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7  
8 **UNITED STATES BANKRUPTCY COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 In re  
11 LEAP WIRELESS INTERNATIONAL, INC.,  
12 and CRICKET COMMUNICATIONS, INC., et  
al.,  
13 Debtors.

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17 Fed. Tax Id. Nos. 33-0811062 and 33-0879924  
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Case Nos.: 03-03470-A11 through  
03-03535-A11

(Jointly Administered)

Chapter 11

**SECOND 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  
OCTOBER 1, 2003 THROUGH  
JANUARY 31, 2004; DECLARATION  
OF ROBERT A. KLYMAN IN  
SUPPORT THEREOF**

**Hearing**

Date: May 6, 2004

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 October 1, 2003 through January 31, 2004 (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 second application for payment of fees and expenses  
15 in 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 October 1, 2003 through January 31, 2004 (the “Second Application  
18 Period”).

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

25	Date of Filing of Cases:	April 13, 2003
26	Name of Trustee:	None Appointed
27	Present Balance of Retainer:	\$176,833.20 from Leap

1 Date of Appointment of Applicant: Order Entered May 6, 2003,  
nunc pro tunc to Petition Date

2 Time Period of Application: October 1, 2003 to  
3 January 31, 2004

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

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

10 Total Leap Fees Requested: \$188,296.00

11 Total Leap Hours: 576.30

12 Total Leap Blended Hourly Rate: \$326.73

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

17 Total Cricket Fees Requested: \$387,249.00

18 Total Cricket Hours: 1,204.80

19 Total Leap Blended Hourly Rate: \$321.42

20 3. The Joint Leap/Cricket Debtors: All fees that L&W incurred jointly on  
21 behalf of the Leap Debtors and the Cricket Debtors will be referred to hereafter as  
22 "Joint Leap/Cricket Fees." The Joint Leap/Cricket Fees reflect services that  
23 L&W provided for the benefit of the Leap Debtors and the Cricket Debtors and/or  
24 where it was impracticable to separately account for services provided to one or  
25 the other group of Debtors. As set forth in the Application to Retain Latham &  
26 Watkins LLP as General Bankruptcy Counsel to the Debtors (docket no. 112), the  
27  
28

1 Cricket Debtors and Leap Debtors will split the cost of the Joint Leap/Cricket  
2 Fees on an 80/20 basis between Cricket and Leap:

3	Total Joint Leap/Cricket Fees Requested:	\$719,606.00
4	Total Joint Leap/Cricket Hours:	2,329.20
5	Total Joint Leap/Cricket Blended Hourly Rate:	\$308.95

6 Total Expenses, in the amount of \$107,891.32 will be allocated on an 80/20 basis  
7 between Cricket and Leap.

8  
9 Voluntary Write-off of Fees and Expenses: Pursuant to L&W's agreement with the  
10 Debtors, L&W has voluntarily agreed to write-off \$22,004.08 in fees against the Leap  
11 Debtors and \$62,625.85 against the Cricket Debtors (for a total voluntary write-off of  
12 \$84,629.93). Assuming the fees and expenses sought by L&W are approved, L&W will  
13 discount the award by the write-offs described herein.

14 Brief Description of Services: See Section VI below

## 15 **II. OVERVIEW OF THE CASES**

16 On April, 13, 2003 (the "Petition Date"), each of the Debtors filed a voluntary  
17 petition for relief under chapter 11 of the Bankruptcy Code. By order dated April 14, 2003, these  
18 chapter 11 cases became jointly administered cases. The Debtors are continuing to operate their  
19 businesses and manage their properties as debtors-in-possession pursuant to §§ 1107(a) and 1108  
20 of the Bankruptcy Code. The Debtors confirmed their Joint Plan by order dated October 22,  
21 2003, a little more than six months after the Petition Date. The Effective Date of the Plan has  
22 not yet occurred.

23 These Cases are extraordinarily large and complex, and national in scope. The  
24 Debtors are Leap, Cricket and sixty-four (64) other subsidiaries and affiliated entities. Together,  
25 the Debtors, through Cricket as an operating company, operate as a wireless communications  
26 carrier that provides innovative, affordable, simple wireless services designed to accelerate the  
27 transformation of wireless service into a mass consumer product. The Debtors offer service and  
28

1 own assets in forty markets across twenty states and own wireless licenses covering thirty-three  
2 states. The Debtors provide service to approximately 1.46 million customers and had gross  
3 revenue of approximately \$184.3 million for the quarter ending June 30, 2003. As of the Petition  
4 Date, the Debtors had approximately \$2.6 billion in total liabilities, the largest chapter 11 case  
5 ever filed in the Southern District of California.

6           The Debtors faced an enormous challenge to meet their need – and that of their  
7 primary economic stakeholders -- to emerge from chapter 11 on an expedited basis. With the  
8 counsel of L&W, the Debtors successfully met that challenge and confirmed the Joint Plan  
9 within approximately six months of the Petition Date. Those challenges faced by the Debtors  
10 can be broken down into two major categories: restructure/operational/business challenges and  
11 MCG litigation challenges.

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



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 Joint Plan (and many other actions taken by the Debtors)  
6 interposed by MCG PCS, Inc. (a shareholder and disputed creditor of Leap). During the Second  
7 Application Period, L&W assisted the Debtors in overcoming those challenges by, among other  
8 things, (a) presenting a prevailing evidentiary case at trial in support of Confirmation of the Plan  
9 and (b) defeating MCG PCS, Inc.'s motion to stay the implementation of the Confirmation  
10 Order. MCG's admitted motivation in opposing the Debtors was to extract a settlement from the  
11 Debtors, but for the Debtors that opposition threatened their going concern potential. Therefore,  
12 at the Debtors' direction, L&W devoted tremendous resources over short time periods to parry  
13 MCG's attacks – because the Debtors had to confirm the Joint Plan quickly to be positioned to  
14 compete in the fourth quarter of 2003 and thereby preserve maximum value for the Debtors' true  
15 economic stakeholders. Ultimately, L&W negotiated and documented a global settlement with  
16 MCG which removed a primary obstacle to the Effective Date.

17           As noted, L&W staffed these cases leanly. L&W's core bankruptcy/corporate  
18 team consisted of four lawyers (Klyman, Clarkson, Seim and Brown) and two paraprofessionals  
19 (Bowman and Barberena). As set forth in Exhibits to First Interim Application the hourly rates  
20 of these professionals are commensurate to the rates charged by professionals in other national  
21 cases and for cases of tremendous magnitude and complexity. Because of the magnitude of the  
22 electronic filings in these cases (e.g., more than 450 filings were entered on the docket by the  
23 Debtors and other parties during the Second Application Period), L&W relied on other  
24 paraprofessionals to electronically file pleadings and maintain databases of pleadings and other  
25 filings. Moreover, because the Debtors are subject to the regulatory powers of the FCC, the  
26 Debtors relied on their core outside team of FCC experts in L&W's Washington D.C. office. In  
27 addition, as the Cases proceeded to trial, L&W brought in additional litigation assistance with  
28 briefing, experts and discovery; however, L&W provided maximum efficiency for the Debtors

1 because the lead bankruptcy partner also served as lead trial counsel. L&W also relied on other  
2 attorneys as needed who could provide expertise or assistance in these Cases in multiple practice  
3 areas.

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

8 The Leap Debtors:

- 9 • L&W, as counsel for the Leap Debtors: \$332,217.20 (comprised of  
10 \$188,296.00 for Leap and \$143,921.20 for 20% of Joint Leap/Cricket)
- 11 • Counsel for the Committee: total of \$450,612.50
  - 12 ○ Kramer Levin: \$429,605.50
  - 13 ○ Irell & Manella: \$21,017.00

14 The Cricket Debtors:

- 15 • L&W, as counsel for the Cricket Debtors: \$962,933.80 (comprised of  
16 \$369,284.00 for Cricket and \$575,684.80 for 80% of Joint  
17 Leap/Cricket)

18 **III. BACKGROUND AND QUALIFICATIONS**

19 On May 6, 2003, this Court entered an Order approving L&W's employment as  
20 general bankruptcy counsel to the Debtors effective as of the Petition Date (the "Employment  
21 Order"). L&W served as the Debtors' general bankruptcy counsel throughout the Second  
22 Application Period on the term and conditions set forth in the Employment Order. The  
23 Application to Retain, Employ and Compensate L&W as General Bankruptcy Counsel for the  
24 Debtors summarizes L&W's background and qualifications, and specifies the qualifications of  
25 the primary bankruptcy, corporate and FCC professionals who provided services to the Debtors.  
26 L&W can provide additional resumes of other L&W lawyers upon request.

27 To provide effective, efficient representation to this estate, L&W allocated  
28 responsibilities among professionals based upon each individual's comparative expertise and

1 knowledge of particular aspects of this case and allocated work to attorneys with lower hourly  
2 rates whenever practical. For example, Mr. Klyman primarily handled the bankruptcy and  
3 restructuring matters, including substantially all hearings, confirmation of the Plan, and worked  
4 on a day to day basis with the Debtors to ensure that this case moved forward to confirmation in  
5 accordance with the aggressive timetable required by the parties. He also served as lead trial  
6 attorney for the Debtors in connection with the confirmation trial. Mr. Clarkson primarily  
7 handled general corporate matters (including without limitation SEC requirements for Leap as a  
8 public company) and corporate matters related to, among other things, the sale of assets and  
9 resolution of claims. In addition, Mr. Clarkson attended many hearings and meetings because of  
10 his intimate knowledge of the Debtors (as he had been primary corporate counsel for the Debtors  
11 from their corporate inception). Ms. Seim, an experienced corporate associate, handled  
12 corporate matters under Mr. Clarkson's general supervision. Mr. Brown handled a wide range of  
13 associate-level matters such as preparing motions to reject executory contracts and non-  
14 residential real property leases, motions to extend the time within which the Debtors may  
15 assume, assume or assign, or reject leases of nonresidential real property, analyzing the claims  
16 asserted against the Debtors, communicating with creditors and such other issues that arose in  
17 the Cases. Kathryn Bowman, a paralegal, also rendered services in the Cases, including  
18 reviewing monthly operating reports and supervising e-filing and other matters in these Cases.  
19 Wherever possible, L&W's professionals did not duplicate efforts. L&W believes that it  
20 allocated its resources effectively and efficiently throughout these Cases.

#### 21 **IV. COMPENSATION TO DATE**

22 Pursuant to order of this Court dated January 12, 2004 (docket no. 1286), L&W  
23 received \$653,354.63 from Leap and \$1,937,882.56 from Cricket in connection with L&W's  
24 First Interim Application for Allowance And Payment of Compensation And Allow  
25 Reimbursement of Expenses For the Period From April 13, 2003 through September 30, 2003  
26 (the "First Interim Application").

27 On the Petition Date, L&W held retainers for services that L&W was to render  
28 during these Cases in the amount of \$173,554.52 from the Leap Debtors and \$579,696.15 from

1 the Cricket Debtors. Pursuant to the First Interim Application, L&W drew on the retainer from  
2 the Cricket Debtors for partial payment of the fees and expenses sought by L&W. The Leap  
3 Debtors and the Court authorized L&W to retain the retainer provided by the Leap Debtors until  
4 the Effective Date of the Plan.

5           Neither L&W nor any member of L&W has any agreement or understanding of  
6 any kind to divide, pay over, or share any portion of the fees to be awarded to L&W with any  
7 other person or attorney, except as among members and associates of L&W. Following the  
8 Petition Date, L&W and its members have neither acquired nor received a transfer of a beneficial  
9 interest in claims against the Debtors or stock of the Debtors.

#### 10           **V. SERVICES AND COMPENSATION REQUESTED**

11           Sections VI and VII describe the services that L&W rendered to these Estate  
12 during the Second Application Period as well as the expenses that L&W incurred in connection  
13 with this representation. Because L&W categorizes its services in numbered categories that are  
14 substantially similar to those recommended in the UST Guidelines, the discussion in Section VI  
15 is organized by category. (Some of the services rendered could reasonably be categorized in  
16 more than one of the billing categories. Consequently, different attorneys sometimes billed their  
17 services on the same matter in different categories; however, time entries for a single task by one  
18 attorney were not duplicated.) L&W further billed its services to separate client numbers for  
19 Cricket, Leap or the Joint Leap/Cricket Debtors as applicable, which is reflected in the attached  
20 exhibits. Expenses are allocated to the Joint Leap/Cricket Debtors because it proved  
21 impracticable to allocate expenses to one or the other of the Debtors.

22           **A Fee Application Summary is attached hereto as Exhibit A.**

23           **A complete, chronological, line-item listing-sorted by activity category of the**  
24 **services that L&W rendered during the Second Application Period for the Leap Debtors,**  
25 **the Cricket Debtors and the Joint Leap/Cricket Debtors is appended hereto as Exhibit B, C**  
26 **and D, respectively (collectively, the “Services Exhibits”).** The Services Exhibits include the  
27 name of the professional who rendered the services; the date services were rendered; the hours  
28

1 spent rendering services; the total billed for the services; and a detailed description of the  
2 services.

3 **Attached as Exhibit E is a listing of hours spent by L&W attorneys by**  
4 **month, as well as their hourly rates.**

5 **Exhibit F summarizes, by month, the total reimbursable expenses that L&W**  
6 **incurred during the Second Application Period, along with a description of such expense**  
7 **categories.**

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

## 11 **VI. SUMMARY OF PROFESSIONAL SERVICES RENDERED**

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

### 19 **A. Asset Disposition – 0002.**

20 This category includes services rendered in connection with the sale of the  
21 Debtors' wireless licenses, particularly the sale to Cingular. Among other things, L&W advised  
22 the Debtors in regards to their sale strategy, reviewed asset purchase agreements, discussed the  
23 sale with the Debtors, and assisted the Debtors in developing their plans for conducting an  
24 auction sale and the terms of the sale. L&W submitted motions to the Court for approval of  
25 bidding procedures and sale, conducted the auction and sought approval of an order authorizing  
26 the sale. L&W also provided advice and counsel regarding the purchase of a license from  
27 Alpine, which will be the subject of a motion in the near term. In order to buy or sell a wireless  
28 license during the course of the Cases, the Debtors required bankruptcy, corporate and FCC

1 advice. L&W provided such advice, but the interdisciplinary nature of these transactions  
2 required multiple conferences between L&W lawyers who had the relevant experience in  
3 bankruptcy and FCC transactions.

4 **B. Business Operations – 0003.**

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

12 1. SEC Advice. Leap is a publicly traded company. The Debtors therefore  
13 required advice from L&W regarding compliance with SEC rules and regulations, including the  
14 preparation and filing of periodic Form 8-K, 10-K and 10-Q reports and press releases. In  
15 addition, L&W advised the Debtors with respect to their obligations under SEC rules and  
16 regulations, and participated in numerous meetings of the Debtors' boards of directors and/or  
17 senior management and legal departments.

18 2. Analyzing contracts and leases for assumption/rejection. Along with the  
19 Debtors, L&W analyzed and revised schedules of non-residential real property leases and  
20 executory contracts for assumption/rejection and negotiated resolutions of numerous objections  
21 to those schedules. L&W also handled all objections to cure amounts and claims arising from  
22 rejection of contracts and leases.

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

27 4. Motions generally. The docket is replete with numerous motions filed by  
28 L&W on behalf of the Debtors designed to further the business operations of the Debtors.

1 Certain of the motions brought by L&W on behalf of the Debtors elicited objections from one  
2 party or another. At the direction of the Debtors and consistent with L&W's view as to what is  
3 in the best interests of these Estates, L&W negotiated compromises of many of the objections as  
4 they were asserted. L&W spend substantial time negotiating such compromises, including  
5 without limitation, with respect to adequate assurance of payment for the Debtors' utilities.

6 **C. Case Administration – 0004.**

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

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

17 In order to minimize fees, L&W arranged for many of the services in this  
18 category to be provided by paraprofessionals with lower billing rates. These services include  
19 conducting extensive research on Pacer in response to requests by the Debtors, L&W attorneys  
20 and other parties in interest to locate pleadings and to maintain L&W's files with respect to  
21 pleadings entered in the Cases, preparing and maintaining service lists for the parties to the  
22 Cases, filing pleadings and coordinating the service of motions, notices, orders and dozens of  
23 other pleadings, compiling and updating the list of parties who requested special notice in the  
24 Cases, calendaring hearing dates and updating pleading notebooks. Paraprofessionals of L&W  
25 also prepared certain of the pleadings, including Orders from hearings and these services were  
26 charged to this category. None of the foregoing fees is properly characterized as overhead, as  
27 L&W does not build in those fees as part of the L&W rate structure. Instead, paraprofessionals

28

1 work as case managers (in debtor and non-debtor cases) and their fees are billed directly to L&W  
2 clients.

3 In order to comply with the electronic filing requirements of this Court, several of  
4 L&W's paraprofessionals took a lengthy course on e-filing. While this method of filing saved  
5 many thousands of dollars in messenger and filing costs, such method required a trained  
6 professional or paraprofessional to spend time on each filing. Accordingly, L&W has submitted  
7 bills which include the fees associated with e-filing (a non-standard overhead charge which is not  
8 embedded in L&W's hourly rates).

9 **D. Claims Administration and Objections – 0005.**

10 This category includes services relating to claims administration matters. L&W  
11 advised the Debtors regarding procedures for filing proofs of claim and strategies and categories  
12 for objections to claims.

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

18 **E. Employment Benefits/Pensions – 0006.**

19 L&W advised the Debtors with respect to employee benefit programs and interim  
20 compensation.

21 **F. Fee/Employment Applications – 0007.**

22 Time billed to this category relates to the preparation and review of retention  
23 applications for L&W, the Debtors' other professionals, assisting such other professionals in the  
24 preparation of their first interim fee applications. L&W was requested to draft and/or review fee  
25 applications for many of the Debtors' other professionals, including, but not limited to,  
26 PricewaterhouseCoopers LLP (accountants), Ernst & Young, Deloitte & Touche and UBS  
27 Securities LLC (financial advisors). L&W was also involved in detailed and extensive  
28 negotiations over how UBS' fees and expenses would be allocated among the Leap Debtors and



1 the Cricket Debtors. Due to the complexity of these cases, L&W spent substantial time  
2 preparing the First Interim Application. For example, L&W logged time to fifty-one (51)  
3 categories spread out over three major matters (e.g., Leap, Cricket and Joint Leap/Cricket). In  
4 addition, in light of precedent in this district regarding fee applications, L&W spent time  
5 researching and responding to historic concerns raised by this Court with respect to fees and  
6 expenses charged by national firms.

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

11 **G.     Financing – 0009.**

12           This category includes L&W services related to negotiations with potential  
13 sources of post-Effective Financing for the Reorganized Debtor. This category was primarily for  
14 services provided to the Cricket Debtors.

15 **H.     Litigation – 0010.**

16           All state-court litigation pending against the Debtors was automatically stayed.  
17 The Debtors, with L&W's assistance, have responded as appropriate to discrete issues that have  
18 arisen regarding pending litigation, such as inquiries regarding the scope of the automatic stay  
19 and issues related to certain actions. L&W also prosecuted an action against MCG PCS, Inc. to  
20 subordinate MCG's claim and for recovery of preferential payments, and provided and  
21 responded to discovery with respect thereto. L&W also advised Leap with respect to litigation  
22 involving Endessa on a \$35 million note owed by Endessa. L&W also spent considerable time  
23 successfully moving to subordinate claims filed by American Wireless and resolving outstanding  
24 litigation claims of Transworld (originally filed as a \$500 million claim).

25 **I.     Meetings of Creditors – 0011.**

26           Time billed to this category consists primarily of services involving, responding  
27 to inquiries from numerous creditors on a myriad of matters, and preparing correspondence and  
28 other documents for distribution to the Committees or other creditors. L&W also represented the

1 Debtors in conference calls and other discussions with interested parties with respect to matters  
2 affecting creditors.

3 **J. Plan and Disclosure Statement – 0012.**

4 L&W attorneys spent a significant amount of time preparing for and litigating  
5 issues associated with confirmation of the Debtors' Plan. A substantial amount of the fees billed  
6 to this category during the Second Application Period related to the lengthy Confirmation  
7 Hearing and associated matters (all of which were hotly contested by MCG PCS, Inc.). In  
8 addition, L&W successfully defeated MCG PCS, Inc.'s motion for a stay of the Confirmation  
9 Order and prepared a designation of the record in response to MCG's appeal of such order.  
10 L&W also successfully negotiated a resolution of objections to confirmation from other parties,  
11 including GLH.

12 L&W staffed its trial team leanly. As the trial approached, L&W included in that  
13 team a handful of other lawyers to prepare a variety of pleadings and motions related to trial  
14 preparation. In addition, L&W utilized the technological assistance of James Padilla, an  
15 experienced trial paraprofessional (whose fees and expenses are not part of L&W overhead and  
16 in numerous other trials have been directly billed to clients).

17 As a result of L&W's efforts, the Debtors were ultimately able to reach a  
18 settlement on favorable terms with MCG PCS, Inc. That settlement was extremely complicated  
19 and involved, among other things, which included lengthy negotiations with respect to a warrant  
20 drafted by L&W.

21 **K. FCC Bankruptcy-Related Matters – 0014.**

22 The Debtors' primary assets are wireless communication licenses granted by the  
23 FCC. L&W's services in this category related to preparation of applications to the FCC for  
24 consent to assignment of licenses as part of individual transactions with Cingular and other  
25 potential buyers. L&W also generally advised the Debtors regarding other FCC issues and  
26 strategy, the requirements for FCC build-out arrangements and diligence on license transfers. In  
27 addition, L&W worked on the so-called "long form application," which is the Debtors'  
28 application to the FCC for authority to consummate the Plan and approve the various changes of

1 control and ownership of the FCC licenses that will occur under the Plan. The long form  
2 application required L&W to collect and synthesize the facts and develop various legal theories,  
3 and in so doing to work with and through special FCC counsel to the Informal Vendor Debt  
4 Committee. In addition, various L&W FCC lawyers held conferences with the FCC staff with  
5 respect to the long form application.

#### 6 **VII. SUMMARY OF EXPENSES**

7 L&W is seeking reimbursement for \$107,891.32 in expenses that it incurred  
8 during the Second Application Period. The UST Guidelines require that an application seeking  
9 reimbursement of expenses include a summary of all expenses by category and month. **This**  
10 **summary, which includes a description of the applicable categories, is attached as Exhibit**  
11 **A.** These costs and expenses were billed to the Debtors at the rates that L&W has customarily  
12 applies to its non-debtor clients.

#### 13 **VIII. CONCLUSION**

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

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

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

- 1 (A) the time spent on such services;
- 2 (B) the rates charged for such services;
- 3 (C) whether the services were necessary to the administration of, or beneficial  
4 at the time at which the service was rendered toward the completion of, a  
5 case under this title;
- 6 (D) whether the services were performed within a reasonable amount of time  
7 commensurate with the complexity, importance, and nature of the  
8 problem, issue, or task addressed; and
- 9 (E) whether the compensation is reasonable, based on the customary  
10 compensation charged by comparably skilled practitioners in cases other  
11 than cases under this title.

12 11 U.S.C. § 330(a)(3).

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

23 In addition, L&W’s fees should be evaluated in the context of those charged by  
24 other national firms in large and complex cases. See In re Temple Retirement Community, Inc.,  
25 97 B.R. 333, 342 (Bankr. W.D. Tex. 1989) (“the appropriate question may not always simply be:  
26 “What do you charge your nonbankruptcy clients?” In many cases, the court should also ask:  
27 “What is the range of rates charged by attorneys of comparable competence for comparable  
28

1 services in the comparable community or marketplace?") see also Southland v. Int'l  
2 Longshoremen's and Warehousemen's Union, 845 F.2d 796, 801 (9<sup>th</sup> Cir. 1987). As noted  
3 recently by the Bankruptcy Court for the Eastern District of Virginia,  
4

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

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

25 Moreover, Section 330 does not preclude the award of paraprofessional  
26 and clerical services where comparable non-bankruptcy clients pay for those services. In  
27 Busy Beaver, for example, the Third Circuit discussed at length the reasonableness of  
28 requesting compensation for clerical services. See In re Busy Beaver Building Centers,



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 Second 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 October 1, 2003 through January 31, 2004  
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.       Except as described in the Application, L&W has not been paid or  
24 promised any compensation from any source for services rendered in connection with the  
25 Debtors’ bankruptcy cases.

26                      6.       I am familiar with the Bankruptcy Code, the Federal Rules of Bankruptcy  
27 Procedure, the Local Bankruptcy Rules for the Southern District of California and the Guidelines  
28

