

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**



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Order Instituting Rulemaking on the  
Commission's Own Motion to Establish  
Consumer Rights and Consumer Protection  
Rules Applicable to All Telecommunications  
Utilities.

Rulemaking 00-02-004  
(Filed February 3, 2000)

**REPLY COMMENTS OF CRICKET COMMUNICATIONS, INC. (U-3076-C)  
AND METROPCS CALIFORNIA, LLC (U-3079-C)  
TO CTIA –THE WIRELESS ASSOCIATION® SUPPLEMENTAL COMMENTS**

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Dated: August 16, 2010

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Pursuant to the Assigned Administrative Law Judge's Ruling ("ALJ Ruling") issued in this proceeding on August 10, 2010, Cricket Communications (U-3076-C) ("Cricket") and MetroPCS California, LLC (U-3079-C) ("MetroPCS") respectfully submit these reply comments to the Supplemental Comments of CTIA - The Wireless Association® ("CTIA") in the above-captioned proceeding.

**I. INTRODUCTION**

Cricket and MetroPCS support CTIA's Alternative Proposed Rules as an appropriate means for monitoring unauthorized charges for wireless services. Although Cricket and MetroPCS maintain that no rules need be adopted in this proceeding as the wireless industry has established extensive procedures to prevent unauthorized charges, CTIA's proposed rules offer a practical solution for gathering data regarding possible unauthorized charges on wireless bills by third party content providers. Significantly, because the CTIA proposal relies on the reporting of data that the carriers already use to monitor third party providers, the Alternative Proposed Rules would not impose the substantial and expensive modifications to wireless carriers' systems that the proposed rules set forth in the ACR dated February 12, 2010 would require.

Cricket and MetroPCS specifically support the language of Section 7 of the Alternative Proposed Rules, which would reduce the reporting obligations for prepaid and pay-in-advance

(collectively, “pay-in-advance”) services. As explained in comments filed previously in this proceeding and below, the risk of cramming is extremely low with pay-in-advance services; moreover, customers can completely eliminate any risks by not funding accounts used for such purchases in advance.<sup>1</sup>

## II. DISCUSSION

### A. The Commission Should Adopt The Limited Reporting Obligations in the Alternative Proposed Rules for Pay-in-Advance Services

Cricket and MetroPCS urge the Commission to adopt Section 7 of the CTIA Alternative Proposed Rules, which sets forth reduced reporting requirements for providers of pay-in-advance services.

Like the other wireless carriers, Cricket and MetroPCS have adopted the Mobile Marketing Association (“MMA”) Guidelines.<sup>2</sup> The MMA guidelines provide significant protection to customers purchasing content services since they require the customer to confirm the purchase through a “double opt-in” process: (1) requesting a service; and (2) confirming that they intend to purchase a service. Moreover by their nature, pay-in-advance services offer extra levels of protection against cramming. In order to be able to purchase a content service from a third party provider, a customer on a pay-in-advance service plan must first establish and place enough monies in the discretionary account to fund a content purchase. If the customer has not established the account or does not have enough funds in the discretionary account, the transaction is not completed. (A customer can never receive a *bill* for unauthorized charges because no *bills* are issued, no credit is extended)

As a result, the risk of an unauthorized charge in the pay-in-advance context is extremely low, and practically speaking, affects very few customers because only a small percentage fund

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<sup>1</sup> See Cricket and MetroPCS Reply Comments at 11.

<sup>2</sup> See CTIA Opening Comments at 6.

these types of discretionary purchases. Moreover, pay-in-advance customers can completely eliminate their risk of any cramming by simply not establishing or not funding the discretionary account.

The complaint statistics bear out that cramming rarely occurs with pay-in-advance services. Cricket and MetroPCS explained in their opening comments in this proceeding that the Commission's own Consumer Affairs Branch ("CAB") data reflects that for the period of November 2008 to February 2010, there was only *one* cramming complaint for MetroPCS and *none* for Cricket.<sup>3</sup> Moreover, although cramming is rare in the pay-in-advance context, Cricket and MetroPCS also have liberal refund policies that provide credits to customers that are dissatisfied with any third party services they have purchased. In light of the foregoing, the CTIA Alternative Proposed Rules properly recognize that such services should not be subject to all reporting requirements.

Adopting reduced reporting obligations for pay-in-advance services would also be consistent with the Commission's past recognition that prepaid and pay-in-advance services should be exempt from other consumer protection rules. For example, in the Limited English Proficiency ("LEP") rulemaking, the Commission determined in D.07-07-043 that it made sense to exempt pay-in-advance services from the LEP rules because those services do not require term contracts, and customers incur less financial risk in purchasing these services.<sup>4</sup> Significantly, the LEP decision exempted pay-in-advance services because the Commission concluded that consequences of problems arising from the lack of LEP requirements for LEP customers

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<sup>3</sup> Cricket and MetroPCS Opening Comments at 14-15. Cricket and MetroPCS observed that the Division of Ratepayer Advocates (DRA)'s assertion that the CAB representatives had incorrectly failed to categorize a portion of the customer complaints as "cramming" further demonstrates the difficulty of classifying complaints as "cramming" or otherwise. Cricket and MetroPCS Reply Comments at 4-5.

<sup>4</sup> D.07-07-043, *mimeo* at 70.

purchasing pay-in-advance services would be nominal. Such reasoning applies even more so in this context.

### **B. Tracking the Eligibility of Carriers Offering Pay-in-Advance Services**

Cricket and MetroPCS recognize, however, that the Commission may want to monitor on a periodic basis whether certain providers that offer pay-in-advance services continue to qualify for the exemption. Further, the Commission may want to track which carriers are not filing certain reports due to exemption from certain of the reporting obligations under the Alternative Proposed Rules. To that end, Cricket and MetroPCS propose that Section 7 of the CTIA Alternative Proposed Rules be revised to include the underlined language:

7) Due to the nature of pre-paid and pay in advance wireless telecommunications service, wireless carriers who offer pre-paid or pay in advance service to their customers are not obligated to comply with the reporting rules in Sections 1 through 3 with respect to such pre-paid or pay in advance services, provided that such carriers annually certify to the Executive Director that they qualify for the exemption. Such carriers are still obligated to comply with the requirements of Sections 4, 5 and 6 herein.

With this requirement, wireless carriers will have to certify annually that they qualify for the exemption, and the Commission staff will be able to monitor which carriers assert that they are exempt from Sections 1 through 3 of the Alternative Proposed Rules.

### **III. CONCLUSION**

For the foregoing reasons, Cricket and MetroPCS emphasize that no reporting rules are necessary for the wireless industry, given the stringent MMA double opt-in process that wireless carriers follow the purchase of wireless content service . However, if the Commission decides that some rules are necessary, Cricket and MetroPCS affirm their support for the CTIA Alternative Proposed Rules as a practical alternative for gathering relevant information about potential “cramming” activity. Most importantly, Cricket and MetroPCS urge the Commission to adopt an exemption for pay-in-advance services as set forth in Section 7 of the Alternative



## CERTIFICATE OF SERVICE

I, Judy Pau, certify:

I am employed in the City and County of San Francisco, California, I am over eighteen years of age and am not a party to the within entitled cause. My business address is 505 Montgomery St., Suite 800, San Francisco, California 94111-6533.

On August 16, 2010, I caused the following to be served:

**REPLY COMMENTS OF CRICKET COMMUNICATIONS, INC. (U-3076-C)  
AND METROPCS CALIFORNIA, LLC (U-3079-C)  
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enclosed in a sealed envelope, by first class mail on the parties listed as “Parties” and “State Service” on the attached service list who have not provided an electronic mail address, and via electronic mail to all parties on the service list who have provided the Commission with an electronic mail address.

\_\_\_\_\_  
/s/  
Judy Pau

Commissioner Bohn (Via U.S. Mail and Electronic Mail)  
Administrative Law Judge Bushey (Via U.S. Mail and Electronic Mail)

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