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10 **UNITED STATES BANKRUPTCY COURT**  
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 In re  
13 LEAP WIRELESS INTERNATIONAL, INC.,  
14 and CRICKET COMMUNICATIONS, INC., et  
15 al.  
16 Debtors.

17 Fed. Tax Id. Nos. 33-0811062 and 33-0879924

Case Nos.: 03-03470-A11 through  
03-03535-A11

(Jointly Administered)

Chapter 11

**FIRST INTERIM APPLICATION OF  
LATHAM & WATKINS LLP,  
GENERAL BANKRUPTCY COUNSEL  
TO THE DEBTORS AND DEBTORS-  
IN-POSSESSION, FOR ALLOWANCE  
AND PAYMENT OF COMPENSATION  
AND REIMBURSEMENT OF  
EXPENSES FOR THE PERIOD FROM  
APRIL 13, 2003 THROUGH  
SEPTEMBER 30, 2003;  
DECLARATION OF ROBERT A.  
KLYMAN IN SUPPORT THEREOF**

**Hearing**

Date: December 11, 2003

Time: 10:30 a.m.

Place: Department 2

Judge: Hon. Louise DeCarl Adler

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1 TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE, THE OFFICE OF THE  
2 UNITED STATES TRUSTEE, THE OFFICIAL COMMITTEE OF UNSECURED  
3 CREDITORS, THE INFORMAL VENDOR DEBT COMMITTEE AND OTHER  
4 INTERESTED PARTIES:

5 Latham & Watkins LLP (“L&W”), general bankruptcy counsel to Leap Wireless  
6 International, Inc. (“Leap”), Cricket Communications, Inc. (“Cricket”), and certain of their  
7 subsidiaries and other affiliated entities (collectively, the “Debtors”), the debtors-in-possession in  
8 the above-captioned cases (the “Cases”), respectfully submits its First Interim Application of  
9 Latham & Watkins LLP, General Bankruptcy Counsel to the Debtors and Debtors-in-Possession,  
10 for Allowance and Payment of Compensation and Reimbursement of Expenses for the Period  
11 from April 13, 2003 through September 30, 2003 (the “Application”), for services rendered and  
12 costs incurred by L&W as counsel to the Debtors.

### 13 I. INTRODUCTION

14 This Application is L&W’s first application for payment of fees and expenses in  
15 these Cases. Pursuant to this Application, L&W seeks an award for the payment of  
16 compensation and reimbursement of expenses for services rendered by L&W to the Debtors  
17 during the period from April 13, 2003 through September 30, 2003 (the “Interim Fee Period”).

18 L&W submits this Application in accordance with §Section 330 of title 11 of the  
19 United States Code (the “Bankruptcy Code”), applicable caselaw with respect to Section 330, the  
20 Guidelines for Fulfilling the Requirements of the United States Trustee and the Guidelines for  
21 Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11  
22 U.S.C. § 330 (together, the “UST Guidelines”) and the Local Bankruptcy Rules for the Southern  
23 District of California. In support of this Application, L&W respectfully represents and shows the  
24 following:

24	Date of Filing of Cases:	April 13, 2003 (the “Petition Date”)
25	Name of Trustee:	None Appointed
26	Present Balance of Retainer:	\$173,554.52 from Leap \$579,696.15 from Cricket
27	Date of Appointment of Applicant:	Order Entered May 6, 2003, <i>nunc pro tunc</i> to Petition Date

1 Time Period of Application: April 13, 2003 to  
2 September 30, 2003

3 The fees subject to this Application are subdivided into three primary  
4 components, as follows:

5 1. The Leap Debtors: All fees that L&W incurred on behalf of Leap and its  
6 subsidiaries that did not pledge assets as collateral to the Vendor Debt Holders  
7 (the "Leap Debtors") were separately billed to the Leap Estate (and hereafter are  
8 referred to as "Leap Fees"):

9 Total Leap Fees Requested: \$346,191.00

10 Total Leap Hours: 1,011.70

11 Total Leap Blended Hourly Rate: \$342.19

12 2. The Cricket Debtors: All fees that L&W incurred on behalf of Cricket and  
13 its subsidiaries and affiliates that pledged assets as collateral to the Vendor Debt  
14 Holders (the "Cricket Debtors") were separately billed to the Cricket Estate (and  
15 hereafter are referred to as "Cricket Fees"):

16 Total Cricket Fees Requested: \$709,228.00

17 Total Cricket Hours: 2010.40

18 Total Leap Blended Hourly Rate: \$352.78

19 3. The Joint Leap/Cricket Debtors: All fees that L&W incurred jointly on  
20 behalf of the Leap Debtors and the Cricket Debtors will be referred to hereafter as  
21 "Joint Leap/Cricket Fees." The Joint Leap/Cricket Fees reflect services that  
22 L&W provided for the benefit of the Leap Debtors and the Cricket Debtors and/or  
23 where it was impracticable to separately account for services provided to one or  
24 the other group of Debtors. As set forth in the Application to Retain Latham &  
25 Watkins LLP as General Bankruptcy Counsel to the Debtors (docket no. 112), the  
26 Cricket Debtors and Leap Debtors will split the cost of the Joint Leap/Cricket  
27 Fees on an 80/20 basis between Cricket and Leap:

28 Total Joint Leap/Cricket Fees Requested: \$1,442,248.00

1 Total Joint Leap/Cricket Hours: 4579.60

2 Total Joint Leap/Cricket Blended Hourly Rate: \$314.93

3 Total Expenses, in the amount of \$261,028.11 will be allocated on an 80/20 basis  
4 between Cricket and Leap.

5  
6 Voluntary Write-off of Fees and Expenses: Pursuant to L&W's agreement with the  
7 Debtors, L&W has voluntarily agreed to write-off \$33,491.59 in fees and expenses  
8 against the Leap Debtors and \$133,966.33 against the Cricket Debtors. Assuming the  
9 fees and expenses sought by L&W are approved, L&W will discount the award by the  
10 write-offs described herein.

11 Brief Description of Services: See Section VI below

12 **II. OVERVIEW OF THE CASES**

13 On April, 13, 2003 (the "Petition Date"), each of the Debtors filed a voluntary  
14 petition for relief under chapter 11 of the Bankruptcy Code. By order dated April 14, 2003, these  
15 chapter 11 cases became jointly administered cases. The Debtors are continuing to operate their  
16 businesses and manage their properties as debtors-in-possession pursuant to §§ 1107(a) and 1108  
17 of the Bankruptcy Code. The Debtors confirmed their Joint Plan by order dated October 22,  
18 2003, a little more than six months after the Petition Date.

19 These Cases are extraordinarily large and complex, and national in scope. The  
20 Debtors are Leap, Cricket and sixty-four (64) other subsidiaries and affiliated entities. Together,  
21 the Debtors, through Cricket as an operating company, operate as a wireless communications  
22 carrier that provides innovative, affordable, simple wireless services designed to accelerate the  
23 transformation of wireless service into a mass consumer product. The Debtors offer service and  
24 own assets in forty markets across twenty states and own wireless licenses covering thirty-three  
25 states. The Debtors provide service to approximately 1.46 million customers and had gross  
26 revenue of approximately \$184.3 million for the quarter ending June 30, 2003. As of the Petition  
27  
28

1 Date, the Debtors had approximately \$2.6 billion in total liabilities, the largest chapter 11 case  
2 ever filed in the Southern District of California.

3           The Debtors faced an enormous challenge to meet their need – and that of their  
4 primary economic stakeholders -- to emerge from chapter 11 on an expedited basis. With the  
5 counsel of L&W, the Debtors successfully met that challenge and confirmed the Joint Plan  
6 within approximately six months of the Petition Date. The Debtors are now poised to compete  
7 during the crucial fourth quarter selling season and in the face of new legislation enabling  
8 customers to transfer their phone numbers to different wireless carriers. Those challenges faced  
9 by the Debtors can be broken down into two major categories: restructure/operational/business  
10 challenges and MCG litigation challenges.

11           L&W's core restructure team was leanly staffed and devoted nearly full time to  
12 advising the Debtors with respect to the restructuring of the Debtors' obligations (including  
13 leases and contracts), the technical requirements for Debtors within chapter 11 (including the  
14 creation of schedules and statements of financial affairs) and the implementation of business  
15 strategies through motion practice. Because of the complex nature of the Debtors' business  
16 operations, the restructure team as needed consulted with L&W corporate, FCC, tax, benefits and  
17 litigation lawyers, among others, and those lawyers consulted amongst themselves. By so doing,  
18 L&W was able to bring to bear its comprehensive expertise in an efficient manner, and operated  
19 within these Cases in a manner comparable to how L&W has traditionally run complex matters  
20 for non-debtor clients. If L&W restructure lawyers were unable to consult with other L&W  
21 lawyers, the net effect would have been to force those lawyers to consult with FCC, corporate,  
22 tax, benefits and litigation lawyers from other firms. Moreover, L&W served as outside counsel  
23 to the Debtors since the Debtors' creation; as a result, certain of L&W corporate lawyers with  
24 history in each of the Debtors' material deals and experiences were involved as part of the core  
25 restructure team; such staffing avoided the need for L&W restructure lawyers to "reinvent the  
26 wheel." L&W also worked closely with the New York-based professionals retained by the  
27 Informal Vendor Debt Committee and the Official Committee; in fact, the Debtors and the two  
28



1 committees were generally unified in their approaches during these Cases and were able to iron  
2 out any differences between them without Court involvement.

3           Outside of the costs and fees associated with the restructure/operational/business  
4 challenges met by the Debtors, most of L&W's fees and expenses resulted from the implacable  
5 and relentless opposition to the Disclosure Statement and Joint Plan (and many other actions  
6 taken by the Debtors) interposed by MCG PCS, Inc. (a shareholder and disputed creditor of  
7 Leap). L&W assisted the Debtors in overcoming those challenges by, among other things,  
8 successfully defending against the appointment of an equity committee and presenting an  
9 prevailing evidentiary case at trial in support of Confirmation of the Plan. MCG's admitted  
10 motivation in opposing the Debtors was to extract a settlement from the Debtors, but for the  
11 Debtors that opposition threatened their going concern potential. Therefore, at the Debtors'  
12 direction, L&W devoted tremendous resources over short time periods to parry MCG's attacks –  
13 because the Debtors had to confirm the Joint Plan quickly to be positioned to compete in the  
14 fourth quarter of 2003 and thereby preserve maximum value for the Debtors' true economic  
15 stakeholders.

16           As noted, L&W staffed these cases leanly. L&W's core bankruptcy/corporate  
17 team consisted of four lawyers (Klyman, Clarkson, Seim and Brown) and two paraprofessionals  
18 (Bowman and Barberena), who collectively were responsible for approximately 65.8% of the  
19 hours spent on these Cases by L&W. The hourly rates of these professionals are commensurate  
20 to the rates charged by professionals in other national cases and for cases of tremendous  
21 magnitude and complexity.<sup>1</sup> Because of the magnitude of the electronic filings in these cases  
22 (e.g., more than 1000 filings are on the docket to date), L&W relied on other paraprofessionals to  
23 electronically file pleadings and maintain databases of pleadings and other filings. Moreover,

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24  
25 <sup>1</sup> By way of example only, attached hereto as Exhibit H is the fee application filed by  
26 Debtors' counsel in In re Peregrine Systems, Inc., et al., a San Diego-based company that  
27 filed for chapter 11 in Delaware, where lead partners from Pachulski, Stang, Ziehl,  
28 Young & Jones billed at hourly rates between \$495 and \$650; attached hereto as Exhibit I  
is the application of Kirkland & Ellis' Los Angeles office to be retained as debtors'  
counsel in the chapter 11 case of In re Chevys, which reflects lead partners' hourly rates  
of between \$625 and \$670.

1 because the Debtors are subject to the regulatory powers of the FCC, the Debtors relied on their  
2 core outside team of FCC experts in L&W's Washington D.C. office. In addition, as the Cases  
3 proceeded to trial, L&W brought in additional litigation assistance with briefing, experts and  
4 discovery; however, L&W provided maximum efficiency for the Debtors because the lead  
5 bankruptcy partner also served as lead trial counsel. L&W also relied on other attorneys as  
6 needed who could provide expertise or assistance in these Cases in multiple practice areas.

7 Notably, L&W staffed these Cases and charged fees and expenses in the same  
8 way that L&W historically has run matters and charges fees and expenses in non-bankruptcy  
9 matters. The overall fees sought by L&W are commensurate with the fees incurred by other  
10 parties in these extremely complex Cases during the Application Period:

11 The Leap Debtors:

- 12 • L&W, as counsel for the Leap Debtors: \$634,640 (comprised of  
13 \$346,191 for Leap and \$288,449.60 for 20% of Joint Leap/Cricket)
- 14 • Counsel for the Committee: total of \$791,535.50
  - 15 ○ Kramer Levin: \$698,677.50
  - 16 ○ Irell & Manella \$92,858.00
- 17 • Howrey & Simon, as counsel for MCG: approximately \$750,000<sup>2</sup>

18 The Cricket Debtors:

- 19 • L&W, as counsel for the Debtors: \$1,863,026.40 (comprised of  
20 \$709,228 for Cricket and \$1,153,788.40 for 80% of Joint  
21 Leap/Cricket)
- 22 • Counsel to the Informal Vendor Debt Committee: total of \$1,371,013
  - 23 ○ Andrews Kurth: \$1,214,013
  - 24 ○ Pyle Sims: \$157,000

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28 <sup>2</sup> Based on statements made by MCG's counsel.

1 **III. BACKGROUND AND QUALIFICATIONS**

2 On May 6, 2003, this Court entered an Order approving L&W’s employment as  
3 general bankruptcy counsel to the Debtors effective as of the Petition Date (the “Employment  
4 Order”). L&W served as the Debtors’ general bankruptcy counsel throughout the Interim Fee  
5 Period on the term and conditions set forth in the Employment Order. The Application to Retain,  
6 Employ and Compensate L&W as General Bankruptcy Counsel for the Debtors summarizes  
7 L&W’s background and qualifications, and specifies the qualifications of the primary  
8 bankruptcy, corporate and FCC professionals who provided services to the Debtors. L&W can  
9 provide additional resumes of other L&W lawyers upon request.

10 To provide effective, efficient representation to this estate, L&W allocated  
11 responsibilities among professionals based upon each individual’s comparative expertise and  
12 knowledge of particular aspects of this case and allocated work to attorneys with lower hourly  
13 rates whenever practical. For example, Mr. Klyman primarily handled the bankruptcy and  
14 restructuring matters, including all hearings, matters relating to the First Day Motions,  
15 confirmation of the Plan, and worked on a day to day basis with the Debtors to ensure that this  
16 case moved forward to confirmation in accordance with the aggressive timetable required by the  
17 parties. He also served as lead trial attorney for the Debtors in connection with the confirmation  
18 trial and equity committee hearings. Mr. Clarkson primarily handled general corporate matters  
19 (including without limitation SEC requirements for Leap as a public company) and corporate  
20 matters related to the negotiation and drafting of the Plan, structure of the New Senior Notes and  
21 corporate structure for the Reorganized Debtors. In addition, Mr. Clarkson attended many  
22 hearings and meetings because of his intimate knowledge of the Debtors (as he had been primary  
23 corporate counsel for the Debtors from their corporate inception). Ms. Seim, an experienced  
24 corporate associate, handled corporate matters under Mr. Clarkson’s general supervision. Mr.  
25 Brown handled a wide range of associate-level matters such as preparing the First Day Motions,  
26 motions to reject executory contracts and non-residential real property leases, motions to extend  
27 the time within which the Debtors may assume, assume or assign, or reject leases of  
28 nonresidential real property, preparing employment applications, analyzing the claims asserted

1 against the Debtors, communicating with creditors and such other issues that arose in the Cases.  
2 Kathryn Bowman, a paralegal, also rendered services in the Cases, including shepherding the  
3 schedules and SOFAs to completion, reviewing monthly operating reports and supervising e-  
4 filing and other matters in these Cases. Wherever possible, L&W's professionals did not  
5 duplicate efforts. L&W believes that it allocated its resources effectively and efficiently  
6 throughout these Cases.

#### 7 **IV. COMPENSATION TO DATE**

8 L&W has not received or been promised any compensation for the post-petition  
9 services that it has rendered or the expenses that it has incurred in these Cases. Neither L&W  
10 nor any member of L&W has any agreement or understanding of any kind to divide, pay over, or  
11 share any portion of the fees to be awarded to L&W with any other person or attorney, except as  
12 among members and associates of L&W. Following the Petition Date, L&W and its members  
13 have neither acquired nor received a transfer of a beneficial interest in claims against the Debtors  
14 or stock of the Debtors.

#### 15 **V. COMPENSATION REQUESTED**

16 On the Petition Date, L&W held retainers for services that L&W was to render  
17 during these Cases in the amount of \$173,554.52 from the Leap Debtors and \$579,696.15 from  
18 the Cricket Debtors. Pursuant to this Application, L&W requests that the Court enter an Order  
19 allowing L&W to draw on these retainer for partial payment of the fees and expenses sought by  
20 L&W for the Interim Fee Period.

21 Sections VI and VII describe the services that L&W rendered to these Estate  
22 during the Interim Fee Period as well as the expenses that L&W incurred in connection with this  
23 representation. Because L&W categorizes its services in numbered categories that are  
24 substantially similar to those recommended in the UST Guidelines, the discussion in Section VI  
25 is organized by category. (Some of the services rendered could reasonably be categorized in  
26 more than one of the billing categories. Consequently, different attorneys sometimes billed their  
27 services on the same matter in different categories; however, time entries for a single task by one  
28 attorney were not duplicated.) L&W further billed its services to separate client numbers for

1 Cricket, Leap or the Joint Leap/Cricket Debtors as applicable, which is reflected in the attached  
2 exhibits. Expenses are allocated to the Joint Leap/Cricket Debtors because it proved  
3 impracticable to allocate expenses to one or the other of the Debtors.

4 The Fee Application Summary that contains the information required by the UST  
5 Guidelines, is attached hereto as **Exhibit A**.

6 A complete, chronological, line-item listing-sorted by activity category of the  
7 services that L&W rendered during the Interim Fee Period for the Leap Debtors, the Cricket  
8 Debtors and the Joint Leap/Cricket Debtors is appended hereto as **Exhibit B, C and D**,  
9 respectively (collectively, the “Services Exhibits”). The Services Exhibits include the name of  
10 the professional who rendered the services; the date services were rendered; the hours spent  
11 rendering services; the total billed for the services; and a detailed description of the services.

12 Attached as **Exhibit E** is a summary of L&W’s services broken down by category  
13 (and includes separate summaries for Leap, Cricket and Joint Leap/Cricket).

14 Attached as **Exhibit F** is a listing of hours spent by L&W attorneys by month, as  
15 well as their hourly rates.

16 **Exhibit G** summarizes, by month, the total reimbursable expenses that L&W  
17 incurred during the Interim Fee Period, along with a description of such expense categories.

18 The compensation sought in this Application is for the totality of the services  
19 rendered as general bankruptcy counsel to the Debtors based upon the standards applicable to  
20 cases such as these.

## 21 VI. SUMMARY OF PROFESSIONAL SERVICES RENDERED

22 Describing in detail each and every service that L&W has provided to the Debtors  
23 would be extremely time consuming. Accordingly, this section merely summarizes, by activity  
24 category, the more significant services that L&W provided to the Estates. Attached hereto as  
25 **Exhibit J** is a summary of hours and blended rates for each activity category. The description of  
26 activities in each category is generally applicable to the Leap Debtors and the Cricket Debtors;  
27 there are exceptions as noted in the time records attached to this Application as Exhibits B, C  
28 and D.

1 **A. Asset Analysis and Recovery – 0001.**

2 This category of services primarily involved the preparation of the Schedules of  
3 Assets and Liabilities and Statements of Financial Affairs for the 66 Debtors. The Schedules and  
4 SOFAs were a massive undertaking, which resulted in the production of thousands of pages of  
5 reports. Following a meeting with the Office of the U.S. Trustee, the Debtors decided to prepare  
6 Schedules and SOFAs that reflect the economic realities of the cases: the Schedules and SOFAs  
7 comprised sixteen (16) sets of Schedules and Statements spanning thousands of pages (one set  
8 grouped all entities whose assets were pledged to the holders of Old Vendor Debt; Leap was put  
9 into as different set (more detail). The Court ordered the Debtors to file the Schedules and  
10 SOFAs by May 28 2003, 45 days following the Petition Date. The Debtors took responsibility  
11 for preparing the Schedules and SOFAs with supervisory guidance from L&W but commencing  
12 in mid-May 2003 requested that L&W devote significant time and efforts to the preparation and  
13 analysis of the Schedules and SOFAs to meet the Court deadline.

14 The L&W team was primarily comprised of Robert Klyman (lead bankruptcy  
15 counsel), Barry Clarkson (lead corporate counsel), Eric Brown, Kathy Bowman (paralegal) and  
16 Claudia Barbarena (paralegal assistant). Because the Schedules and SOFAs were due May 28,  
17 2003 and the L&W team was brought in near the deadline, the L&W team worked on short  
18 notice and devoted long hours over a few weeks to finalize and file the Schedules and SOFAs.  
19 Moreover, this short time window required a number of conferences and meetings that involved  
20 multiple members of the L&W team. In addition, at the request of the Debtors, L&W inputted  
21 the Schedules and SOFAs onto L&W's computer system and took responsibility for turning  
22 multiple drafts of those documents on an expedited basis. The L&W computer programmers and  
23 document specialists also worked long hours to finalize the Schedules and SOFAs; their fees and  
24 expenses are not standard costs that might otherwise be properly classified as overhead (and are  
25 included in the expense category of Document Support).

26 **B. Asset Disposition – 0002.**

27 This category includes services rendered in connection with the sale of the  
28 Debtors' wireless licenses, particularly the sale to Edge Acquisition LLC. Among other things,

1 L&W advised the Debtors in regards to their sale strategy, reviewed asset purchase agreements,  
2 discussed the sale with the Debtors, and assisted the Debtors in developing their plans for  
3 conducting an auction sale and the terms of the sale. L&W submitted motions to the Court for  
4 approval of bidding procedures and sale, conducted the auction and sought approval of an order  
5 authorizing the sale. L&W also provided advice and counsel regarding a potential license sale  
6 with Cingular (which will be the subject of a motion in the near term). In order to sell a wireless  
7 license during the course of the Cases, the Debtors required bankruptcy, corporate and FCC  
8 advice. L&W provided such advice, but the interdisciplinary nature of these transactions  
9 required multiple conferences between L&W lawyers who had the relevant experience in  
10 bankruptcy and FCC transactions.

11 **C. Business Operations – 0003.**

12 Under this category, L&W assisted the Debtors in stabilizing, analyzing and  
13 restructuring the Debtors’ ongoing business operations, including the Debtors’ numerous cell  
14 sites leases, retail store leases, administrative office leases, telecommunication services  
15 agreements, utility agreements and other executory contracts. In addition, L&W provided  
16 substantial advice with respect to compliance with SEC rules and regulations. In so doing, L&W  
17 provided advice on complex matters that required input and expertise from a variety of practice  
18 areas. For example, without limitation:

19 1. SEC Advice. Leap is a publicly traded company. The Debtors therefore  
20 required advice from L&W regarding compliance with SEC rules and regulations, including the  
21 preparation and filing of periodic Form 10-K and 10-Q reports and press releases. In addition, at  
22 the request of the Official Committee, L&W, on behalf of Leap, prepared and drafted a detailed  
23 request to the SEC for authority to cease Leap's reporting requirements under the SEC rules and  
24 regulations. The SEC denied that request, thereby necessitating continued SEC filings. In  
25 addition, L&W advised the Debtors with respect to their obligations under SEC rules and  
26 regulations, and participated in numerous meetings of the Debtors’ boards of directors and/or  
27 senior management and legal departments

28

1           2.     Lucent, Nortel and Ericsson: Cricket's primary vendor relationships are  
2 with Lucent, Nortel and Ericsson. Each of these companies is a party to an executory contract  
3 with Cricket, and each contract is extremely important to the Debtors' business operations.  
4 Lucent asserted an approximately \$33 million cure amount with respect to its contract, and the  
5 other parties also asserted large cure amounts. As a result of L&W's efforts (along with those of  
6 the Debtors), the Debtors negotiated savings of more than \$20 million in asserted cure amounts.

7           3.     Analyzing contracts and leases for assumption/rejection. L&W filed four  
8 separate motions to reject hundreds of non-residential real property leases and executory  
9 contracts, a motion to reject a service agreement with AT&T Corp., a motion to assume certain  
10 cell sites as amended, and a motion to assume and reject certain cell site leases with American  
11 Tower, LP. Each of the foregoing motions required substantial time from L&W lawyers to  
12 analyze contracts, confer with the Debtors regarding business operations and to prepare exhibits.  
13 In addition, in order to gain more time to analyze the leases and contracts, L&W successfully  
14 filed two separate motions to extend the time the Debtors have to assume the remainder of their  
15 non-residential real property leases.

16           4.     Response to inquiries from creditors. The name and phone number of  
17 L&W's bankruptcy lawyers appeared on every notice sent to creditors. As a result, L&W spent  
18 many hours responding to numerous creditor inquiries. Most of the time, those inquiries were  
19 ministerial in nature and the response provided by a more junior lawyer or paraprofessional.

20           5.     Motions generally. The docket is replete with dozens of motions filed by  
21 L&W on behalf of the Debtors designed to further the business operations of the Debtors  
22 (including without limitation various first day motions, motions for severance and retention  
23 plans, motions with respect to utilities). Certain of the motions brought by L&W on behalf of  
24 the Debtors elicited objections from one party or another. At the direction of the Debtors and  
25 consistent with L&W's view as to what is in the best interests of these Estates, L&W negotiated  
26 compromises of many of the objections as they were asserted. L&W spend substantial time  
27 negotiating such compromises, including without limitation, with respect to adequate assurance  
28 of payment for the Debtors' utilities.



1 **D. Case Administration – 0004.**

2 When the Debtors commenced these Cases, they became subject to myriad of  
3 administrative and procedural requirements imposed on debtors in possession by the Bankruptcy  
4 Code, the Federal Rules of Bankruptcy Procedure, this Court’s Local Rules, and the UST  
5 Guidelines. L&W coordinated the Debtors’ efforts to fulfill these requirements by, among other  
6 things, frequently conferring with the Debtors’ management regarding pending issues, strategic  
7 decisions, and allocation of responsibilities.

8 L&W also reviewed and revised the Debtors’ monthly operating reports, interim  
9 statements, and other documents required by the UST Guidelines; responded to the UST’s  
10 various requests for information; and conducted numerous other administrative tasks that do not  
11 clearly fit into other categories.

12 In order to minimize fees, L&W arranged for many of the services in this  
13 category to be provided by paraprofessionals with lower billing rates. These services include  
14 conducting extensive research on Pacer in response to requests by the Debtors, L&W attorneys  
15 and other parties in interest to locate pleadings and to maintain L&W’s files with respect to  
16 pleadings entered in the Cases, preparing the 7-Day Package for the UST, preparing and  
17 maintaining service lists for the parties to the Cases, filing pleadings and coordinating the service  
18 of motions, notices, orders and dozens of other pleadings, compiling and updating the list of  
19 parties who requested special notice in the Cases, calendaring hearing dates and updating  
20 pleading notebooks. Paraprofessionals of L&W also prepared certain of the pleadings, including  
21 Orders from hearings and these services were charged to this category. None of the foregoing  
22 fees is properly characterized as overhead, as L&W does not build in those fees as part of the  
23 L&W rate structure. Instead, paraprofessionals work as case managers (in debtor and non-debtor  
24 cases) and their fees are billed directly to L&W clients.

25 In order to comply with the electronic filing requirements of this Court, several of  
26 L&W’s paraprofessionals took a lengthy course on e-filing. While this method of filing saved  
27 many thousands of dollars in messenger and filing costs, such method required a trained  
28 professional or paraprofessional to spend time on each filing. Accordingly, L&W has submitted

1 bills which include the fees associated with e-filing (a non-standard overhead charge which is not  
2 embedded in L&W's hourly rates).

3 **E. Claims Administration and Objections – 0005.**

4 This category includes services relating to claims administration matters. L&W  
5 advised the Debtors regarding procedures for filing proofs of claim and strategies and categories  
6 for objections to claims. L&W worked with the Debtor's noticing and claims agent, Poorman-  
7 Douglas to establish and give notice of a claim bar date. L&W prepared the motion for this  
8 Court's approval of a claims bar date, and the Court established June 28, 2003, as the last date to  
9 file proofs of claim on account of pre-petition claims. On a motion prepared by L&W, this Court  
10 also established a supplemental bar date for September 2, 2003 for certain possible claimants.

11 L&W and the Debtors' accounting staff also undertook an extensive review of all  
12 of the proofs of claim that were filed against the Debtors' estates. As a result of that analysis, the  
13 Debtors and L&W were able to identify thousands of potentially objectionable claims. The  
14 Debtors filed objections (or notices of objection) to many of those claims during the Application  
15 Period.

16 **F. Employment Benefits/Pensions – 0006.**

17 L&W advised the Debtors with respect to employee benefit programs, interim  
18 compensation to certain insiders, retention bonuses and severance agreements for management.

19 **G. Fee/Employment Applications – 0007.**

20 Time billed to this category relates to the preparation and review of retention  
21 applications for L&W, the Debtors' other professionals, assisting such other professionals in the  
22 preparation of their retention applications, and advising them regarding the requirements of  
23 chapter 11 and the UST Guidelines, negotiations with the UST concerning the retention of these  
24 professionals, discussions with professionals concerning their retention applications, and the  
25 review of other retention applications filed in these Cases. L&W was requested to draft and/or  
26 review applications for many of the Debtors' other professionals, including, but not limited to,  
27 PricewaterhouseCoopers LLP (accountants), Ernst & Young, Deloitte & Touche, UBS Securities  
28 LLC (financial advisors), Frank E. Rogozienski (special litigation counsel) and Falkenberg

1 Capital Corporation (valuation expert). L&W was also involved in detailed and extensive  
2 negotiations over how UBS' fees and expenses would be allocated among the Leap Debtors and  
3 the Cricket Debtors.

4 This category also includes certain of L&W's services with respect to the  
5 Debtors' employment of ordinary course professionals. L&W advised the Debtors on various  
6 issues regarding the standards for obtaining Court approval to employ professionals, and related  
7 matters, and obtained such approval.

8 **H. Fee/Employment Objections – 0008.**

9 L&W did not bill any time to this category during the Application Period.

10 **I. Financing – 0009.**

11 This category includes L&W services related to negotiations with the Vendor  
12 Debt Holders regarding the final order regarding Cash Collateral (the "Final Cash Collateral  
13 Order"), responding to objections to motions for use of Cash Collateral, preparation of the Final  
14 Cash Collateral Order, attendance at hearings regarding the Final Cash Collateral Order and  
15 consultation with the Debtors regarding the use of Cash Collateral. This category was primarily  
16 for services provided to the Cricket Debtors.

17 **J. Litigation – 0010.**

18 All state-court litigation pending against the Debtors was automatically stayed.  
19 The Debtors, with L&W's assistance, have responded as appropriate to discrete issues that have  
20 arisen regarding pending litigation, such as inquiries regarding the scope of the automatic stay  
21 and issues related to certain derivative actions, the Nortel v. Kyocera litigation and the Zawalick  
22 litigation. L&W also prepared and filed an action against MCG PCS, Inc. to subordinate MCG's  
23 claim and for recovery of preferential payments. L&W also advised Leap with respect to  
24 litigation involving Endessa on a \$35 million note owed by Endessa. L&W also spent  
25 considerable time preparing for and successfully opposing the motion for appointment of an  
26 equity committee (including preparing for hearings and depositions).

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28

1 **K. Meetings of Creditors – 0011.**

2 Time billed to this category consists primarily of services involving preparing for  
3 and appearing at the 341(a) meeting of creditors, responding to inquiries from numerous  
4 creditors on a myriad of matters, and preparing correspondence and other documents for  
5 distribution to the Committees or other creditors. L&W also represented the Debtors in  
6 conference calls and other discussions with interested parties with respect to matters affecting  
7 creditors.

8 **L. Plan and Disclosure Statement – 0012.**

9 L&W attorneys spent a significant amount of time preparing and negotiating the  
10 Debtors' Plan and Disclosure Statement between the Creditors Committee, the Informal Vendor  
11 Debt Committee and other interested parties. After initially filing the draft Disclosure Statement  
12 and Plan on May 9, 2003, the Debtors subsequently amended the voluminous Disclosure  
13 Statement to fully address the Court's comments and objections raised by interested parties.  
14 Preparation of the Plan and Disclosure Statement also required L&W to work closely with the  
15 Debtors' other professionals, particularly for the preparation of the Plan's exhibits and valuation  
16 of the Debtors' licenses and enterprise. L&W prepared for and attended highly contested  
17 hearings for approval of the Disclosure Statement. L&W also coordinated with Poorman-  
18 Douglas and Merrill Corporation to solicit votes on the Plan and present ballot declarations and  
19 other relevant evidence to the Court.

20 L&W also spent considerable time preparing for Confirmation of the Plan,  
21 including preparing a detailed confirmation memorandum and supporting declaration, along with  
22 the proposed confirmation order, implementing Plan modifications, preparing lay and expert  
23 witnesses for testimony, deposing and defending depositions of lay and expert witnesses and  
24 attending the Plan Confirmation Hearing. Since the Confirmation Hearing began on September  
25 30, 2003, this Application mostly includes fees and expenses related to preparation for the  
26 Confirmation Hearing and the first day of trial.

27 L&W staffed its trial team leanly. As the trial approached, L&W included in that  
28 team a handful of other lawyers to prepare a variety of pleadings and motions related to trial

1 preparation. In addition, L&W utilized the technological assistance of James Padilla, an  
2 experienced trial paraprofessional (whose fees and expenses are not part of L&W overhead and  
3 in numerous other trials have been directly billed to clients).

4 **M. Relief from Stay Proceedings – 0013.**

5 This category includes services relating to termination or continuation of the  
6 automatic stay under § 362 of the Bankruptcy Code.

7 **N. FCC Bankruptcy-Related Matters – 0014.**

8 The Debtors' primary assets are wireless communication licenses granted by the  
9 FCC. L&W's services in this category related to preparation of applications to the FCC for  
10 consent to assignment of licenses as part of individual transactions with Edge Acquisitions LLC,  
11 Cingular and other potential buyers. L&W also filed applications with the FCC to extend the  
12 FCC's consent to the license transfers to Edge. L&W also generally advised the Debtors  
13 regarding other FCC issues and strategy, the requirements for FCC build-out arrangements and  
14 diligence on license transfers. In addition, L&W worked on the so-called "long form  
15 application," which is the Debtors' application to the FCC for authority to consummate the Plan  
16 and approve the various changes of control and ownership of the FCC licenses that will occur  
17 under the Plan. The long form application required L&W to collect and synthesize the facts and  
18 develop various legal theories, and in so doing to work with and through special FCC counsel to  
19 the Informal Vendor Debt Committee. In addition, various L&W FCC lawyers held conferences  
20 with the FCC staff with respect to the long form application.

21 **O. Tax Advice – 0015.**

22 Time billed to this category consists primarily of advice rendered to the Debtors  
23 relating to state and federal tax issues, including advice regarding tax disclosure, withholding  
24 taxes, debt discharge and net operating losses. The structure of the Joint Plan was driven by  
25 maximizing tax benefits, and L&W's tax lawyers worked closely with the Debtors and lawyers  
26 from other disciplines at L&W to successfully implement the restructure.

27  
28

1 **VII. SUMMARY OF EXPENSES**

2 L&W is seeking reimbursement for \$261,028.11 in expenses that it incurred  
3 during the Interim Fee Period. The UST Guidelines require that an application seeking  
4 reimbursement of expenses include a summary of all expenses by category and month. This  
5 summary, which includes a description of the applicable categories, is attached as Exhibit G.  
6 These costs and expenses were billed to the Debtors at the rates that L&W has customarily  
7 applies to its non-debtor clients.

8 **VIII. CONCLUSION**

9 Bankruptcy Code section 330(a)(1) authorizes the Court to award to professionals  
10 who have been employed under Bankruptcy Code section 327 reasonable compensation for their  
11 services as well as reimbursement for all actual and necessary expenses. As stated by the Ninth  
12 Circuit Court of Appeals: “The primary method used to determine a reasonable attorney fee in a  
13 bankruptcy case is to multiply the number of hours expended by an hourly rate.” In re  
14 Yermakov, 718 F.2d 1465, 1471 (9th Cir. 1983).

15 Section 330(a)(3) further states that the Court should consider the nature, extent,  
16 and value of the services provided, taking into account all relevant factors. These factors include  
17 the time spent on the services, the rates charged for the services, whether the services were  
18 necessary or beneficial, whether the services were performed in a reasonable amount of time, and  
19 whether the compensation is reasonable based on compensation customarily charged by  
20 comparable professionals:

21 In determining the amount of reasonable compensation to be awarded, the court  
22 shall consider the nature, the extent, and the value of such services, taking into  
account all relevant factors, including—

- 23 (A) the time spent on such services;  
24 (B) the rates charged for such services;  
25 (C) whether the services were necessary to the administration of, or beneficial  
26 at the time at which the service was rendered toward the completion of, a  
27 case under this title;  
28

1 (D) whether the services were performed within a reasonable amount of time  
2 commensurate with the complexity, importance, and nature of the  
3 problem, issue, or task addressed; and

4 (E) whether the compensation is reasonable, based on the customary  
5 compensation charged by comparably skilled practitioners in cases other  
6 than cases under this title.

7 11 U.S.C. § 330(a)(3).

8 L&W should be awarded its requested fees and expenses, which are comparable  
9 to those that L&W charges in large, complex nonbankruptcy cases. See In re Manoa Finance  
10 Co., Inc., 853 F.2d 687, 689 (9<sup>th</sup> Cir. 1988) (“Congress has expressed its intent that bankruptcy  
11 compensation be commensurate with that earned in comparable nonbankruptcy cases.”); see also  
12 Grant v. George Schumann Tire & Battery Co., 908 F.2d 874, 878 (11<sup>th</sup> Cir. 1990) (“Congress  
13 expressed its intent that there should be no distinction between fees set in bankruptcy cases and  
14 those set in non-bankruptcy cases.”); and H.R.Rep. No. 595, 95th Cong., 2d Sess. 329-30,  
15 *reprinted in* 1978 U.S.Code Cong. & Admin.News 5963, 6286 (“Bankruptcy specialists,  
16 however, if required to accept fees in all of their cases that are consistently lower than fees they  
17 could receive elsewhere, will not remain in the bankruptcy field”).

18 In addition, L&W’s fees should be evaluated in the context of those charged by  
19 other national firms in large and complex cases. See In re Temple Retirement Community, Inc.,  
20 97 B.R. 333, 342 (Bankr. W.D. Tex. 1989) (“the appropriate question may not always simply be:  
21 “What do you charge your nonbankruptcy clients?” In many cases, the court should also ask:  
22 “What is the range of rates charged by attorneys of comparable competence for comparable  
23 services in the comparable community or marketplace?”) see also Southland v. Int’l  
24 Longshoremen’s and Warehousemen’s Union, 845 F.2d 796, 801 (9<sup>th</sup> Cir. 1987). As noted  
25 recently by the Bankruptcy Court for the Eastern District of Virginia,  
26  
27  
28

1 If a national chapter 11 case were filed in this court that required bankruptcy  
2 counsel experienced in large, complex reorganizations, the relevant market for  
3 such counsel would be those counsel who regularly represent debtors in large,  
4 complex reorganizations throughout the United States. The hourly rates of local  
5 counsel who are well experienced in local chapter 11 reorganization cases may  
6 not be particularly relevant because they compete in a different market.

7 In re Computer Learning Centers, Inc., 285 B.R. 191, 228 (Bankr. E.D. Va. 2002); see also  
8 Temple Retirement Community, 97 B.R. at 342-343 (“When the nature of a given case in fact  
9 justifies the retention of out-of-town counsel, however, local rates should not operate as a  
10 limiting factor in determining the reasonableness of the base fee sought;” holding the  
11 complexities of the case justified Dallas rates even though the venue was Waco, TX); In re  
12 Public Service Co. of New Hampshire, 86 B.R. 7, 11 (Bankr. D.N.H. 1988) (Los Angeles  
13 bankruptcy firm representing major public utility company in New Hampshire); In re Frontier  
14 Airlines, 74 B.R. 973, 977 (Bankr. D. Colo. 1987) (New York counsel in a major air line case  
15 filed in Denver, Colorado); Matter of Baldwin-United Corp., 36 B.R. 401, 403 (Bankr. S.D.  
16 Ohio 1984) (major Los Angeles firm represented corporate debtor in a highly complicated case  
17 then pending in Cincinnati, Ohio); In re Atlas Automation, Inc., 27 B.R. 820, 822 (Bankr. E.D.  
18 Mich. 1983) (regional firm with bankruptcy expertise took case in Flint, Michigan). As noted  
19 above, L&W’s rates are commensurate with those charged in these Cases and in other national  
20 complex cases.

21 Moreover, Section 330 does not preclude the award of paraprofessional  
22 and clerical services where comparable non-bankruptcy clients pay for those services. In  
23 Busy Beaver, for example, the Third Circuit discussed at length the reasonableness of  
24 requesting compensation for clerical services. See In re Busy Beaver Building Centers,  
25 Inc., 19 F.3d 833, 848- 56 (3<sup>rd</sup> Cir. 1994). According to the Third Circuit, “the Code  
26 dictates ... the bankruptcy court should review fee applications not for whether each  
27 particular service undertaken by a paralegal is clerical or paraprofessional by nature, but  
28 for whether non-bankruptcy attorneys typically charge and collect from their clients fees





1       **DECLARATION OF ROBERT A. KLYMAN IN SUPPORT OF THE APPLICATION**

2                       I, Robert A. Klyman, declare as follows:

3                       1.       I am an attorney admitted to practice law in the State of California and  
4 before this Court and am a partner in the law firm of Latham & Watkins LLP (“L&W”), general  
5 bankruptcy counsel for Leap Wireless International, Inc. (“Leap”), Cricket Communications, Inc.  
6 (“Cricket”), and certain of their subsidiaries and other affiliated entities (collectively, the  
7 “Debtors”), the debtors-in-possession in the above-captioned cases (the “Cases”). In that  
8 capacity, I am primarily responsible for L&W’s representation of the Debtors. The matters  
9 stated hereinafter are within my own personal knowledge and, if called as a witness, I could and  
10 would competently testify thereto.

11                      2.       I have reviewed, participated in the preparation of and supervised the  
12 preparation of the First Interim Application of Latham & Watkins LLP, General Bankruptcy  
13 Counsel to the Debtors and Debtors-in-Possession, for Allowance and Payment of Compensation  
14 and Reimbursement of Expenses for the Period from April 13, 2003 through September 30, 2003  
15 (the “Application”).

16                      3.       I have personal knowledge of the facts set forth in the Application as they  
17 relate to the events that occurred during the Debtors’ bankruptcy cases and my own activities.  
18 As to services by other professionals in my firm, I reviewed the description of such services in  
19 L&W’s billing records. I have also reviewed the applications for payment of fees and expenses  
20 submitted by other professionals in these cases, and have reviewed or am informed of the fees  
21 submitted in invoices to Cricket by counsel to the Informal Vendor Debt Committee.

22                      4.       The facts stated in the Application are true and correct as set forth therein.

23                      5.       L&W has not been paid or promised any compensation from any source  
24 for services rendered in connection with the Debtors’ bankruptcy cases.

25                      6.       I am familiar with the Bankruptcy Code, the Federal Rules of Bankruptcy  
26 Procedure, the Local Bankruptcy Rules for the Southern District of California and the Guidelines  
27 for Fulfilling the Requirements of the United States Trustee and the Guidelines for Reviewing  
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