REDACTED CONFIDENTIAL INFORMATION - SUBJECT TO PROTECTIVE
IN I.11-06-009

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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Investigation on the Commission's Own Motion into the Planned Purchase and Acquisition by AT&T Inc. of T-Mobile USA, Inc., and its Effect on California Ratepayers and the California Economy	)))))	Investigation 11-06-009

RESPONSES OF CRICKET COMMUNICATIONS, INC. (U-3076-C) TO CPUC DATA REQUESTS

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In its Order issued on June 9, 2011, initiating an investigation into the proposed acquisition of T-Mobile USA, Inc. by AT&T Inc., the California Public Utilities Commission (the "Commission") directed specified parties, including Cricket Communications, Inc. (U-3076-C) ("Cricket"), to respond to certain Data Requests set forth in Appendix A of the Order. Through its undersigned counsel, Cricket hereby submits the enclosed responses to the Data Requests that apply to Cricket. Consistent with the Protective Order adopted in the Investigation, Cricket is filing a public version of this Response (which redacts Confidential Information) and confidential version of this Response under seal.

Cricket is pleased to work cooperatively with the Commission in its investigation of this proposed acquisition, which has the potential to irreparably harm the competitive dynamics of the wireless industry in California and nationwide. Cricket is a leading provider of affordable, flat rate, unlimited voice and data service with no overage charges. Cricket's service does not require credit checks, long-term contracts, or termination fees. Cricket's customer base historically has been comprised of lower-income and value-seeking consumers. As a mid-sized carrier whose corporate headquarters is in California, Cricket has a unique perspective on how competition manifests in the wireless industry, and on what the effects of the proposed acquisition would be on competition.

Cricket's submits the enclosed responses based on the best information that it has available and that it was able to assemble on the Commission's accelerated timeframe. Without obligating itself to do so, Cricket reserves the right to continue its discovery and to modify or supplement the responses below with such pertinent information or documents as it may reasonably discover.[1]

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[1] By submitting these responses, Cricket does not waive, and expressly reserves, the right to object on appropriate grounds to the use of such information and documents, to future data requests, and to the Commission's assertion of jurisdiction in this or other proceedings.

To Respondents and All Parties

Request Number 6:

Provide your best estimate of the market share of Respondents, MetroPCS, Sprint, Cricket and other wireless telephone providers in California, and do so on a state-wide basis, as well as providing such a market share analysis for each major metropolitan area in the State (see Appendix A to the AT&T merger "Public Interest Statement" filed at the FCC).

Response:

Cricket provides service in the San Diego and Central Valley regions of California and thus does not have comprehensive estimates of market shares in most California markets. However, based on data from a respected industry analyst, Cricket estimates that market shares in the San Diego and Fresno markets as of the fourth quarter of 2010 are as follows: **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]**

Request Number 7:

With regard to the Appendix A to the AT&T merger "Public Interest Statement" filed at the FCC, state separately the total Cellular, PCS, 700 MHZ AWS and otherwise described spectrum which you own, hold, or otherwise control in each of the California markets identified in the above-referenced FCC Appendix A, what you believe to be the total spectrum available for wireless transmission in those markets, and spectrum known by you to be owned, held or otherwise controlled by those wireless carriers today.

Response:

Cricket has spectrum information about only the California markets in which it holds spectrum: San Diego, Fresno, Modesto, and Merced. Attached as Exhibit 1 (Bates numbers Cricket-CA-000001 through Cricket-CA-000016) is a chart of spectrum holdings based on industry analyst data, FCC information, and company records. As Exhibit 1 demonstrates, AT&T already holds by far the most spectrum in Cricket's California markets, and the proposed acquisition would give AT&T greater than four times as much spectrum as Cricket in those markets.

Request Number 8:

Provide your view of the spectrum efficiencies, if any, that will be obtained by the proposed acquisition by AT&T of T-Mobile's spectrum and operations.

Response:

The principal argument that AT&T and T-Mobile have put forth to justify this proposed acquisition is that AT&T faces a significant spectrum shortage that can only be cured by acquiring T-Mobile. This claim is highly questionable and unsupported. To the extent that AT&T faces any spectrum constraints, they are largely constraints of its own making that have arisen through its mismanagement of resources. That mismanagement does not justify enhancing an already-dominant carrier's market power that will have the ability and incentive to harm competition and consumers.

Even apart from this transaction and apart from its also-pending proposed acquisition of 700 MHz spectrum from Qualcomm, AT&T today already controls enormous amounts of spectrum, the most of any carrier in the United States. AT&T has not put to use significant portions of this spectrum. For example, AT&T acquired approximately $1.3 billion in AWS spectrum in 2006, but has yet to deploy commercial operations in this band.[2] Indeed, AT&T is sufficiently uninterested in deploying its AWS spectrum that it has offered significant blocks of it to T-Mobile as part of the breakup fee in this acquisition.[3] It is impossible to credit AT&T's claim that it is spectrum constrained when it is prepared, if necessary, to move to LTE on its own without using *any* of its valuable AWS spectrum. AT&T also has an extensive and rapidly growing WiFi network, and AT&T does not explain at all the impact of its WiFi network on its ability to alleviate any purported spectrum crunch.

AT&T's principal competitor, Verizon—despite having more subscribers than AT&T, and less spectrum than AT&T—has publicly stated that it faces no significant spectrum shortage.[4] Verizon's statements are a strong indication that AT&T already has ample resources at its disposal, and simply needs to manage them more efficiently. The solution, especially with a resource as scarce as spectrum, is for AT&T to deploy all of its spectrum and to manage it efficiently, not to harm competition by creating a dominant carrier with market power that usurps limited resources. If Verizon can manage the transition to LTE with more customers and less spectrum, then AT&T can do the same.

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[2] *See, e.g.*, http://www.dailywireless.org/2010/06/18/phoney-spectrum-scarcity (noting that "T-Mobile, Cricket and MetroPCS are using their expensive AWS spectrum. Verizon and AT&T are not."); *see also Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, Fourteenth Report, WT Docket No. 09-66, ¶ 257 (May 20, 2010) ("*14th Wireless Competition Report*").

[3] *See* Steven M. Davidoff, *AT&T Deal Shows How Different a Private Sale Can Be*, N.Y. Times, Mar. 25, 2011, *available at* http://dealbook nytimes.com/2011/03/25/att-deal-shows-how-different-a-private-sale-can-be; Philip Elmer-DeWitt, *AT&T-Mobile: What the Analysts Say*, CNN Money, (Mar. 21, 2011), http://tech fortune.cnn.com/2011/03/21/att-mobile-what-the-analysts-say; *see also* Stock Purchase Agreement § 7.5 and Annex E (attached to FCC Application).

[4] Verizon and Sprint React to US mega deal, Mobile Business Briefing, Mar. 22, 2011, http://www mobilebusinessbriefing.com/article/verizon-and-sprint-react-to-us-mega-deal.

AT&T has asserted that it must support legacy technologies during its transition to LTE,[5] and that it must manage a surge in data volume,[6] but these are challenges that many carriers face. The issue is whether AT&T should be allowed to acquire a built-out network and millions of customers in lieu of building out its own spectrum assets. Allowing AT&T to become even more dominant would heighten these hurdles for the rest of the industry.

The transaction could effectively prevent smaller players from acquiring spectrum at future auctions. The wireless industry is a heavily capital-intensive industry, and the trend for years has been to concentrate cash flow and capital in the hands of AT&T and Verizon.[7] This proposed acquisition would significantly worsen the disparity between AT&T's vast capital and the capital of smaller carriers. Recent auctions and private sector transactions have already confirmed the challenges that smaller carriers face: the recent 700 MHz auction, AT&T's acquisition of Aloha Partners, and its proposed acquisition of Qualcomm's 700 MHz spectrum, all demonstrate AT&T's ability to secure spectrum at prices with which smaller carriers cannot compete. This transaction would exacerbate the problem and increase the likelihood that future auctions and after-market spectrum acquisitions will continue to be dominated by AT&T and Verizon.

AT&T's extensive spectrum holdings, coupled with significant spectrum constraints for Cricket, would mean that if AT&T were to raise its prices by a small but significant and non-transitory amount, Cricket would face significant spectrum limitations in its efforts to substantially and rapidly expand its service offerings to recruit AT&T retail customers. Exhibit 6 to Cricket's Petition to Deny filed with the FCC demonstrates the tremendous disparity in the amount of spectrum that AT&T would hold versus the amount of spectrum that Cricket currently holds in many markets.[8] For example, in the top ten markets that Cricket serves, its spectrum holdings range from 10 MHz to 30 MHz of spectrum.[9] By contrast, the combined AT&T and T-Mobile would have spectrum holdings in the range of 122 MHz to 171 MHz in those same markets.[10] For instance, in San Diego, a post-merger AT&T would have over five times more spectrum than Cricket.[11] The transaction thus would result in a tremendous concentration of spectrum in the hands of AT&T in cities and towns around the country, including markets in California, and put AT&T in an even more dominant position vis-à-vis Cricket.

Cricket already faces a significant disadvantage in its spectrum holdings relative to AT&T, and confronts challenges in reacting to AT&T's business decisions because of its

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5 AT&T Inc. and T-Mobile USA, Inc., Description of Transaction, Public Interest Showing, and Related Demonstrations, *Applications of AT&T Inc. and Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses and Authorizations*, WT Docket 11-65, at 22-25 (filed Apr. 21, 2011) ("*Public Interest Statement*").

6 *Id.* at 20-22.

7 *See, e.g.*, *14th Wireless Competition Report* ¶¶ 219-221 & charts 34-37 (providing different measures of wireless providers' cash flows).

8 The exhibits are available at http://fjallfoss.fcc.gov/ecfs/document/view?id=7021681261.

9 Exhibit 6 to Cricket's FCC Petition.

10 *Id.*

11 *Id.*.

relatively weaker spectrum position and spectrum constraints. But the addition of T-Mobile's spectrum and resources to AT&T's current holdings would widen the gulf and make Cricket far weaker in comparison to AT&T. Because no new spectrum is coming onto the market in the near term, the transaction would confer an enormous competitive advantage to AT&T. And again, the capital-intensive nature of deployment coupled with the concentration of cash-flow in AT&T and Verizon's hands create further impairments to smaller and mid-sized carriers' ability to compete with the super-carriers.

Finally, the transaction also eliminates any incentive for AT&T to deploy its current tremendous cache of AWS and 700 MHz spectrum assets. As discussed above, AT&T has not deployed many of these assets. Without this transaction, AT&T would have to employ its existing spectrum assets to their fullest capabilities—which would lead to greater investment in deployment, more jobs, and higher utilization of spectrum resources. Were the transaction to proceed, however, AT&T would have no incentive to maximize the use of its spectrum resources. AT&T already is hoarding vast spectrum resources that other carriers such as Cricket could put to better use to provide more robust competition, and this transaction would greatly exacerbate the trend.

Request Number 9:

Would the merger, which is planned as a nationwide transaction, have specific or different effects in California? For example, would the merger result in less competition in the California marketplace for wireless telephone customers?

Response:

The merger would result in less competition in wireless telephone markets in California. As the Commission points out in its Order, a combined AT&T and T-Mobile would have "approximately 20 million California wireless telephone and data customers, and over 47% of the California wireless market."[12] Post-merger market concentration would be greater in California than nationally, where AT&T would have a combined wireless market share of approximately 42%.[13] Also, the merger "would leave the affiliates of California's two largest incumbent local exchange carriers (ILECs), AT&T California and Verizon California Inc., with over 77% of the California wireless telephone market (voice and data), an increase from their current 65% share."[14]

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[12] Order Instituting Investigation on the Commission's Own Motion Into the Planned Purchase and Acquisition by AT&T Inc. of T-Mobile USA, Inc., and its Effect on California Ratepayers and the California Economy, at 1 (June 9, 2011) (the "Order").

[13] Order at 10 & n.9. *See also* Order at 10 n.9 ("The differential would be larger in mobile broadband, where AT&T's post-merger market share in California would be over 55%, whereas nationally it would be in the 42% range.").

[14] Order at 1-2.

Although Cricket has not conducted an independent analysis of the effects of the proposed transaction in California, Cricket's national analysis reveals effects in specific markets within California. For example, if the transaction proceeds, the top two carriers would have greater than 70% market share in San Diego, and AT&T alone would have greater than 50% market share in Fresno.[15] After the deal, in those two Cricket markets, AT&T would control 165 MHz of spectrum, greater than 45% of the available spectrum.[16] In both San Diego and Fresno, the top two carriers would control greater than 60% of the available spectrum.[17] In addition, in three additional Cricket markets in California (Visalia, Modesto, and Madera), AT&T would control more than 130 MHz of spectrum.[18] This transaction thus would significantly change the competitive landscape in markets within California, as illustrated by these examples.

Request Number 10:

How should the relevant market(s) be defined? How should the product market (or markets) be defined, as wireless telephone carriers, as smart phone carriers, or some other way? How should the relevant geographic market (or markets) be defined? Locally according to carriers available to consumers in a locality, regionally, by state, nationally, or some combination of these? Provide citations to studies that exemplify the kind of market analysis that addresses the above.

Response:

The geographic market should be defined and analyzed both at the national level and at the local level. AT&T's own economic expert acknowledges that "there are both national and local dimensions to competition in the provision of wireless service."[19]

The tremendous increase in industry concentration over the last decade has created super-carriers that advertise based on national offerings and capabilities, offer nationwide services, price at the national level, and engage in activities (such as restricting handset availability and interoperability) whose competitive effects are felt by other carriers on a nationwide basis. Both AT&T and Verizon are publicly representing through their marketing campaigns that they compete with each other principally at the national level, as exemplified by their current national advertising war over which nationwide network is largest and which has better nationwide coverage.[20] In addition, important customers of AT&T and T-Mobile are national customers.

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15 *Compare* Exhibits 1 and 2 to Cricket's FCC Petition.

16 Exhibit 3 to Cricket's FCC Petition; *compare* Exhibits 4 and 5 to Cricket's FCC Petition.

17 *Compare* Exhibits 4 and 5 to Cricket's FCC Petition.

18 Exhibit 3 to Cricket's FCC Petition.

19 *Public Interest Statement*, Declaration of Dennis W. Carlton, Allan Shampine and Hal Sider ("Carlton Declaration") ¶ 83.

20 *Compare* http://www.verizonwireless.com/its-the-network.shtml *with* http://www.wireless.att.com/learn/why/network/index.jsp?wtSlotClick=1-00245D-0-1&WT.svl=calltoaction.

For example, enterprise customers frequently demand nationwide service offerings, or, at a minimum, regional offerings whose geographic reach extends far beyond individual Cellular Market Areas ("CMAs"). Consumers also increasingly demand nationwide service and thus view wireless service as a nationwide product.[21] Furthermore, carriers such as Cricket that seek nationwide voice and data roaming arrangements are constrained to pursue wholesale agreements from nationwide carriers on a nationwide basis. And when AT&T and Verizon roll out new services or devices, develop and implement particular standards for next generation technology, or restrict the availability or interoperability of devices, the competitive effects of those actions reverberate and impact competition nationwide.

In addition, less than three years ago when AT&T acquired Centennial Communications, AT&T itself argued to the FCC that "the evidence shows that the predominant forces driving competition among wireless carriers operate at the national level."[22] AT&T represented to the FCC that the facts regarding its pricing strategies and practices were as follows: "In the mainland U.S., AT&T establishes its rate plans and pricing on a national basis, *without reference to market structure at the CMA level.* One of AT&T's objectives is to develop its rate plans, features and prices in response to competitive conditions and offerings at the national levels – primarily the plans offered by the other national carriers."[23] AT&T argued that, because Centennial was a regional carrier, its "pricing *is an inconsequential factor* in AT&T's competitive decision-making."[24] Thus, according to AT&T, the relevant constraints on its pricing occur at the national level.

There are also competitive effects at the local level that warrant analysis. The FCC historically has concluded that the relevant geographic market for purposes of its competitive analysis is local and consists of CMAs, on the ground that consumers typically shop for mobile telephony or data services among options that are available in their local area. In light of national level pricing, competition, and advertising, the Commission should not focus exclusively on local markets, but it should nevertheless consider the impact of the proposed acquisition on competition in local markets.

Request Number 11:

Would the merger give the resulting entity monopsony power or increase the tendency to monopsony power including market power over equipment suppliers? If yes, then what impact would the merger have on choice and competition in handsets and related equipment?

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21 *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, Second Report and Order, WT Docket No. 05-265, ¶ 15 (April 7, 2011).

22 *See* Description of Transaction, Public Interest Showing, and Related Demonstrations, *Application of AT&T Inc. and Centennial Communications Corp. For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Leasing Arrangements*, WT Docket No. 08-246, at 28 (filed Nov. 21, 2008).

23 *Id.* at 28-29 (emphasis added).

24 *Id.* at 29 (emphasis added).

Response:

The merger would give the resulting entity monopsony power over equipment suppliers and would reduce consumer choice and overall competition in handsets and related equipment. Consumers and carriers alike understand that device selection is a critical component of the decision to purchase wireless services. As one article recently observed, "for many smaller wireless carriers, smartphones represent a critical element of their growth strategies," yet the largest carriers "hinder their access to the latest gadgets as well as their ability to provide affordable devices."[25] AT&T already has engaged in a variety of exclusionary tactics to ensure that the most attractive devices remain out of the hands of rivals, either forever or for a sufficiently long period that it can reap all of the first-mover advantages of a popular new device. Particularly because the life cycle of devices can be rapid, AT&T—together with Verizon—has successfully controlled the device market for years.

AT&T and Verizon have achieved this control of the market in several ways. First, they have used their market power to achieve exclusive arrangements with manufacturers, such as AT&T's long exclusivity period for the iPhone, which today still remains available exclusively through AT&T and Verizon. AT&T and Verizon also have monopolized inventory in several instances during parts shortages when consumer demand outpaced supply. They have demanded devices that are not compatible with other networks in order to limit their availability to other carriers and increase their leverage in roaming negotiations.[26] They have achieved favorable cost advantages due to their size and volume purchase ability, which leave smaller rivals facing markedly higher costs. And particularly during the transition to 4G, AT&T and Verizon have advocated narrow, virtually carrier-specific standards that will allow them to procure devices that they will assert are incompatible with other carriers' 4G standards.[27]

The proposed acquisition would make an already problematic situation dramatically worse. AT&T's dominant position after this acquisition would greatly enhance its ability to exclude competitors from obtaining the most sought-after devices. Even absent express exclusivity agreements, AT&T's monopsony power would enable it in practice to procure the lion's share of a manufacturer's production, particularly during parts shortages. AT&T also would have a much greater ability to extend the duration of exclusivity periods for new devices.

Request Number 12:

Would innovation be promoted or constrained by the merger? For example, would the merger increase, maintain or diminish facilities and competition for wireless

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[25] *See* Fierce Wireless, "Tier 2 Wireless Carriers Clamoring For More Smartphones," available at http://www fiercewireless.com/special-reports/tier-2-wireless-carriers-clamoring-more-smartphones.

[26] *See, e.g.*, D. Hyslop and C. Helzer, "700 MHz Band Analysis," (May 6, 2010), attached to Ex Parte of MetroPCS *et al.*, WT Docket No. 06-150, PS Docket No. 06-229, GN Docket No. 09-51, RM Docket No. 11952 (May 10, 2010).

[27] *See, e.g.*, *Petition for Rulemaking Regarding the Need for 700 MHz Mobile Equipment to Be Capable of Operating on All Paired Commercial 700 MHz Frequency Blocks*, Petition for Rulemaking, at ii-iii, RM-11592 (filed Sep. 29, 2009).

transmission services such as distributed antenna systems (DAS) and open distributed antenna systems (O-DAS)? How would the merger affect handset competition and innovation?

Response:

The proposed acquisition poses a serious risk of constraint on innovation. The merger would increase AT&T's ability to prevent or delay the development of spectrum management technologies that would help interoperability of devices across spectrum bands by leveraging its buying power to coerce the production of non-interoperable devices. Such interoperability is crucial for carriers such as Cricket to provide their subscribers with the services and devices that they demand. In addition, as described above, AT&T's dominant position post-merger would increase its ability to obtain volume discounts for handsets and other devices, placing smaller competitors at a marked disadvantage for developing and purchasing cutting-edge products for their customers.

Small, mid-sized, and startup carriers today are the drivers of innovation in the wireless industry. Providers such as Cricket have developed novel and industry-changing products and services, including unlimited voice and data offerings at fixed price points, and unlimited mobile music services such as Cricket's Muve Music.[28] There is a very real risk that this transaction would deal a crippling blow to wireless innovation. The wireless industry cannot continue to be at the forefront of the broadband revolution, for example, if the industry becomes dominated by super-carriers who lack the incentives to innovate and who are controlling the cash flow and the capital that small, mid-sized, and startup carriers need to generate new products and services.

Request Number 13:

What impact would the merger have on the market for special access or backhaul services?

a. **What alternatives to incumbents' special access backhaul facilities currently exist, and what alternatives would exist after the merger, for independent, competitive wireless carriers?**

b. **Would the smaller post-merger pool of independent, competitive wireless carriers purchasing special access backhaul from local exchange carriers affect the market power of those special access backhaul customers? Would the merger increase the market power of the local exchange carriers and/or their wireless affiliates with respect to special access backhaul services?**

c. **Would the merger increase the ability of the merging parties to impose exclusive or requirements contracts on purchasers of backhaul services? Would the merger increase the ability of the merging parties or their wireline affiliates to**

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[28] Leap introduced Muve Music as an unlimited music plan delivered to mobile devices. The service allows unlimited music downloads, ringtones and ringback tones included in a wireless service for a flat monthly rate, and is expected to be an industry game changer. *See* Press Release, "Cricket Introduces First Wireless Rate Plan with Unlimited Music Included," (Dec. 20, 2010), http://www.mycricket.com/pdf/muve/PressRelease121910.pdf.

require that the entity seeking backhaul services buy a certain percentage of their backhaul services from the wireline affiliates of the merging parties?

Response:

Cricket today relies on AT&T for 55% of its backhaul services nationwide, and all or nearly all of its backhaul in California. Cricket's alternatives for special access backhaul facilities in California markets are limited to Cox and Time Warner Cable, depending on location.

Wireless providers need special access services to provide backhaul in order to connect base stations to switching centers, and the FCC has referred to backhaul as a potential "bottleneck."[29] The GAO has found that "rates for special access are a significant expense for wireless carriers because connections to backhaul provided by special access are an integral component of wireless networks."[30] Moreover, "to the extent rates are not just and reasonable, special access may serve as a barrier to entry and growth for some wireless carriers."[31]

AT&T already has sufficient market power in backhaul services that it can charge "many multiples of cost" for access to its network.[32] T-Mobile itself previously has acknowledged that "increased oversight is particularly important for those suppliers of special access, including AT&T and Verizon, that compete with T-Mobile and other independent wireless carriers through their wireless affiliates. Because of their dominance in the special access marketplace, these ILECs have both the ability and the incentive to discriminate against competitors in favor of their wireless affiliates."[33] AT&T, by combining its traffic with T-Mobile traffic, would have a significantly greater incentive to price-discriminate in favor of its own vertically integrated wireless traffic. AT&T will be able to leverage its dominant position in last-mile facilities to selectively benefit or disadvantage competitors. AT&T inevitably will favor its own T-Mobile traffic over competitors' traffic and in doing so will cause tremendous harm to competition in the wireless industry.

The transaction also threatens the quality of backhaul that Cricket receives from AT&T. Local exchange carriers already have minimal incentives to prioritize access to competitive carriers or to improve the quality of their backhaul services. AT&T will be able to wield service quality as a competitive weapon by providing favorable service to its own traffic, but reducing the quality of its backhaul services to competitors.

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29 *14th Wireless Competition Report* ¶ 293.

30 U.S. Gov't Accountability Office, GAO-10-779, *Telecommunications: Enhanced Data Collection Could Help FCC Better Competition in the Wireless Industry*, at 41 (2010).

31 *Id.*

32 *And then there were three: AT&T to swallow T-Mobile*, ETI Views and News (Econ. and Tech. Inc., Boston, Mass.), Mar. 2011, at 1.

33 Comments of T-Mobile, *Special Access Rates for Price Cap Local Exchange Rates*, WC Docket No. 05-25, at 5 (filed Aug. 8, 2007).

Request Number 14:

What affect, if any, might the merger have on roaming agreements and arrangements between AT&T and other wireless carriers?

Response:

The FCC recently adopted rules regarding data roaming that, among other things, require carriers to offer data roaming arrangements on commercially reasonable terms and conditions.[34] In light of the competitive effects of this proposed acquisition, those rules unfortunately would not go nearly far enough to ensure that a merged AT&T/T-Mobile would negotiate voice and data roaming agreements on reasonable terms, particularly with respect to the critical rollout of 4G LTE services.

As an initial matter, AT&T already exercises market power and engages in exclusionary conduct with regard to reaching data roaming agreements. The FCC observed in its recent data roaming order that "AT&T has largely refused to negotiate domestic 3G roaming arrangements," and noted that AT&T did not enter into a *single* 3G roaming agreement until March 2011.[35] The FCC also found that it was "unlikely" that AT&T would be willing to offer roaming arrangements for 4G LTE networks "at any time in the near future."[36]

AT&T's dominance and market power arising from this proposed acquisition will severely impact roaming arrangements because Cricket and other regional carriers depend on nationwide carriers to achieve nationwide coverage for their subscribers. Cricket has no alternative—even leaving aside the considerable transaction costs of reaching multiple agreements, there is no longer a feasible way to assemble the nationwide coverage that consumers demand through piecemeal roaming arrangements.[37] Thus the market for roaming agreements needed to achieve nationwide coverage is limited to nationwide carriers.

The proposed acquisition would create a monopoly in AT&T for 3G GSM roaming, and eliminate a critical nationwide partner for 4G LTE roaming in the near future. As a result, this acquisition would strengthen AT&T's ability to resist data roaming agreements altogether or reduce the quality of service that it provides to roaming carriers. The proposed acquisition also would result in higher roaming rates. By eliminating a major roaming partner in T-Mobile, creating a monopoly in nationwide roaming partners for GSM, and strengthening AT&T's already dominant competitive position, this transaction would result in much higher GSM roaming rates, and ultimately higher 4G LTE roaming rates. AT&T would have such market

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[34] *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, Second Report and Order, WT Docket No. 05-265, ¶¶ 1, 13 (April 7, 2011) ("*Data Roaming Order*").

[35] *Id.* ¶ 25.

[36] *Id.* ¶ 27.

[37] The Commission has found that consumers increasingly expect their providers to offer mobile data and expect "to have access to the full range of services available on their devices wherever they go." *See id.* ¶ 15.

power following this transaction that an increase in AT&T's rates would have an upward effect on prices industry-wide.

Indeed, one of the best analyses of this issue comes from T-Mobile itself. T-Mobile in November 2010 complained to the Commission that it had "not been able to achieve a 3G roaming agreement with AT&T" despite "AT&T's apparent willingness to provide 3G roaming to foreign carriers."[38] When AT&T continued to stonewall, T-Mobile argued that "while roaming has historically been competitive and reciprocal, *i.e.*, there were multiple potential roaming partners and a mutual need for roaming, AT&T's [refusal to negotiate] suggests that *roaming is increasingly becoming a monopoly service provided on a unilateral basis*."[39] T-Mobile attributed "AT&T's intransigence" as being "a direct result of the dominant position it now holds in the roaming marketplace."[40] These are precisely Cricket's concerns. Thus, T-Mobile itself understands that AT&T's has the power and incentive to unilaterally deny roaming agreements to carriers, and does in fact exercise that power to refuse agreements or demand oppressive terms—all to the detriment of consumers who expect nationwide coverage for voice and data services.[41] The problem will get much worse if the proposed acquisition is approved.

Request Number 16:

Provide executed exemplars of all forms of contract, and all tariff pages whether federal or intrastate, used with regard to California special access or backhaul facilities which you purchase or lease or otherwise obtain from AT&T in California.

a. **Provide for the most recent month available the total number of DS1, DS3, and any other channel termination backhaul services provided to your company by AT&T for channel terminations in California, and identify the type of backhaul involved (DS1, DS3, other), as well as the total numbers of such facilities billed at intrastate and interstate rates.**

b. **Provide your understanding of AT&T's special access offerings for wireless backhaul including the range of rates, and the average rate, for channel termination (first, nonrecurring, and recurring charges, etc.) and channel mileage (rates per mile, by fixed mileage, etc.).**

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[38] *See* Ex Parte Letter from Howard J. Symons, counsel for T-Mobile USA, Inc., to Marlene Dortch, Secretary, WT Docket No. 05-265 (filed Nov. 2, 2010).

[39] *See* Ex Parte Letter from Howard J. Symons, counsel for T-Mobile USA, Inc., to Marlene Dortch, Secretary, WT Docket No. 05-265 (filed Nov. 10, 2010) (emphasis added).

[40] *See* Ex Parte Letter from Thomas J. Sugrue, Senior Vice President, Government Affairs, T-Mobile USA, Inc., to Chairman Julius Genachowski, WT Docket No. 05-265 (filed Mar. 10, 2011).

[41] T-Mobile remains concerned enough about this issue that it filed a motion last week to intervene in support of the Commission in Verizon's appeal of the *Data Roaming Order*. *See* Motion, T-Mobile USA Inc., *Cellco Partnership d/b/a Verizon Wireless v. FCC*, Nos. 11-1135 and 11-1136 (D.C. Cir. filed June 13, 2011).

c. **Provide contracts and tariff pages, and an explanation similar to the one requested above, for Verizon special access offerings, to the extent they differ materially from those offered by AT&T.**

Response:

To the best of Cricket's information and belief, the following is approximately the total number of termination backhaul services provided to Cricket by AT&T for channel terminations in California for the most recent month:

[BEGIN CONFIDENTIAL]

[END CONFIDENTIAL]

In addition, Cricket is enclosing samples of the relevant tariff pages, attached at Exhibit 2 (Bates numbers Cricket-CA-000017 through Cricket-CA-000031.

Cricket does not purchase special access from Verizon in California; Cricket does not operate in Verizon territory in California.

Request Number 17:

If you believe that the merger will lead to increased market concentration in California, should the Commission consider and propose or impose conditions to prevent significant adverse consequences which may result from the merger? What, if any, should those conditions be?

Response:

The proposed acquisition unquestionably would lead to increased market concentration in California. This increased concentration would cause significant harms to competition and to consumers. In particular, the acquisition would cause significant harms with respect to roaming agreements by giving AT&T greater market power and greater ability to impose higher prices and coercive roaming conditions. The acquisition also would cause anticompetitive consolidation of spectrum in the hands of AT&T. It further would harm competition and consumers by exacerbating AT&T's ability to impede the ability of rivals' to acquire desirable handsets and devices, by entering into exclusive agreements and by limiting the interoperability

of devices. Finally, the transaction would give AT&T the ability to harm competitors by increasing special access and backhaul rates, and decreasing quality.

In Cricket's view, these harms to competition and consumers are so significant and comprehensive that they cannot meaningfully be alleviated through conditions. Cricket consequently believes that the proposed acquisition should be rejected.

Respectfully submitted,

/s/ James H. Barker

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June 24, 2011

EXHIBIT 1

SPECTRUM DEPTH BY CARRIER

Market	Licensed POPs	Leap	ATT/TMO	ATT	TMO	VZW	SpCo	MFCS	Sprint	Cox	ATW	Ponderosa Telephone	Nanado	Preferred Acq	Arcap	Total
San Diego	3,100,857	30	165	100	65	67	0	0	61	32	0	0	0	0	2	**357**
Fresno	1,699,532	40	165	125	40	59	20	0	58	0	10	0	2	4	0	**357**
Modesto	593,643	35	135	95	40	69	20	25	60	0	10	0	2	1	0	**357**
Merced	260,833	35	133	93	40	59	20	25	60	0	10	12	2	1	0	**357**

SPECTRUM CHECK

	Licensed		Cellular		PCS							AWS						700				800		Total
Market	POPs	State	A	B	A	B	C	D	E	F	G	A	B	C	D	E	F	A	B	C	D	A	B	MHz
San Diego	3,100,857	CA	25	25	30	30	30	10	10	10	10	20	20	10	10	10	20	14	12	34	6	21	0	357
Fresno	1,699,532	CA	25	25	30	30	30	10	10	10	10	20	20	10	10	10	20	14	12	34	6	18	4	357
Modesto	593,643	CA	25	25	30	30	30	10	10	10	10	20	20	10	10	10	20	14	12	34	6	20	1	357
Merced	260,833	CA	25	25	30	30	30	10	10	10	10	20	20	10	10	10	20	14	12	34	6	20	1	357

AT&T T-Mobile

	Licensed		Cellular		PCS							AWS						700				800		Total
Market	POPs	State	A	B	A	B	C	D	E	F	G	A	B	C	D	E	F	A	B	C	D	A	B	MHz
San Diego	3,100,857	CA	25			30	10	10		10		20				10	20		12	12	6			165
Fresno	1,699,532	CA	25			30		10	10	10		20				10	20		12	12	6			165
Modesto	596,016	CA	25			30		10		10						10	20		12	12	6			135
Merced	260,833	CA	25			30		10	10	10						10	20		12		6			133

Leap Wireless

Market	Licensed POPs	State	Cellular		PCS							AWS						700				800		Total MHz
			A	B	A	B	C	D	E	F	G	A	B	C	D	E	F	A	B	C	D	A	B	
San Diego	3,100,857	CA					10							10	10									30
Fresno	1,699,532	CA					30								10									40
Modesto	593,643	CA					15					20												35
Merced	260,833	CA					15					20												35

AT&T Mobility

	Licensed		Cellular		PCS							AWS						700				800		Total
Market	POPs	State	A	B	A	B	C	D	E	F	G	A	B	C	D	E	F	A	B	C	D	A	B	MHz
San Diego	3,100,857	CA	25			5	10	10		10						10			12	12	6			100
Fresno	1,699,532	CA	25			30		10				20				10			12	12	6			125
Modesto	596,016	CA	25			20		10								10			12	12	6			95
Merced	260,833	CA	25			30		10								10			12		6			93

T-Mobile USA

Market	Licensed POPs	State	Cellular A	Cellular B	PCS A	PCS B	PCS C	PCS D	PCS E	PCS F	PCS G	AWS A	AWS B	AWS C	AWS D	AWS E	AWS F	700 A	700 B	700 C	700 D	800 A	800 B	Total MHz
San Diego	3,100,857	CA				25						20					20							65
Fresno	1,699,532	CA							10	10							20							40
Modesto	596,016	CA				10				10							20							40
Merced	260,833	CA							10	10							20							40

Verizon Wireless

	Licensed		Cellular		PCS							AWS						700				800		Total
Market	POPs	State	A	B	A	B	C	D	E	F	G	A	B	C	D	E	F	A	B	C	D	A	B	MHz
San Diego	3,100,857	CA		25			10		10											22				67
Fresno	1,699,532	CA		25														12		22				59
Modesto	596,016	CA		25					10									12		22				69
Merced	260,833	CA		25														12		22				59

Sprint

Market	Licensed POPs	State	Cellular A	Cellular B	PCS A	PCS B	PCS C	PCS D	PCS E	PCS F	PCS G	AWS A	AWS B	AWS C	AWS D	AWS E	AWS F	700 A	700 B	700 C	700 D	800 A	800 B	Total MHz
San Diego	3,100,857	CA			30						10											21		61.25
Fresno	1,699,532	CA			30						10											18		57.5
Modesto	596,016	CA			30						10											20		60
Merced	260,833	CA			30						10											20		60

Spectrum Co

Market	Licensed POPs	State	Cellular A	Cellular B	PCS A	PCS B	PCS C	PCS D	PCS E	PCS F	PCS G	AWS A	AWS B	AWS C	AWS D	AWS E	AWS F	700 A	700 B	700 C	700 D	800 A	800 B	Total MHz
San Diego	3,100,857	CA																						0
Fresno	1,699,532	CA											20											20
Modesto	596,016	CA											20											20
Merced	260,833	CA											20											20

Cox Wireless

Market	Licensed POPs	State	Cellular		PCS							AWS						700				800		Total MHz
			A	B	A	B	C	D	E	F	G	A	B	C	D	E	F	A	B	C	D	A	B	
San Diego	3,100,857	CA											20					12						32
Fresno	1,699,532	CA																						0
Modesto	596,016	CA																						0
Merced	260,833	CA																						0

Metro PCS

Market	Licensed POPs	State	Cellular A	Cellular B	PCS A	PCS B	PCS C	PCS D	PCS E	PCS F	PCS G	AWS A	AWS B	AWS C	AWS D	AWS E	AWS F	700 A	700 B	700 C	700 D	800 A	800 B	Total MHz
San Diego	3,100,857	CA																						0
Fresno	1,699,532	CA																						0
Modesto	596,016	CA					15								10									25
Merced	260,833	CA					15								10									25

Atlantic Wireless

Market	Licensed POPs	State	Cellular A	Cellular B	PCS A	PCS B	PCS C	PCS D	PCS E	PCS F	PCS G	AWS A	AWS B	AWS C	AWS D	AWS E	AWS F	700 A	700 B	700 C	700 D	800 A	800 B	Total MHz
San Diego	3,100,857	CA																						0
Fresno	1,699,532	CA												10										10
Modesto	596,016	CA												10										10
Merced	260,833	CA												10										10

Ponderosa Telephone Company

Market	Licensed POPs	State	Cellular A	Cellular B	PCS A	PCS B	PCS C	PCS D	PCS E	PCS F	PCS G	AWS A	AWS B	AWS C	AWS D	AWS E	AWS F	700 A	700 B	700 C	700 D	800 A	800 B	Total MHz
San Diego	3,100,857	CA																						0
Fresno	1,699,532	CA																						0
Modesto	596,016	CA																						0
Merced	260,833	CA																		12				12

Xanado Company

Market	Licensed POPs	State	Cellular		PCS							AWS						700				800		Total MHz
			A	B	A	B	C	D	E	F	G	A	B	C	D	E	F	A	B	C	D	A	B	
San Diego	3,100,857	CA																						0
Fresno	1,699,532	CA																2						2
Modesto	596,016	CA																2						2
Merced	260,833	CA																2						2

Preferred Acquisitions, Inc.

	Licensed		Cellular		PCS							AWS						700				800		Total
Market	POPs	State	A	B	A	B	C	D	E	F	G	A	B	C	D	E	F	A	B	C	D	A	B	MHz
San Diego	3,100,857	CA																						0
Fresno	1,699,532	CA																					4	3.75
Modesto	596,016	CA																					1	1.25
Merced	260,833	CA																					1	1.25

Access Spectrum

Market	Licensed POPs	State	Cellular		PCS							AWS						700				800		Total MHz
			A	B	A	B	C	D	E	F	G	A	B	C	D	E	F	A	B	C	D	A	B	
San Diego	3,100,857	CA																2						2
Fresno	1,699,532	CA																						0
Modesto	596,016	CA																						0
Merced	260,833	CA																						0

EXHIBIT 2

33. Pricing Flexibility Contract Offerings (N)

33.133 Contract Offer No. 133 - Special Access Bundle Service Offer

33.133.1 General Description

Contract Offer No. 133 - Special Access Bundle Service Offer (Contract Offer No. 133) is an access discount pricing plan for which concurrent subscription is required to the following Access Tariffs: Ameritech Operating Companies (Ameritech), Tariff F.C.C. No. 2; Pacific Bell Telephone Company (PBTC), Tariff F.C.C. No. 1; Southwestern Bell Telephone Company (SWBT), Tariff F.C.C. No. 73; and BellSouth Telecommunications, Inc. (BellSouth), Tariff F.C.C. No. 1. This Contract Offer No. 133 permits Customers who meet the Eligibility Criteria in Section 33.133.3, and the Terms and Conditions in Section 33.133.4, to purchase Subject Services in Section 33.133.2 at the discounted rates listed in Section 33.133.5. Subject Services under Contract Offer No. 133 are available in the Pricing Flexibility Metropolitan Statistical Areas (MSAs) described in Section 33.133.3 (B). (N) (Nx) (Nx) (N)

Contract Offer No. 133 is available for subscription from August 21, 2007 through September 21, 2007. This Contract Offer is not renewable.

33.133.2 Subject Services

(A) This Contract Offer applies to pricing-flexibility-qualified services (hereafter referred to as Subject Services) contained in the following tariff section(s):

(1) PBTC Tariff F.C.C. No. 1, Section 30 - OC-192 DSRS;

(2) PBTC Tariff F.C.C. No. 1 Section 32 - Optical Carrier Network (OCN) Point-to-Point;

(3) PBTC Tariff F.C.C. No. 1, Section 7 - DS3 Special Access Service;

(4) PBTC Tariff F.C.C. No. 1, Section 29 - Dedicated SONET Ring Service; and

(5) PBTC Tariff F.C.C. No. 1, Section 7 - DS1 High Capacity Service

(B) All Terms and Conditions for the Subject Services listed above are governed by their respective tariff sections, except as noted herein. (N)

(x) Issued under Authority of Special Permission No. 07-020 of F.C.C.

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Cricket-CA-000017

33. Pricing Flexibility Contract Offerings (Cont'd)

(N)

33.133 Contract Offer No. 133 - Special Access Bundle Service Offer (Cont'd)

33.133.3 Eligibility Criteria

The following Eligibility Criteria must be met to receive Contract Offer No. 133 discounted rates:

(A) Subject Services must be pricing flexibility qualified access services listed in Section 33.133.2(A);

(B) Subject Services must be located in the following MSAs:

(1) Full Service Relief MSAs are listed below:

San Jose, CA; Fresno, CA; Los Angeles/Long Beach, CA;

(2) Limited Service Relief MSAs are listed below:

Bakersfield, CA; Modesto, CA; Oxnard/Ventura, CA; Sacramento, CA; San Diego, CA; San Francisco/Oakland, CA; Santa Rosa, CA; Stockton, CA.

(C) Any Subject Service ordered pursuant to this Contract Offer must be new;

(D) All traffic must originate or terminate at a Mobile Switching Center (MSC); and

(E) Concurrent Subscription

The Customer must concurrently subscribe to the identical Contract Offer of Contract Offer No. 133, pursuant to the following tariffs:

(N)
(Nx)

(1) Ameritech Tariff F.C.C. No. 2, Section 22, Contract Offer No. 164;

(2) SWBT Tariff F.C.C. No. 73, Section 41 Contract Offer No. 137; and

(3) BellSouth Tariff F.C.C. No. 1, Section 25, Contract Offer No. 51.

(Nx)

(x) Issued under Authority of Special Permission No. 07-020 of F.C.C.

(This page filed under Transmittal No. 368)

33. Pricing Flexibility Contract Offerings (Cont'd) (N)

33.133 Contract Offer No. 133 - Special Access Bundle Service Offer (Cont'd)

33.133.4 Terms and Conditions

(A) Term Period

The contract term (Term Period) shall be seventy-two (72) months, commencing on the date the Telephone Company receives the signed Letter of Subscription (LOS) from the Customer. This offer is not renewable.

Upon expiration of the Term Period, Subject Services shall be converted to the prevailing applicable monthly (extension) rates, described in Section 39, unless the Customer selects a payment plan described in Sections 7, 29, 30 or 32, as applicable.

(B) General

(1) Subject Services, as described in Section 33.133.2, are subject to certain rates, charges and general terms and conditions described in PBTC Tariff F.C.C. No. 1, Sections 2, 5 and 13, as applicable. Such terms and conditions may be modified through filing tariff changes at any time during the Term Period; however, such tariff modifications will not change the Terms and Conditions described in the Contract Offer.

(2) All Terms and Conditions for the Subject Services provided under this Contract Offer are governed by the otherwise applicable tariff sections, except as provided herein.

(3) The Customer may not include Subject Services provided under this Contract Offer in any other contract offer, promotional offering, or other discount plan, (e.g. MVP).

(4) Commingling shall be defined as provided in Section 2.6. Commingling of Subject Services under this Contract Offer is prohibited.

(5) If the Customer discontinues service under Contract Offer No. 133 during the Term Period, termination liability charges shall apply in accordance with Section 33.133.8. (N)

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Cricket-CA-000019

33. Pricing Flexibility Contract Offerings (Cont'd) (N)

33.133 Contract Offer No. 133 - Special Access Bundle Service Offer (Cont'd)

33.133.4 Terms and Conditions (Cont'd)

(B) General (Cont'd)

(6) To subscribe to this Contract Offer, the Customer must provide a signed Letter of Subscription (LOS) to the Telephone Company.

(7) The Customer must Purchase the following number of new DS1 Subject Services in the time frame allotted:

In Year One - fifty (50) new DS1 Subject Services.

In Year Two - fifty (50) new DS1 Subject Services for a cumulative of 100 DS1s through Year Two of Contract Offer No. 133; and

In Year Three - one hundred (100) new DS1 Subject Services for a cumulative of two hundred (200) DS1s through Year Three of Contract Offer No. 133.

Customer must maintain two hundred (200) or greater DS1 Subject Services for the remainder of the Term Period.

(8) The Customer must Purchase the following number of new DS3 Subject Services in the time frame allotted:

In Year One - four (4) new DS3 Subject Services.

In Year Two - four (4) new DS3 Subject Services for a cumulative of eight (8) DS3s through Year Two of Contract Offer No. 132; and

In Year Three - four (4) new DS3 Subject Services for a cumulative of twelve (12) DS3s through Year Three of Contract Offer No. 133.

Customer must maintain twelve (12) or greater DS3 Subject Services for the remainder of the Term Period. (N)

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33. Pricing Flexibility Contract Offerings (Cont'd) (N)

33.133 Contract Offer No. 133 - Special Access Bundle Service Offer (Cont'd)

33.133.4 Terms and Conditions (Cont'd)

(B) General (Cont'd)

(9) The Customer must purchase the following number of new OCN Point-to-Point or DSRS Subject Services in the time frame allotted:

In Year One - zero (0) new OCN PTP or DSRS Subject Services.

In Year Two - one (1) new OCN PTP or DSRS Subject Services for a cumulative of one (1) OCN PTP or DSRS through Year Two of Contract Offer No. 133; and

In Year Three - zero (0) new OCN PTP or DSRS Subject Services for a cumulative of one (1) OCN PTP or DSRS through Year Three of Contract Offer No. 133.

Customer must maintain one (1) or greater OCN PTP or DSRS Subject Services for the remainder of the Term Period.

(10) DS3 and DS1 Subject Services ordered under Contract Offer No. 133 must subtend new or existing PBTC SONET services where such services are deployed.

(11) Subject Services must originate or terminate on a wireless carrier's network.

(C) Service Terms

(1) The minimum term commitment for each Subject Service purchased under this Contract Offer (Service Term) will be seventy-two (72) months, commencing upon the Service Establishment Date (SED) of services.

(2) If the Customer disconnects a Subject Service during the Service Term, termination charges shall apply in accordance with Section 33.133.10. (N)

(This page filed under Transmittal No. 368)

Cricket-CA-000021

(N)

33. Pricing Flexibility Contract Offerings (Cont'd)

33.133 Contract Offer No. 133 - Special Access Bundle Service Offer (Cont'd)

33.133.5 Rates and Charges

(A) DSRS Rates and Charges

The Customer must pay the Monthly Recurring Charges (MRCs) listed in Table A, below, for new OC-48 DSRS Subject Services ordered under this Contract Offer.

Table A

DSRS OC48 Rate Elements	USOC	MRC
Nodes		
Customer Premises Node - First	FP5EX	$3,064.75
Customer Premises Node - Additional	RN8EX	$3,064.75
First Re-Map Cust Prem	FP5EA	$2,723.50
Additional Re-Map Cust Prem	RN8EA	$2,723.50
Plus	FP5SX	$2,723.50
Plus Re-Map	RN8SX	$2,723.50
Central Office Node	FC5EX	$2,723.50
Central Office Plus Node	FC5SX	$2,535.00
OC-48 Add/Drop Capability		
OC-48 Add/Drop Capability Per Node	MPEFX	$1,881.75
OC-48 Add/Drop Capability Re-Map Per Node	M8RFX	$1,881.75
OC-48 Add/Drop Capability Plus Per Node	MPEPX	$1,673.75
OC-48 Add/Drop Capability Plus Re-Map Per Node	M8RPX	$1,673.75
Ports		
OC12/OC12c	SPRHX	$234.00
Oc3/OC3c	SPRJX	$87.75
DS3	SPRKX	$71.50
EC-1	S9NVX	$71.50
DS1 (requires Optical to electrical A/D capability)	SPRLX	$29.25
OC48	S9T3X	$1,072.50
100 Mbps Ethernet (STS-1)	S9TGX	$84.50
100 Mbps Ethernet (STS-3c)	S9THX	$104.00
1 Gbps Ethernet (STS-1)	S9TJX	$130.00
1 Gbps Ethernet (STS-3c)	S9TKX	$130.00
1 Gbps Ethernet (STS-12c)	S9TLX	$325.00
1 Gbps Ethernet (STS-24c)	S9TMX	$552.50
Per DS1 Re-Map (28 DS1s)	P8RLX	$819.00
Per DS3 Re-Map (3 DS3s)	P8RKX	$214.50
Per EC-1 Re-Map (3 EC-1 ports)	S9N9X	$214.50
Per OC3/OC3c Re-Map	P8RJX	$87.75
Per OC12/OC12c Re-Map	P8RHX	$234.00
OC-48 Mileage	1YAZX	$143.00

(N)

(This page filed under Transmittal No. 368)

33. Pricing Flexibility Contract Offerings (Cont'd) (N)

33.133 Contract Offer No. 133 - Special Access Bundle Service Offer (Cont'd)

33.133.5 Rates and Charges (Cont'd)

(A) DSRS Rates and Charges (Cont'd)

DSRS OC48 Rate Elements	USOC	MRC
Optical to Electrical DS1 Add/Drop Capability		
Per OC3 to DS1 Re-Map	MXJDX	$455.00
Per OC3 to DS1 Re-Map	M8RDX	$455.00
Regenerator OC-48 (each)	RGY	$1,703.00

Any rate element not described herein will be subject to the applicable tariff rates provided in Section 39.

The Customer must pay the MRCs listed in Table B, below, for new OC-12 and OC-3 DSRS Subject Services ordered under this Contract Offer.

Table B

DSRS OC3 and OC12 Rate Elements	USOC	MRC
OC-3 Node: Customer Premises First	FP5CX	$919.75
OC-3 Node: Customer Premises First Re-Map	RN8CX	$919.75
OC-3 Node: Customer Premises Additional	FP5CA	$520.00
OC-3 Node: Customer Premises Additional Re-Map	RN8CA	$520.00
OC-3 Node: Central Office	FC5CX	$520.00
OC-12 Node: Customer Premises First	FP5DX	$2,002.00
OC-12 Node: Customer Premises First Re-Map	RN8DX	$2,002.00
OC-12 Node: Customer Premises Additional	FP5DA	$1,361.75
OC-12 Node: Customer Premises Additional Re-Map	RN8DA	$1,361.75
OC-12 Node: Central Office	FC5DX	$1,361.75
Ports: DS1 at OC-3 Node	SPRAX	$29.25
Ports: DS3 at OC-3 Node	SPRBX	$71.50
Ports: EC-1 at OC-3 Node	S9NSX	$71.50
Ports: DS1 at OC-12 Node	SPRGX	$29.25
Ports: DS3 at OC-12 Node	SPRCX	$71.50
Ports: EC-1 at OC-12 Node	S9NUX	$71.50
Ports: OC-3 at OC-12 Node	SPREX	$87.75

(N)

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(N)

33. Pricing Flexibility Contract Offerings (Cont'd)

33.133 Contract Offer No. 133 - Special Access Bundle Service Offer (Cont'd)

33.133.5 Rates and Charges (Cont'd)

(A) DSRS Rates and Charges (Cont'd)

Table B (Cont'd)

DSRS OC3 and OC12 Rate Elements	USOC	MRC
Ports: DS1 Re-Map Block (28 DS1 ports) at OC-3 Ring	P8RAX	$819.00
Ports: DS1 Re-Map Block (28 DS1 ports) at OC-12 Ring	P8RGX	$819.00
Ports: DS3 Re-Map port at OC-3 Ring	P8RBX	$71.50
Ports: DS3 Re-Map port at OC-12 Ring (consists of 3 DS3s)	P8RCX	$214.50
Ports: EC-1 Re-Map port at OC-3 Ring	S9N6X	$71.50
Ports: EC-1 Re-Map port at OC-12 Ring	S9N8X	$71.50
Ports: OC-3 Re-Map port at OC-12 Ring	P8REX	$87.75
Mileage: (per mile b/w nodes) OC-3	1YAZX	$143.00
Mileage: (per mile b/w nodes) OC-12	1YAZX	$143.00
Optical to Electrical DS1 Add/Drop Capability: OC-3 to DS1 Add/Drop	MXJDX	$455.00
Optical to Electrical DS1 Add/Drop Capability: OC-3 to DS1 Add/Drop Re-Map	M8RDX	$455.00
Dedicated Ring Regenerator: OC-3	RGY	$520.00
Dedicated Ring Regenerator: OC-12	RGY	$1,361.75

Any rate elements not described herein will be subject to the applicable tariff rates provided in Section 39.

(B) OCN Point-to-Point Rates and Charges

The Customer must pay the MRCs listed in Table C, below, for the new OCN Point-to-Point Subject Service ordered under this Contract Offer.

Table C

OC3 PTP Rate Element	USOC	MRC
Local Distribution Channel	TMECS	$ 910.00
Fixed Mileage	1L5XX	$ 620.20
Variable Mileage	1L5XX	$ 154.00
1+1 Protection with Route Survivability - per LDC	P8T	$ 126.00
1+1 Protection with Route Survivability - per quarter mile	S2DXY	$ 35.00
Collocation Transport - Fixed	1H48S	$ 620.20
Collocation Transport - Per Mile	1H48S	$ 154.00
OC3 Add/drop Mux (Per Arrangement)	MPECX	$ 665.00
Add/Drop per DS3	MXJBX	$ 105.00
Add/Drop per DS1	MXJAX	$ 38.50
1+1 Protection with Cable Survivability - per LDC	P3S	$ 126.00
1 + 1 Protection	P8T	$ 126.00

(N)

(This page filed under Transmittal No. 368)

33. Pricing Flexibility Contract Offerings (Cont'd) (N)

33.133 Contract Offer No. 133 - Special Access Bundle Service Offer (Cont'd)

33.133.5 Rates and Charges (Cont'd)

(B) OCN Point-to-Point Rates and Charges (Cont'd)

Table C (Cont'd)

OC12 PTP Rate Element	USOC	MRC
Local Distribution Channel	TMECS	$2,100.00
Fixed Mileage	1L5XX	$1,575.00
Variable Mileage	1L5XX	$154.00
1+1 Protection with Route Survivability - per LDC	P8T	$182.00
1+1 Protection with Route Survivability - per quarter mile	S2DXY	$70.00
Collocation Transport - Fixed	1H48S	$1,575.00
Collocation Transport - Per Mile	1H48S	$154.00
OC12 Add/drop Mux (Per Arrangement)	MPEDX	$1,470.00
Add/Drop per OC3	MXJCX	$175.00
Add/Drop per DS3	MXJBX	$105.00
1+1 Protection with Cable Survivability - per LDC	P3S	$175.00
1 + 1 Protection	P8T	$175.00

OC48 PTP Rate Element	USOC	MRC
Local Distribution Channel	TMECS	$4,900.00
Fixed Mileage	1L5XX	$3,150.00
Variable Mileage	1L5XX	$154.00
1+1 Protection with Route Survivability - per LDC	P8T	$987.00
1+1 Protection with Route Survivability - per quarter mile	S2DXY	$87.50
Collocation Transport - Fixed	1H48S	$3,150.00
Collocation Transport - Per Mile	1H48S	$154.00
OC48 Add/drop Mux (Per Arrangement)	MXRFX	$2,590.00
Add/Drop per OC12	MXJEX	$437.50
Add/Drop per OC3	MXJCX	$175.00
Add/Drop per DS3	MXJBX	$105.00
1+1 Protection with Cable Survivability - per LDC	P3S	$175.00
1+1 Protection	P8T	$175.00

Any rate element not described herein will be subject to the applicable tariff rates provided in Section 39. (N)

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33. Pricing Flexibility Contract Offerings (Cont'd) (N)

33.133 Contract Offer No. 133 - Special Access Bundle Service Offer (Cont'd)

33.133.5 Rates and Charges (Cont'd)

(C) DS3 Rates and Charges:

The Customer must pay the MRCs listed in Table D, below, for the new DS3 Subject Services ordered under this Contract Offer.

Table D

DS3 Rate Element	USOC	MRC
DS3 CHANNEL TERMINATION - Per Point of Termination	TUZPX	$731.25
INTEROFFICE CHANNEL MILEAGE Fixed	1OXHX	$337.50
INTEROFFICE CHANNEL MILEAGE Per mile	1J5HS	$33.75
CENTRAL OFFICE MULTIPLEXING - DS3 TO DS1 - Per Arrangement	MKM	$356.25

Any rate element not described herein will be subject to the applicable tariff rates provided in Section 39.

(D) DS1 Rates and Charges

The Customer must pay the MRCs listed in Table e, below, for the new DS1 Subject Services ordered under this Contract Offer.

Table E

DS1 RATE ELEMENT	USOC	MRC
DS1 CHANNEL TERMINATION - Per Point of Termination	TMECS	$73.00
INTEROFFICE CHANNEL MILEAGE Fixed	1L5XX	$24.82
INTEROFFICE CHANNEL MILEAGE Per mile	1L5XX	$9.49
CENTRAL OFFICE MULTIPLEXING - DS1 TO DS0 - Per Arrangement	MQ1	$116.80

Any rate element not described herein will be subject to the applicable tariff rates provided in Section 39. (N)

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(N)

33. Pricing Flexibility Contract Offerings (Cont'd)

33.133 Contract Offer No. 133 - Special Access Bundle Service Offer (Cont'd)

33.133.5 Rates and Charges (Cont'd)

(E) OC192 DSRS Rates and Charges

The Customer shall have, at their option, the ability to purchase OC192 DSRS Subject Services and be billed at the OC48 Quad rate as outlined in Table F, below.

Table F

OC192 Element	USOC	1st OC48 Quad Discount Rate	2nd OC48 Quad Discount Rate	3rd and 4th OC48 Quad Discount Rate
Mileage	1L5XX/1YAZX/1YA++	$132.00	$121.00	$110.00
DS3 Port	S9QGX/S9Q++	$72.00	$66.00	$60.00
OC3 Port	S9NEX/S9N++	$81.00	$74.25	$67.50
OC-12 PORT	S9NGX/S9N++	$195.00	$178.75	$162.50
Regen	RGY/RGY++	$1,110.00	$1,017.50	$925.00
CO Node	GC5AX/GC5++	$2,947.50	$2,701.88	$2,456.25
Premises Node	GP5AX/GP5++	$3,300.00	$3,025.00	$2,750.00
Add/Drop Capability	MXRGX/MXR++	$750.00	$687.50	$625.00
Add/Drop Optical to Electrical per arrangement	MXJGX/MXJG+	$375.00	$343.75	$312.50

Any rate elements not described herein will be subject to the applicable tariff rates provided in Section 39.

(N)

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(N)

33. Pricing Flexibility Contract Offerings (Cont'd)

33.133 Contract Offer No. 133 - Special Access Bundle Service Offer (Cont'd)

33.133.6 Assignment/Transfer/Successors

If the Customer wishes to assign or transfer its use of services under this Contract Offer pursuant to PBTC Tariff F.C.C. No. 1, Section 2.1.2, the Telephone Company will acknowledge such transfer or assignment if the criteria in PBTC Tariff F.C.C. No. 1, Section 2.1.2, are fulfilled, unless 1) the proposed assignee or transferee demonstrates a lack of credit worthiness under one of the criteria in (A), (B) or (C), below, or 2) if the proposed assignee or transferee or its parent has commenced a voluntary receivership or bankruptcy proceeding (or had a receivership or bankruptcy proceeding initiated against it).

(A) Any debt securities of the proposed assignee or transferee or its parent (defined as an entity that owns directly or indirectly more than fifty (50) percent of the equity of the proposed assignee or transferee) are rated below investment grade, as defined by the Securities and Exchange Commission; or

If any debt securities of a proposed assignee or transferee or its parent are rated the lowest investment grade and have been placed on review by the rating organization for a possible downgrade.

(B) The proposed assignee or transferee or its parent does not have any outstanding securities rated by credit rating agencies, e.g. Standard and Poor's, but does have a Dun and Bradstreet rating, and the proposed assignee or transferee is rated:

(1) "fair" or below in a composite credit appraisal published by Dun and Bradstreet; or

(2) "high risk" in a Paydex score as published by Dun and Bradstreet.

(C) If the information required to review the assignee or transferee's credit worthiness pursuant to either Subsection (A) or (B) of this Section 33.133.6 is not available, the Telephone Company shall exercise its reasonable discretion in determining the credit worthiness of the assignee or transferee based on any information available.

(N)

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33. Pricing Flexibility Contract Offerings (Cont'd) (N)

33.133 Contract Offer No. 133 - Special Access Bundle Service Offer (Cont'd)

33.133.7 Mergers and Acquisitions

All provisions of this Contract Offer shall continue in full force and effect if the Customer, in whole or in part, merges with, acquires, is acquired by, sells all or substantially all of its stock or assets to any other entity, or purchases all stock or substantially all stock or certain assets of another company (the foregoing generally referred to herein as a merger or acquisition). Upon the Transaction Close Date of the merger or acquisition, if the other company involved in the merger or acquisition also purchases Subject Services from the Telephone Company, the Subject Services, as provided for in this Contract Offer, will continue to be maintained at the same volume, rates, Terms and Conditions as outlined herein. The Transaction Close Date shall be defined as the date that the stock purchase is complete and/or the final date on which the assets of the acquired/merged company have been purchased.

33.133.8 Technology Upgrade

(A) If the Telephone Company makes available one or more new special access service offerings capable of substituting for the Subject Services provided under this Contract Offer, and such new offering(s) employ new technology not available from the Telephone Company at the commencement of the Term Period, the Customer will be permitted to enter into a new contract offer or other contract or tariff arrangement to purchase the new service offering from the Telephone Company, in substitution for the Subject Services provided under this Contract offer, without incurring termination liability under this Contract Offer, provided, however, that the contract offer, other contract or tariff governing the new service includes a term period and billing equal to, or greater than, that of this Contract Offer. The Customer may exercise the upgrade option provided the following additional conditions are met:

(1) The Customer must meet all eligibility requirements outlined in Section 33.133.3, and Terms and Conditions outlined in Section 33.133.4;

(2) The Customer must notify the Telephone Company ninety (90) days prior to exercising this option; and

(3) The Customer will be responsible for all Non-Recurring Charges associated with the upgrade, as well as any Special Construction Charges incurred by the Telephone Company to provision the upgraded service.

(N)

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33. Pricing Flexibility Contract Offerings (Cont'd) (N)

33.133 Contract Offer No. 133 - Special Access Bundle Service Offer (Cont'd)

33.133.9 Portability

The Telephone Company will waive otherwise applicable termination liability charges for moves of existing DS1 and DS3 Subject Services, provided that the Customer complies with the conditions set forth below. In the event that termination liability charges for any such moves and/or disconnections are billed by the Telephone Company, the Customer will receive credits for those charges on a quarterly basis.

(A) The Customer must be in compliance with all Terms and Conditions of this Contract Offer;

(B) DS1 Subject Services must have been in service for a minimum of twelve (12) months to be eligible for portability;

(C) DS3 Subject Services must have been in service for a minimum of two (2) years to be eligible for portability; and

(D) OCN Point-to-Point and SONET Dedicated Ring Services are eligible for portability only under the terms and conditions specified for those services in the general tariff.

(N)

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(N)

33. Pricing Flexibility Contract Offerings (Cont'd)

33.133 Contract Offer No. 133 - Special Access Bundle Service Offer (Cont'd)

33.133.10 Termination Liability

Termination liability language, described below, applies in lieu of the termination liability language described in PBTC Tariff F.C.C. No. 1, Sections 7, 20, 30, and 40. If the Customer discontinues services provided under this Contract Offer before the completion of the Term Period for any reason, or if the Customer breaches the Terms or Conditions of this Contract Offer or of any other applicable tariff provision, the Customer must pay the Telephone Company termination liability charges as described below. Termination liability charges will also apply if the Customer is not in compliance with all the provisions of this Contract Offer. These termination liability charges shall become due as of the effective date of the termination of service, and are payable as described below.

The Customer's termination liability charges shall be equal to:

Termination Term Year	Termination Percentage
1 - 6	50%

The termination liability charge shall be calculated as follows:

MRC multiplied by the number of months remaining in the Term Period, multiplied by fifty (50) percent.

Example 1: A Customer with a $100,000 MRC terminates service after twenty-four (24) months, and has forty-eight (48) months remaining on the six (6) year Term Period. The termination liability would be calculated as:

($100,000 X 48 months) X 50% = $2,400,000 termination liability charge

(N)

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