



May 23, 2012

The Honorable Edward J. Markey  
Congressional Bi-partisan Privacy Caucus  
7<sup>th</sup> District, Massachusetts  
Congress of the United States  
House of Representatives  
Washington, DC 20515-2107

Dear Representative Markey:

I write in response to your May 2, 2012 letter, to our CEO Douglas Hutcheson requesting information about Cricket's responses to legal process issued by law enforcement. I am happy to answer the specific questions you raised and I would welcome the opportunity to discuss these matters further if you believe it would be helpful.

By way of background, Cricket takes its obligations to balance subscriber privacy with compliance with law enforcement requests quite seriously. Except in emergency circumstances, as defined by statute, Cricket does not release subscriber information to law enforcement without formal legal process, and Cricket examines all legal process to verify that the correct types of process are being used for the type of subscriber data being requested, even where it requires Cricket to refuse to comply with a law enforcement demand.

Below, I have set forth the specific questions in your letter and Cricket's response.

1. *Over the past five years, how many requests has your company received from law enforcement to provide information about your customers' phone usage, including but not limited to location of device, tracing of phone calls and text messages, and full-scale wiretapping?*

Cricket receives thousands of forms of compulsory legal process each year from law enforcement for information related to phone usage, including subpoenas, court orders, search warrants, pen register, trap and trace orders, and intercept orders. Each form of legal process may seek multiple types of information, or information about multiple subscribers. Cricket also receives requests for disclosures of information under emergency circumstances. For the five year period from 2007– 2011, Cricket received a steadily increasing number of requests, from a low of approximately 24,000 in 2007 to a high of approximately 42,500 in 2011. This growth is in line with the growth in the number of Cricket subscribers over the same time period.

a. *How many of these requests did your company fulfill and how many did it deny?*

Cricket does not keep records of law enforcement requests that were not fulfilled. Anecdotally, however, I can inform you that Cricket does deny some requests based on insufficient law enforcement process.

b. *If it denied any requests, for what reasons did it issue those denials?*

The primary reasons that Cricket may have not implemented a law enforcement request are:

- The language of the order is insufficient to allow production of the requested content
- The level of legal process is insufficient for the type of data requested. For example, a subpoena is used to request transactional records that require a Court Order under 18 U.S.C. § 2703(d).
- Cricket may have no responsive information if data is requested with respect to time periods during which an identified user is not on our network but is roaming on a partner carrier's network
- The identified user is not a customer during the period for which data is requested, either because they have disconnected or because they are now with another carrier
- Law enforcement provided incorrect information, making it impossible to provision the request

2. *What protocol or procedure does your company employ when receiving these requests?*

Until April 2012, Cricket had an in-house Subpoena Compliance Group that was responsible for receiving, logging and reviewing all legal process seeking subscriber information. That group was managed by an attorney in Cricket's legal department and was trained to evaluate subpoenas, court orders and search warrants to determine if they are facially valid and are the appropriate form of process for the information requested. Such training was conducted by a former Department of Justice Computer Crime prosecutor who specializes in issues related to proper methods of obtaining electronic evidence. Each piece of legal process received by Cricket was also individually evaluated for compliance with Cricket's policies and procedures. Cricket will reject and has rejected legal process where the incorrect process is used to seek subscriber data. Where Cricket's policies caused a disagreement between the in-house compliance staff and the requesting law enforcement agency, such disputes were generally elevated to in-house legal counsel, and occasionally to outside counsel to resolve.

Since April 2012, Cricket has turned the law enforcement compliance function over to a third-party provider, Neustar, who regularly provides outsourced subpoena compliance functionality to telecommunications providers and performs the screening and production function on Cricket's behalf, with the same escalation path to in-house and outside counsel. Cricket understands that Neustar has over 400 provider clients in the WiFi, Voice, IP Broadband, wireline and wireless

industry for whom it provides these same legal compliance services. More information on Neustar's services can be found at the link below.<sup>1</sup>

*a. Do you consider whether law enforcement has obtained a warrant to obtain this information?*

Yes. Cricket requires law enforcement to procure a warrant, or in some cases, a Title III intercept Order for certain types of subscriber information.

*b. Does your company distinguish between emergency cell phone tracking requests from law enforcement and non-emergency requests? If yes, what are the distinctions?*

Yes, Cricket follows a process to provide disclosures without legal process in emergency circumstances where Cricket, in good faith, relying on certifications by law enforcement, believes that an emergency involving danger of death or serious physical injury to any person requires disclosure without delay of information relating to the emergency. Cricket requires that law enforcement fill out an emergency disclosure form in order to screen for bona fide emergencies.

*3. Has your company encountered misuse of cell phone tracking by police departments? If yes, in what ways has tracking been misused? And if yes, how has your company responded?*

Cricket is unaware of any misuse of cell phone tracking data by police departments. It also does not conduct such tracking on law enforcement's behalf without judicial process. Also, Cricket Communications does not currently have the ability to 'ping' or geo-locate a handset upon request by law enforcement.

*4. How much of your staff is devoted to providing this type of information to law enforcement (i.e., does your company have staff assigned specifically to this function)?*

As indicated above, Cricket recently outsourced these services to a third-party vendor, Neustar, Inc. Neustar provides compliance and intercept services for Cricket. Cricket has one vendor manager on staff to monitor the activities and performance of Neustar to ensure that compliance and intercept services are being performed per Cricket's policies and applicable law. Prior to outsourcing this service to Neustar, Cricket Communications had 10 dedicated employees trained to review and process law enforcement requests.

*5. The New York Times article mentions police departments purchasing their own mobile phone tracking equipment. Does your company cooperate with police departments that have their own tracking equipment? If yes, how?*

Cricket is not aware of what types of equipment can be purchased for this functionality, nor would Cricket have any reason to coordinate with police departments in the use of their equipment. Cricket controls all access to its equipment, which is not available for law enforcement use.

---

<sup>1</sup> <http://www.neustar.biz/solutions/communication-service-providers/numbering/comply-with-regulations>

*6. Has your company ever accepted money or other forms of compensation in exchange for providing information to law enforcement? If yes, how much money has your company received? And if yes, how much does your company typically charge for specific services (i.e., phone location, trace phone calls or text messages, full-scale wiretapping)?*

Pursuant to 18 U.S.C. § 2706 Cricket is entitled to reimbursement for such costs as are reasonably necessary and which have been directly incurred in searching for, assembling, reproducing, or otherwise providing information in request to legal process received from law enforcement. For real-time requests for surveillance, Cricket is also entitled to reasonable reimbursement pursuant to 18 U.S.C 2518(4) for “reasonable expenses incurred in providing such facilities or assistance” in implementing Title III orders. Cricket is not entitled to, and does not make any profit on services rendered to law enforcement. Further, Cricket is frequently not paid on the invoices it submits to law enforcement. From January 1, 2010 through the present, Cricket has requested reimbursement according to the schedule attached as Exhibit A.

*a. Does your company charge different amounts depending upon whether the request is for emergency or non-emergency purposes? Does your company charge fees for emergency cell phone tracking requests from police departments?*

Cricket does not charge for disclosures to law enforcement in emergency circumstances involving immediate danger of serious bodily injury or loss of life.

*b. Please include any written schedule of any fees that your company charges law enforcement for these services.*

Cricket’s current reimbursement schedule is attached as Exhibit A to this letter.

*7. Does your company actively market the provision of this information to law enforcement? If yes, please describe the nature of these marketing activities.*

Cricket does not actively advertise or market this functionality to law enforcement. Cricket primarily distributes its reimbursement schedule in response to receiving a request from law enforcement, as well as making it available to law enforcement at various law enforcement training conferences when requested.

Sincerely,



Robert J. Irving, Jr.  
Senior Vice President and General Counsel

## Exhibit A

### **COSTS FOR PRODUCTION OF RECORDS OR SERVICE RENDERED:**

1. Subscriber Information:  
Over 25 requests: \$5 per name/number lookup
2. Call Detail Records:  
\$64 per name/number
4. Pen Register/Trap and Trace or Wire Tap/Title III/Title 50:  
\$235 per name/number, per order  
\$100 per name/number per extension or renewal order
5. SMS, Voicemail:  
\$5.50 per name/number