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6 Financial Advisor to the Official  
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8 **UNITED STATES BANKRUPTCY COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 -----  
11 In re: : Case Nos. 03-3470-All  
12 : : through 03-3535-All  
13 LEAP WIRELESS INTERNATIONAL, INC., : (Jointly Administered)  
14 and CRICKET COMMUNICATIONS, INC., *et al.*, :  
15 Debtors. : Chapter 11  
16 : :  
17 : : **SECOND INTERIM FEE**  
18 : : **APPLICATION OF CHANIN**  
19 : : **CAPITAL PARTNERS LLC**  
20 : :  
21 : : Judge: Hon. Louise DeCarl  
22 : : Adler  
23 : :  
24 : : **Hearing**  
25 : :  
Date: May 6, 2004  
Time: 10:30 a.m.  
Place: Department 2



1 Interim Period (i.e. April 13, 2003 through September 30, 2003) costs previously awarded but  
2 inadvertently omitted from the order approving Chanin's first interim fee application in the  
3 amount of \$2,649.27.

4 2. Venue of this proceeding and this application is proper in this district pursuant to  
5 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought herein are 11 U.S.C.  
6 §§ 328 and 331 and Federal Rules of Bankruptcy Procedure 2002(a) and 2016.

## 7 **II. BACKGROUND**

8 3. On April 13, 2003 (the "Petition Date"), each of the Debtors filed a voluntary  
9 petition for relief under Chapter 11 of the Bankruptcy Code.

10 4. The Debtors continue to operate their businesses and manage their properties as  
11 debtors-in-possession pursuant to Bankruptcy Code Sections 1107(a) and 1108.

12 5. On April 25, 2003 (the "Committee Formation Date"), the United States Trustee  
13 appointed the Committee to serve in the Debtors' chapter 11 cases. The Committee selected  
14 Chanin as its financial advisor. By order dated June 18, 2003 (the "Retention Order" – attached  
15 hereto as Exhibit "A"), this Court approved the retention of Chanin as financial advisor to the  
16 Committee as of the Petition Date. From September 2002 through the Committee Formation  
17 Date, Chanin advised and represented an ad hoc committee of holders of Leap's bonds (the  
18 "Unofficial Noteholders' Committee") in connection with a potential restructuring of the  
19 Debtors' indebtedness under the bonds (the "Notes"). The terms of that employment are set  
20 forth in the engagement letter dated September 19, 2002 (the "Engagement Letter" – attached  
21 hereto as Exhibit "B"). The Committee agreed to engage Chanin on the same terms as those set  
22 forth in the Engagement Letter.

23 6. Under the terms of the Engagement Letter, Chanin is to be paid a monthly  
24 advisory fee ("Monthly Fee") of \$100,000. In addition to the Monthly Fee, the Debtors shall pay  
25 Chanin a deferred fee (the "Deferred Fee") upon consummation of a Restructuring Transaction  
(as defined in the Engagement Letter). The Deferred Fee is equal to 1.50% of the Total  
Consideration received by the unsecured creditors in excess of \$45 million. The Deferred Fee is

1 payable in kind at closing on the effective date of the Restructuring Transaction. The Deferred  
2 Fee also shall be payable if Chanin's engagement is terminated by the Committee without Cause  
3 (as defined in the Engagement Letter) and a Restructuring Transaction is consummated within 12  
4 months of the effective date of such termination. Additionally, Chanin shall also be reimbursed  
5 for its out-of-pocket expenses incurred in connection with Chanin's engagement by the  
6 Committee, which shall include but not be limited to all reasonable travel expenses (coach fare),  
7 computer and research charges, attorney fees (provided that such attorney fees shall not exceed  
8 \$25,000 in the aggregate without the Committee's prior consent), messenger services and long-  
9 distance telephone calls.

### 10 **III. RELIEF REQUESTED**

11  
12 7. Chanin has previously filed monthly fee notices pursuant to the Order  
13 Establishing Procedures for Interim Compensation and Reimbursement of Expenses of  
14 Professionals dated May 6, 2003 ("Fee Procedures Order").

15 8. Other than as described herein, Applicant has received no payment and no  
16 promises for payment from any source for services rendered in connection with these cases.  
17 There is no agreement or understanding between the Applicant and any other person for the  
18 sharing of compensation to be received for the services rendered in these cases.

19 9. Pursuant to the Fee Procedures Order, Chanin has filed with the Court the  
20 following: (i) Sixth Monthly Fee Notice on November 24, 2003, requesting payment of  
21 \$81,796.47 representing the sum of \$80,000.00 (80% of the fees incurred) and \$1,796.47 (100%  
22 of the expenses) for the period of October 1, 2003 through October 31, 2003 (the "Sixth Fee  
23 Notice"), (ii) Seventh Monthly Fee Notice on December 19, 2003, requesting payment of  
24 \$82,169.67 representing the sum of \$80,000.00 (80% of the fees incurred) and \$2,169.67 (100%  
25 of the expenses) for the period of November 1, 2003 through November 30, 2003 (the "Seventh  
Fee Notice"), (iii) Eighth Monthly Fee Notice on January 27, 2004, requesting payment of  
\$82,034.28 representing the sum of \$80,000.00 (80% of the fees incurred) and \$2,034.28 (100%

1 of the expenses) for the period of December 1, 2003 through December 31, 2003 (the "Eighth  
2 Fee Notice"), and (iv) Ninth Monthly Fee Notice on February 26, 2004, requesting payment of  
3 \$80,461.18 representing the sum of \$80,000.00 (80% of the fees incurred) and \$461.18 (100% of  
4 the expenses) for the period of January 1, 2004 through January 31, 2004 (the "Ninth Fee  
5 Notice"). Chanin has received payments to-date totaling \$326,461.60 with respect to the Sixth  
6 through Ninth Fee Notices. Chanin hereby requests that the Court approve the sum of  
7 \$400,000.00 in fees and \$6,461.60 in expenses, for a total of \$406,461.60.

8 10. As stated in the Declaration of Russell A. Belinsky, annexed hereto as Exhibit  
9 "C," all of the services for which interim compensation is sought herein were rendered for or on  
10 behalf of the Committee solely in connection with these cases.

#### 11 **IV. REQUEST TO CORRECT ERROR**

12 11. Chanin hereby requests that this Court authorize the payment of expenses  
13 incurred by Chanin during the First Interim Period in the amount of \$2,649.27. At the hearing on  
14 December 11, 2003, the Court allowed the expenses requested by Chanin for the First Interim  
15 Period in the amount of \$6,467.83. The Order Approving Application for Compensation and  
16 Reimbursement of Expenses, signed on December 23, 2003, erroneously listed the amount  
17 authorized for payment as \$3,818.56<sup>1</sup>, rather than \$6,467.83. Therefore, Chanin hereby  
18 respectfully requests that the Court authorize the difference (\$2,649.27) for payment, in order to  
19 correct the mistake.

#### 20 **V. SUMMARY OF SERVICES RENDERED**

21 12. Since April 13, 2003, Chanin has rendered professional services to the Committee  
22 as requested and as necessary and appropriate in furtherance of the interests of the Debtors'  
23 unsecured creditors. The variety and complexity of these cases and the need to act or respond on  
24

25 \_\_\_\_\_  
<sup>1</sup> This was the amount of costs requested and allowed for Irell & Manella LLP, co-counsel for the Committee.

1 an expedited basis in furtherance of the Committee's needs have required the expenditure of  
2 substantial time by Chanin personnel.

3 13. Chanin does not maintain, in the normal course of providing financial advisory  
4 services to its clients, detailed written time records. However, in this case, Chanin maintained  
5 written records of the time expended by Chanin professionals in the rendition of their  
6 professional services to the Debtors. Such time records were made contemporaneously with the  
7 rendition of services by the person rendering such services and in the ordinary course of  
8 Chanin's practice, and are presented in a form that is in compliance with the Retention Order. A  
9 compilation showing the name of the professional, the date on which the services were  
10 performed, a description of the services rendered, and the amount of time spent in performing the  
11 services during the Compensation Period is annexed hereto as Exhibit "D".

12 14. Chanin maintains records of all actual and necessary out-of-pocket expenses  
13 incurred in connection with the rendition of its professional services, all of which are also  
14 available for inspection. A schedule of the categories of expenses and amounts for which  
15 reimbursement is requested is annexed hereto as Exhibit "E".

16 15. Chanin respectfully submits that the professional services that it rendered on  
17 behalf of the Committee were necessary and have directly contributed to the effective  
18 administration of these cases.

19 16. The following summary of services rendered during the Compensation Period is  
20 not intended to be a detailed description of the work performed, as those day-to-day services and  
21 the time expended in performing such services are fully set forth in Exhibit "D". Rather, it is  
22 merely an attempt to highlight certain of those areas in which services were rendered to the  
23 Debtors, as well as to identify some of the problems and issues that Chanin was required to  
24 address.  
25

1 (i) Financial Due Diligence

2 17. Chanin continued its extensive financial due diligence process to understand and  
3 assess the operational performance and financial position of the Debtor. This process included an  
4 in-depth review and analysis of significant amounts of historical financial information,  
5 presentations prepared by the Debtor, monthly financial statements and reports, weekly cash  
6 flow forecasts, and bankruptcy court filings, as well as meetings and teleconferences with  
7 Company management and its advisors.

8  
9 (ii) Financial Analysis

10 18. Chanin reviewed and analyzed the changing cash flow forecasts and budgets  
11 provided by the Debtor vis-à-vis the Debtor's original and revised projections, and historical  
12 performance. Chanin also reviewed and analyzed the Debtor's weekly cash flow projections and  
13 statements of liquidity, including monitoring uses of cash vs. an approved budget.

14  
15 (iii) Recovery and Valuation

16 19. During the Compensation Period, Chanin updated its detailed and integrated  
17 recovery model (the "Recovery Model") with revised financial and liquidity forecasts prepared  
18 by the Debtor during April and May, as well as revised scenarios prepared subsequently. The  
19 Recovery Model was utilized to determine recovery scenarios on behalf of the Committee,  
20 including valuation of non-cash assets such as licenses, causes of action and equity. The  
21 Recovery Model was continuously utilized to enable Chanin to engage in ongoing discussions  
22 with Committee members to discuss strategy.  
23  
24  
25

1 (iv) Review of Motions / Plans of Reorganization Documents

2 20. During the Compensation Period, Chanin reviewed several motions filed by the  
3 Debtors, including contract assumptions and rejections, plan of reorganization, disclosure  
4 statement and other business related matters.

5  
6 (v) Claims Analysis

7 21. Chanin reviewed and analyzed claims filed against the Debtors and the Debtors'  
8 notices of assumption and rejection of claims, and participated on several conference calls with  
9 the Debtor's management and its advisors to better understand the rationale and key  
10 assumptions. Chanin worked with the Committee's counsel in reviewing claims, Debtors'  
11 objections to claims and in the claims resolution process. Chanin presented its findings to the  
12 Committee.

13  
14 (vi) Fee Application Preparation

15 22. Chanin compiled time and expense descriptions of the services it provided, and  
16 performed other tasks in order to comply with the Fee Procedures Order. Chanin made every  
17 effort to minimize the amount of time and fees incurred for these activities.

18 (vii) Creditors' Committee Meetings

19 23. Chanin communicated regularly with Committee members during the  
20 Compensation Period. Chanin participated in several conference calls with the Committee during  
21 the Compensation Period. In preparation for these calls with the Committee, Chanin researched  
22 the financial and business issues to be discussed on the calls.

23 24. Through these conference calls and meetings, Chanin has assisted the Committee  
24 in fulfilling its statutory duties to make informed decisions regarding the various issues which  
25 have arisen in these cases, to monitor closely the Debtors' management of these proceedings, and

1 to reach independent conclusions on the merits of specific matters, as well as regarding the  
2 prospects of reorganization.

3  
4 **VI. ALLOWANCE OF COMPENSATION**

5 25. Section 328 of the Bankruptcy Code authorizes the Court to award financial  
6 advisors for a chapter 11 Creditor's Committee reasonable compensation for services rendered.  
7 That section provides, in pertinent part:

8 (a) The trustee, or a committee appointed under section 1102 of this title,  
9 with the court's approval, may employ or authorize the employment of a  
10 professional person under section 327 or 1103 of this title, as the case may be, on  
11 any reasonable terms and conditions of employment, including on a retainer, on  
12 an hourly basis, or on a contingent fee basis. Notwithstanding such terms and  
13 conditions, the court may allow compensation different from the compensation  
14 provided under such terms and conditions after the conclusion of such  
15 employment, if such terms and conditions prove to have been improvident in light  
16 of developments not capable of being anticipated at the time of the fixing of such  
17 terms and conditions.

18 11 U.S.C. § 328(a).

19 26. The Retention Order establishes that Applicant was employed pursuant to section  
20 1103 of the bankruptcy Code. Moreover, as set forth in detail herein, Applicant has established  
21 that the requested fees are reasonable and were necessary given the circumstances of the  
22 Debtors' cases and the role of the Committee in connection therewith. Applicant's request for  
23 compensation for services rendered to, and reimbursement of expenses incurred on behalf of, the  
24 Committee during the Application Period, satisfies the requirements of sections 328 and 1103 of  
25 the Bankruptcy Code.

1           27.    The total time recorded by Chanin professionals during the Compensation Period  
2 was 362.40 hours. The work involved, and thus the time expended, was carefully assigned in  
3 light of the experience and expertise required for a particular task.

4           28.    As shown by this application and supporting documents, Applicant spent its time  
5 economically and without unnecessary duplication of time. Attached hereto as Exhibit "D" is a  
6 schedule of the hours expended by the professionals during the Compensation Period. In  
7 addition, Chanin incurred actual out-of-pocket expenses in connection with the rendition of the  
8 professional services to the Committee in the sum of \$6,461.60 for which Chanin respectfully  
9 requests reimbursement in full.

10           29.    The disbursements and expenses have been incurred in accordance with Chanin's  
11 normal practice of charging clients for expenses clearly related to and required by particular  
12 matters. Chanin has endeavored to minimize these expenses to the fullest extent possible.

13           30.    Chanin's billing rates do not include charges for photocopying, telephone and  
14 telecopier toll charges, computerized research, travel expenses, "working meals," secretarial  
15 overtime, postage and certain other office services, since the needs of each client for such  
16 services differ. Chanin believes that it is fairest to charge each client only for the services  
17 actually used in performing services for it. In these proceedings, Chanin charges \$0.15 per page  
18 for internal duplicating and \$1.00 per page for outgoing facsimile transmissions. Chanin does  
19 not charge for incoming facsimile transmissions.

20           31.    No agreement or understanding exists between Chanin and any other person for  
21 the sharing of any compensation to be received for professional services rendered or to be  
22 rendered in connection with these cases.

23           32.    No prior application has been made in this or in any other Court for the relief  
24 requested herein for the Compensation Period.  
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