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Congress of the United States
House of Representatives
Washington, DC 20515–2107

May 2, 2012

Mr. S. Douglas Hutcheson
President and Chief Executive Officer
Leap Wireless Inc./ Cricket Communications, Inc.
5887 Copley Drive
San Diego, CA 92111

Dear Mr. Hutcheson:

According to a recent article in The New York Times ("Police Are Using Phone Tracking as a Routine Tool", April 1, 2012), law enforcement departments routinely track mobile telephones, often with little or no judicial oversight. The article also describes how wireless carriers, while responding to law enforcement requests for consumer information, sometimes charge police departments for such services, from providing the location of mobile phones to full-scale wiretapping.

The practice of cell phone tracking raises a number of legal, constitutional, and privacy questions. According to 5,500 pages of internal records obtained by the American Civil Liberties Union from 205 police departments nationwide, a number of departments "claim broad discretion to get the records on their own" without any judicial orders, as described in the report above. Furthermore, a recent Supreme Court ruling that found the warrantless use of GPS devices to track suspects unconstitutional brings to light questions about the standards for cell phone tracking explained in The New York Times story. I am deeply concerned about possible privacy intrusions, particularly in the absence of consumer knowledge or consent, or judicial oversight.

The Times report also explores how mobile phone companies may profit from selling their customers' personal information to law enforcement. The article explains, "The practice has become big business for cell phone companies, too, with a handful of carriers marketing a catalog of 'surveillance fees' to police departments to determine a suspect's location, trace phone calls and texts or provide other services."

As a Co-Chair of the Congressional Bi-partisan Privacy Caucus, I ask that you provide answers to the follow questions:

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 phone calls and text messages, and full-scale wiretapping?

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

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

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

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

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

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?

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)?

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?

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)?

   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?

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

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

Thank you for your attention to this important matter. Please provide responses to these questions no later than May 23, 2012. If you have any questions, please have a member of your staff contact Joseph Wender at 202-225-2836.

Sincerely,

Edward J. Markey
Co-Chairman
Congressional Bi-partisan Privacy Caucus