Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
North County Communications Corp.,	)	
Complainant,	)	
v.	)	Proceeding Number 14-208 Bureau ID Number EB-08-MD-008
Cricket Communications, Inc., Cricket Licensee (Reauction), Inc., Cricket Licensee I, Inc., Cricket Licensee 2007 LLC, and Cricket Licensee Doe X,	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

Adopted: September 23, 2016 **Released: September 23, 2016**

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Order we address a formal complaint filed in 2008 by North County Communications Corp. (North County or Complainant) against Cricket Communications, Inc., Cricket Licensee (Reauction), Inc., Cricket Licensee I, Inc., Cricket Licensee 2007 LLC, and Cricket Licensee Doe X (collectively Cricket or Defendants)[1] under Section 208 of the Communications Act of 1934, as amended (Act).[2] North County alleges that Cricket unlawfully declined to transmit calls from its subscribers to pay-per-call 900 services offered by North County's business customers. Upon review of

[1] *See* Formal Complaint of North County Communications Corporation, Bureau ID Number EB-08-MD-008 (filed Aug. 15, 2008) (Complaint).

[2] 47 U.S.C. § 208. After the Complaint was filed, Cricket was acquired by AT&T Inc. (AT&T). *See Applications Of Cricket License Company, LLC, et al., Leap Wireless International, Inc., And AT&T Inc. For Consent To Transfer Control Of Authorizations Application Of Cricket License Company, LLC And Leap Licenseco Inc., For Consent To Assignment Of Authorization*, Memorandum Opinion and Order, 29 FCC Rcd 2735 (WTB/IB 2013). This order refers to the parties as they existed at the time of the complaint and is based upon the record in this proceeding.

the record before us in this case and for the reasons discussed below, we find that Cricket did not violate the Act and reject the complaint.

II. BACKGROUND

A. The Parties

2. North County is a telecommunications carrier that provides a variety of services in California, including but not limited to interexchange services and competitive local exchange services.[3] Some of North County's business customers have telephone numbers with a 900 number prefix.[4] Having a 900 number enables those businesses to provide a wide variety of "pay-per-call" services,[5] such as chat lines, adult-oriented entertainment, legal advice, horoscopes, polling, bulletin boards, fundraising, travel information, product information, stock market quotes, sports scores, and crossword puzzle clues.[6] Callers who dial 10-digit numbers with a prefix of 900 are charged rates different from, and usually higher than, the normal transmission rates for non-900 calls (hence the term "pay-per-call").[7]

3. Since approximately the year 2000, Cricket has operated as a mobile wireless service provider offering service in California (and elsewhere).[8] Cricket has neither an interconnection

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[3] *See, e.g.*, Joint Statement, Bureau ID Number EB-08-MD-008 (filed Oct. 24, 2008) (Joint Statement) at 1, para. 1; Complaint at 1, para. 1.

[4] *See, e.g.*, Joint Statement at 2, paras. 4-5; 3-4, paras. 11, 15; Complaint at 4-5, paras. 9-11; Complaint Exhibit F(8), Informal Complaint Against Leap Wireless International, Inc. at 2 (North County Informal Complaint); Complaint Exhibit H, Declaration of Todd Lesser in Support of North County Communications Corporation's Formal Complaint at 1-2, para. 3; North County Communications Corporation's Responses to Defendants' Interrogatories, Bureau ID Number EB-08-MD-008 (filed Feb. 27, 2009) (North County Interrogatory Responses) at 1.

[5] Complaint at 4-5, paras. 9-11; Joint Statement at 2-4, paras. 4, 5, 9, 15. *See, e.g.*, *Policies and Rules Concerning Interstate 900 Telecommunications Services*, Notice of Proposed Rulemaking, 6 FCC Rcd 1857, 1857 at paras. 1-2 (1991) (*900 Service 1991 NPRM*); *Policies and Rules Concerning Interstate 900 Telecommunications Services*, Report and Order, 6 FCC Rcd 6166 at para. 1 (1991) (*900 Service 1991 Report and Order*); *Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act*, Notice of Proposed Rulemaking and Notice of Inquiry, 8 FCC Rcd 2331, 2331 at para. 2 (1993) (*900 Service 1993 NPRM & NOI*); *Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act*, Report and Order, 8 FCC Rcd 6885, 6885 at para. 2 (1993) (*900 Service 1993 Report & Order*); *Policies and Rules Governing Interstate Pay-Per-Call and Other Information Services Pursuant to the Telecommunications Act of 1996*, Order and Notice of Proposed Rulemaking, 11 FCC Rcd 14738, 14740 at paras. 3, 5 (1996) (*900 Service 1996 Order & NPRM*); *Policies and Rules Governing Interstate Pay-Per-Call and Other Information Services, and Toll-Free Number Usage*, Notice of Proposed Rulemaking and Memorandum Opinion and Order, 19 FCC Rcd 13461, 13466, at para. 9 (2004) (*900 Service 2004 Order & NPRM*). *See generally* 47 U.S.C. § 228 (regulating carrier offerings of pay-per-call services); 47 C.F.R. § 64.1501, *et seq*. (implementing the requirements of 47 U.S.C. § 228).

[6] *See, e.g.*, *900 Service 1991 NPRM*, 6 FCC Rcd at 1857-58, paras. 4-7; *900 Service 1993 NPRM & NOI*, 8 FCC Rcd at 2331-32, para. 3.

[7] *See, e.g.*, *900 Service 1991 NPRM*, 6 FCC Rcd at 1857, paras. 2-3, n.1; *900 Service 1993 NPRM & NOI*, 8 FCC Rcd at 2331-32, paras. 2-4; *900 Service 1993 Report & Order*, 8 FCC Rcd at 6885, para. 2; *900 Service 1996 Order & NPRM*, 11 FCC Rcd at 14738-39, n.2; *900 Service 2004 Order & NPRM*, 19 FCC Rcd at 13462, para. 1, n.1. In pertinent part, Section 228 of the Act defines "pay-per-call services" as "any service . . . for which the caller pays a per-call or per-time-interval charge that is greater than, or in addition to, the charge for transmission of the call," and "which is accessed through use of a 900 telephone number." 47 U.S.C. § 228(i)(1).

[8] Cricket is a commercial mobile radio service (CMRS or mobile service) provider. *See, e.g.*, Joint Statement at 2, para. 2; Motion to Dismiss and Answer to the Formal Complaint of North County Communications Corporation, Bureau ID Number EB-08-MD-008 (filed Sept. 4, 2008) (Answer or Motion to Dismiss) at 6, para. 2; Complaint Exhibit F(2), Complaint at 2, para. 2. *See generally* http://www.mycricket.com/learn/company-information.

agreement nor direct network interconnection with North County.[9] Consequently, to deliver any calls to North County, Cricket must use the services of intermediate carriers in North County's service area in California, principally Pacific Bell Telephone Company (PacBell),[10] with which Cricket has an interconnection agreement.[11]

B. Cricket's Policy of Not Permitting Customers to Place 900 Number Calls

4. Cricket does not provide 900 service and does not transmit calls from its customers to telephone numbers with a 900 number prefix.[12] Accordingly, Cricket does not transmit calls from its customers to North County's business customers with a 900 number prefix.[13] Cricket's policy of not transmitting 900 calls appears in Cricket's customer contracts, which specify, in pertinent part: Cricket "reserves the right to manage [its] wireless systems and the use of [its] Services," and thus "may block access to . . . 976 and 900 numbers."[14] Cricket applies this policy uniformly and does not provide any customer with the option of using Cricket service to call telephone numbers with a 900 number prefix.[15] There is no credible specific evidence in the record of Cricket's practice leading to any consumer complaints or threatening competitive harm.[16]

C. The Complaint

5. North County's Complaint alleges that Cricket's practice of not transmitting 900 calls violates Cricket's obligations under Section 201(a) of the Act to interconnect and provide service upon reasonable request.[17] North County's Complaint also alleges that Cricket's practice of not transmitting

[9] *See, e.g.*, Joint Statement at 2, para. 3; 3, para. 8.

[10] *See, e.g.*, Joint Statement at 3, paras. 7-8; Complaint at 6, para. 16; Answer at 8, para. 16; Defendants' Second Supplemental Responses to North County Communications, Inc. First and Third Set of Interrogatories, Bureau ID Number EB-08-MD-008 (filed May 5, 2009) (Defendants' Second Supplemental Interrogatory Responses) at 3. PacBell has become an affiliate of AT&T and now does business under the name "AT&T California." *See, e.g., Comments Invited on Application of AT&T Services, Inc. To Discontinue Domestic Telecommunications Services*, Public Notice, 29 FCC Rcd 2109 (WCB 2014) (noting that the affiliates of AT&T Services, Inc. include Pacific Bell Telephone Company d/b/a AT& T California).

[11] *See, e.g.*, Joint Statement at 3, para. 7; Answer at 8, para. 16; Complaint Exhibit F(3), Cellular Interconnection Agreement By and Between Cricket Communications, Inc. and The Pacific Bell Telephone Company, The Nevada Bell Telephone Company, The Michigan Bell Telephone Company ("Cricket/PacBell ICA"). The Cricket/PacBell ICA addresses in part the routing of 900 calls. Joint Statement at 3, para. 7.

[12] *See, e.g.*, Joint Statement at 2, para. 5.

[13] *See, e.g.*, *id*.

[14] *See, e.g.*, *id.* at 2, para. 6; Answer, Exhibit Tab B, Legal Analysis in Support of Cricket's Answer to the Formal Complaint of North County Communications Corporation, Bureau ID Number EB-08-MD-008 (filed Sept. 4, 2008) (Answer Legal Analysis) at 10; Complaint Exhibit Tab G, Cricket Terms and Conditions of Service (Cricket Customer Contract) at 1, § 2(a); Defendants' Responses to North County Communications, Inc. First, Second, and Third Set of Interrogatories, Bureau ID Number EB-08-MD-008 (filed Feb. 27, 2009) (Defendants' Interrogatory Responses) at 5-6.

[15] *See, e.g.*, Answer at 7-8, paras. 12-13; Answer Legal Analysis at 2, 10, 12; Answer Exhibit H.1, Declaration of Tony Casarez ("Casarez Declaration") at 2, para. 5; Defendants' Interrogatory Responses at 4, 9.

[16] *See* Answer, Exhibit H.2, Declaration of Percy Hoffman (Hoffman Declaration) at 2, paras. 4-5; Cricket Opening Brief at 11-12; Cricket Reply Brief at 2; *but see* North County Interrogatory Responses at 2 (generally stating only that, more than a year before the Response was filed, North County directly or indirectly received an unspecified number of complaints from unidentified Cricket customers).

[17] *See, e.g.*, Complaint at 3-5, 33-40; Complaint Legal Analysis at 2-6; North County Reply Brief at 4-10.

900 calls to North County (or to any other carrier) is unjust and unreasonable in violation of Section 201(b) of the Act and Commission restrictions on call blocking.[18]

III. DISCUSSION

A. Cricket is not Required to Transmit 900 Calls to North County under Section 201(a)

1. North County's Request to Cricket Does Not Independently Create an Obligation to Connect under Section 201(a)

6. In Count I, North County claims that Cricket's failure to transmit calls from Cricket's customers to North County's customers with 900 numbers violates the requirement of Section 201(a) of the Act to furnish communication service on reasonable request. Invoking the first clause of Section 201(a), North County asserts that it has made a "reasonable request" for service from Cricket on behalf of North County's own customers with 900 numbers and also on behalf of Cricket's customers attempting to call those 900 numbers.[19] North County contends, therefore, that Section 201(a) requires Cricket to transmit such 900 calls to North County.[20] We reject this contention. As explained below, even assuming, *arguendo*, that North County is authorized to make a service request on behalf of another entity under the first clause of Section 201(a), such a request is insufficient to create an obligation to provide service where, as here, the provider lacks the interconnection facilities and arrangements that are necessary to provide the requested service, and there has been no finding that interconnection is required under Section 201(a).

7. Section 201(a) of the Act provides, in pertinent part:

> It shall be the duty of every common carrier engaged in interstate . . . communication by wire or radio to furnish such communication service *upon reasonable request therefore*; and, in accordance with the orders of the Commission, in cases where the Commission, after opportunity for hearing, finds such action necessary or desirable in the public interest, to establish physical connections with other carriers, to establish through routes and charges applicable thereto and the division of such charges, and

[18] *See, e.g.*, Complaint at 12-13, paras. 41-50; Complaint, Tab B, Legal Analysis (Complaint Legal Analysis) at 5-7; North County Communications Corporation's Opposition to Motion to Dismiss Complaint and Reply to Answer, Bureau ID Number EB-08-MD-008 (filed Sept. 17, 2008) (North County Reply), Legal Analysis (North County Reply Legal Analysis) at 12-16; Reply Brief of North County Communications Corporation, Bureau ID Number EB-08-MD-008 (filed July 21, 2009) (North County Reply Brief) at 10-14. North County characterizes Cricket's alleged violation of Section 201(b) in several ways, such as: (1) "compromis[ing] the ubiquity and seamlessness of the nation's telecommunications network," Complaint Legal Analysis at 6-7; s*ee, e.g.*, Opening Brief of North County Communications Corporation, Bureau ID Number EB-08-MD-008 (filed June 8, 2009) (North County Opening Brief) at 3; (2) contravening the Commission's prohibition of call-blocking, *see, e.g.*, Complaint Legal Analysis at 6; North County Reply Brief at 2; (3) undermining the Commission's objective of ensuring that end users have access to innovative services, including 900 services, *see, e.g.*, Complaint Legal Analysis at 5; North County Reply Brief at 2, 5, 10-11; and (4) breaching the Commission's requirement that carriers "provide customers with unencumbered access to 900 services unless an affirmative blocking request is made by the subscriber," Complaint Legal Analysis at 5.

[19] *See, e.g.*, Complaint at 11, para. 36; Complaint Legal Analysis at 3-4 (citing *Hawaiian Telephone Company*, Declaratory Order and Notice of Apparent Liability, 78 FCC 2d 1062 (1980) (*Hawaiian Telephone*)); North County Reply Brief at 4-5. We note that in *Hawaiian Telephone*, the Commission found a carrier's refusal of a request by the Department of Defense (DOD) violated Section 201(a) where "the DOD is requesting service as a 'customer'" *Hawaiian Telephone*, 78 FCC 2d at 1063 para. 8. North County acknowledges that it is not itself a customer of Cricket's for purposes of Section 201(a). Nor is it seeking to obtain service as a customer. *See, e.g.*, Joint Statement at 2, para. 3; Complaint at 11, para. 36.

[20] *See, e.g.*, Complaint at 11, paras. 37-38; Complaint Legal Analysis at 4; North County Reply Brief at 5.

> to establish and provide facilities and regulations for operating such through routes.[21]

8. In *AT&T v. FCC,* the D.C. Circuit observed that Section 201(a) contains two independent clauses, each with its own distinct meaning and application.[22] The Court held that the first clause of Section 201(a)—the "reasonable request" clause preceding the semicolon—does not create an independent obligation for a carrier to interconnect upon receiving an interconnection request from a carrier.[23] The Court reasoned that such an obligation arises only pursuant to the second clause of Section 201(a)—the "public interest" clause after the semicolon— and the second clause applies in the context of a Commission order issued after opportunity for a hearing on whether it is in the public interest for the Commission to order a carrier to provide service to another carrier.[24] The Court determined that a carrier's request for a physical connection or through route cannot be construed as a request for service under the first clause of Section 201(a), as "[t]his would allow the first clause in § 201(a) to render the second clause meaningless."[25]

9. The record supports the conclusion that meeting North County's request for 900 communication service would require significant new interconnection facilities and arrangements which do not exist here.[26] Under the holding in *AT&T v. FCC*, North County cannot seek interconnection through a request for service under the first clause in Section 201(a). It may only do so under Section 201(a) pursuant to that section's second clause, which as described below requires an order from the Commission establishing such an obligation based on a hearing and a finding that such obligation is necessary or desirable in the public interest. Consequently, to the extent that North County claims that the first clause of Section 201(a) creates an independent obligation for Cricket to interconnect with North County based upon North County's request to Cricket for service or interconnection, the Court's holding in *AT&T v. FCC* compels dismissal of that claim.

2. The Commission Did Not Order Cricket to Connect with North County for the Purposes of Transmitting 900 Calls

10. North County also argues that Cricket's practice of not carrying 900 calls violates the second clause of Section 201(a) because it contravenes a Commission order. North County implicitly acknowledges that an obligation under the second clause arises only after the Commission has conducted a hearing and found that the requested relief—"physical connections with other carriers"—is "necessary or desirable in the public interest"[27] and that a specific hearing or finding was not made with respect to the

[21] 47 U.S.C. § 201(a) (emphasis added).

[22] *AT&T Corp. v. FCC*, 292 F.3d 808 (D.C. Cir. 2002) (*AT&T v. FCC*).

[23] *Id.*, 292 F.3d at 812.

[24] *Id.*

[25] *Id.*

[26] *See*, *e.g.*, Cricket Opening Brief at 5-6. Whether North County frames its request as a request for interconnection or a request for service, the relief North County's seeks—an order stating that Cricket is obligated to carry 900 calls to North County's customers—requires interconnection with Cricket. *See* paragraph 3 *supra* and paragraph 19 *infra*.

[27] 47 U.S.C. § 201(a). *See* North County Reply at 18; North County Reply Brief at 6-7, 9.

parties in this proceeding. North County, however, maintains that we should find that such a hearing and finding has constructively occurred in two ways.

11. First, North County argues that the Commission has espoused a policy of maintaining and increasing the availability of 900 services.[28] Second, North County contends that the Commission has, in a number of items, required all common carriers to carry all calls under all circumstances, absent fraud or illegality.[29] Thus, North County claims that these items constitute the public interest determination required under the second clause of Section 201(a), and thus all carriers are required to transmit 900 calls.

12. We disagree. The Commission has not required in an order or even made a public interest determination that all mobile carriers, much less Cricket, must establish interconnection arrangements in order to transmit 900 calls. On the contrary, the Commission has acknowledged that "[m]any carriers decline to provide transport or bill for calls to 900 numbers."[30] The Commission also has permitted the leading interexchange carriers—AT&T, MCI, and Sprint—to end their provision of 900 services,[31] and has also long recognized that CMRS carriers restrict calling to 900 numbers.[32]

13. Second, although the Commission has emphasized the importance of completing calls and prohibiting blocking in a number of other contexts, these decisions do not support North County's Section 201(a) claim because they adjudicated the reasonableness of blocking practices under Section 201(b); they did not address "physical interconnection" rights and obligations under Section 201(a). We reject the argument that the former is legally equivalent to the latter. North County has identified no case in which the Commission has applied the second clause of Section 201(a) to find that physical interconnection for the purpose of carrying 900 calls is "necessary or desirable in the public interest" either with respect to CMRS providers generally or Cricket in particular. Accordingly, we reject North

[28] *See, e.g.*, Complaint Legal Analysis at 2, 4-6; North County Reply Brief at 2, 5 (all citing *AudioComm Order*, 10 FCC Rcd at 4162, para. 18).

[29] *See, e.g.*, Complaint at 12, para. 45 (citing *Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, Eighth Report and Order and Fifth Order on Reconsideration, 16 FCC Rcd 9108, 9137-38 at paras. 60-61 (2004) (*Access Charge Eighth Report and Order*)); Complaint Legal Analysis at 2-8 (citing *Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923, 9932-33 at para. 24 (2001) (*Access Charge Seventh Report and Order*)) and *Madison River Communications, LLC and Affiliated Companies*, Order and Consent Decree, 20 FCC Rcd 4295 (2005) (*Madison River Consent Decree*); North County Reply at 13-15 (citing *Elkhart Tel. Co. v. Southwestern Bell Tel. Co.*, Memorandum Opinion and Order, 11 FCC Rcd 1051 (CCB 1995) (*Elkhart v. SWBT*) and *Total Telecommunications Services, Inc. and Atlas Telephone Company, Inc. v. AT&T Corporation*, Memorandum Opinion and Order, 16 FCC Rcd 5726 (2001) (*Total Tel v. AT&T*)); North County Reply at 20; North County Opening Brief at 3; North County Reply Brief 3, 4-6, 8-10.

[30] *900 Service 2004 Order & NPRM*, 19 FCC Rcd at 13470, para. 20.

[31] *See AT&T Communications' Application to Discontinue Domestic Telecommunications Services*, Memorandum Opinion and Order, 18 FCC Rcd 24376 (WCB 2003) (*AT&T Service Discontinuation Order*); *Comments Invited on Application of Sprint Communications Company L.P. to Discontinue Domestic Telecommunications Services*, Public Notice, 23 FCC Rcd 10325 (WCB 2008) (*Sprint Public Notice*); *Comments Invited on Application of MCI Communications Services, Inc. d/b/a Verizon Business Services to Discontinue Domestic Telecommunications Services*, Public Notice, 28 FCC Rcd 8031 (WCB 2013) (*MCI Public Notice*) (citing statements in MCI's application to discontinue 900 number service indicating that 900 number usage had declined substantially, with call volumes dropping by more than 80% in the prior year).

[32] *See Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services,* Second Report and Order, 9 FCC Rcd 1411, 1434-35, para. 55, n.104 (referring to situations in which "calls attempted to be made by the subscriber to '900' telephone numbers are blocked").

County's argument that the Commission has effectively ordered Cricket to transmit 900 calls to requesting carriers under the second clause of Section 201(a).

3. This Proceeding Does Not Create an Obligation to Connect under Section 201(a)

14. Last, North County contends that this complaint proceeding can serve as the public interest hearing specified in the second clause of Section 201(a) and generate an order than can constitute the Commission's directive to Cricket to connect.[33] We disagree. Section 208 of the Act authorizes the Commission to conduct complaint proceedings to determine whether a provision of the Act has already been violated based upon the record in the instant proceeding.[34] By contrast, under the second clause of Section 201(a), a carrier's duty to interconnect with another carrier arises only after the Commission has conducted a hearing and issued an order finding that the public interest demands such interconnection. Therefore, a carrier can only violate the second clause of Section 201(a) after an order requiring interconnection has arisen from a hearing conducted pursuant to that clause and the carrier had failed to comply with that order. Thus, there is no cognizable claim under Section 208 for violation of the second clause of Section 201(a) where, as here, there is no preexisting order requiring interconnection under Section 201(a).[35] Accordingly, this complaint proceeding cannot substitute for the requirement of conducting a prior initial public interest hearing under the second clause of Section 201(a), and thus an

[33] *See, e.g.*, North County Reply at 5-6, 18; North County Reply Brief at 9-10.

[34] 47 U.S.C. § 208 (permitting complaints regarding "anything done or omitted to be done by any common carrier subject to this Act, in contravention of the provisions thereof").

[35] North County argues that a Section 208 complaint proceeding satisfies the "hearing" requirement of Section 201(a), because the Commission has held that Section 205 complaint proceedings satisfy the hearing requirement of Section 201(a). *See* North County Reply at 18-19; North County Reply Brief at 9-10. North County's argument misses the point. The question here is not what kind of hearing is required for purposes of Section 208, but whether it can provide relief other than for "contravention of the provisions" of the Act. 47 U.S.C. § 208(a). A hearing is proper under Section 208 only to determine whether a violation of existing law has occurred. No such violation exists here because, as discussed above, the Commission has never conducted a hearing and found that Cricket's physical interconnection with North County is "necessary or desirable in the public interest" under Section 201(a). We also find North County's reliance on *American Trucking Ass'n v. Atchison, Topeka & Sante Fe Ry. Co.*, 387 U.S. 397 (1967), *see*, *e.g.*, North County Reply at 17-18; North County Reply Brief at 7-8, to be unfounded. *American Trucking* did not involve the interpretation of Section 201(a) of the Communications Act, but rather language in the Interstate Commerce Act relating to the duty to provide service "upon reasonable request therefor," which did not include Section 201(a)'s special provisions for "physical interconnections" by communications common carriers. Moreover, *American Trucking* upheld the Interstate Commerce Commission's authority to adopt a rule that required any railroad offering a service through an open-tariff publication to make that service available to any person on nondiscriminatory terms." *American Trucking*, 387 U.S. at 406, 412-13. Those facts are not at issue in this case. *See* Cricket Brief at 4-5. *See* North County Reply at 18-19.

obligation to connect cannot arise independently out of this proceeding.[36] We therefore dismiss Count I of North County's complaint.

B. Cricket's Practice of Not Transmitting 900 Calls to North County is Not Unjust or Unreasonable Under Section 201(b)

15. In Count II, North County contends that Cricket's practice of not transmitting calls to North County's 900-service customers is "unjust and unreasonable" under Section 201(b).[37] In North County's view, a common carrier has an unequivocal obligation to transmit all calls[38] and may decline to transmit a call only in circumstances of fraud or illegality.[39] Thus, North County contends that Cricket's practice is per se unlawful, regardless of the circumstances, and no matter the consumer harms the Commission has found to be associated with 900 numbers.

16. We disagree. As noted above, none of the authorities cited by North County specifically address the obligation of mobile providers to carry 900 calls; they focus on the obligations of local exchange carriers, not CMRS providers. Nor has the Commission previously found that a mobile provider's failure to transmit 900 calls under the facts of this case is a per se violation of 201(b). While the Commission rarely countenances carriers' blocking of calls,[40] the Act does not frame carriers' interconnection and carriage obligations in absolute terms. The Act requires carriers to make

[36] *See, e.g., AT&T v. FCC*, 292 F.3d at 812 (stating that "if the FCC wants to compel [a carrier] to establish a through route with another carrier, then the FCC must follow the procedures specified in the second clause of § 201(a)"); *Tri-City Telephone Co.*, Memorandum Opinion and Order, 20 FCC 2d 674 at para. 2 (1969) (stating that "[t]he pleading filed by Tri-City, although designated a 'complaint,' is actually a petition for interconnection under section 201(a)"). *Cf. Elkhart v. SWBT,* 11 FCC Rcd 1051 (CCB 1995) (right to interconnection previously established). In its 1995 analysis of CMRS-to-CMRS interconnection, the Commission noted that "CMRS providers" may avail themselves of Section 208 to bring to the Commission's attention any "unlawful" denials of interconnection. *See, e.g.*, *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio* Services, Second Notice of Proposed Rulemaking, 10 FCC Rcd 10666, 10686-87 at paras. 40-41 (1995) (subsequent history omitted). That is not the issue here, and in any event such suggestions predate the Court's determination in *AT&T v. FCC* that the first and second clauses of Section 201(a) must be read independently.

[37] Complaint at 12-13, paras. 41-51.

[38] Complaint Legal Analysis at 5-6 (citing *Petition for an Expedited Declaratory Ruling Filed by National Association for Information Services, Audio Communications, Inc. and Ryder Communications, Inc.*, Memorandum Opinion and Order, 8 FCC Rcd 698 (1993), *recon. denied*, 10 FCC Rcd 4153, 4162, at para. 18 (1995) (*NAIS Declaratory Ruling*).

[39] *See, e.g.*, Complaint at 12, para. 45 (citing *Access Charge Eighth Report and Order*, 16 FCC Rcd at 9137-38 paras. 60-61); *id.* at 13, para. 47; Complaint Legal Analysis at 6 (citing *Access Charge Seventh Report and Order,* 16 FCC Rcd at 9932-33 para. 24) and *Madison River Consent Decree*; North County Reply at 13-15 (citing *Elkhart v. SWBT* and *Total Tel v. AT&T*); North County Reply Brief at 12.

[40] The Commission has a "longstanding prohibition on carriers blocking, choking, reducing or otherwise restricting traffic." *Developing an Unified Intercarrier Compensation Regime*, Declaratory Ruling, 27 FCC Rcd 1351, 1354-56, paras. 9, 11 (WCB 2012) (call blocking may violate section 201(b) or 202(a)); *Rural Call Completion*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 16154, para. 29 (2013) ("blocking, choking, reducing, or restricting traffic in any way . . . generally constitutes an unjust and unreasonable practice under section 201(b) of the Act."); *Policies and Rules Concerning Operator Service Providers*, Declaratory Ruling and Order, 28 FCC Rcd 13913 (WCB 2013), paras.1, 9 ("call blocking is largely antithetical to the fundamental goal of ubiquity and reliability of the telecommunications network" and can be allowed "only under rare and limited circumstances"); *Establishing Just and Reasonable Rates for Local Exchange Carriers*, Declaratory Ruling and Order, 22 FCC Rcd 11629, para. 7 (WCB 2007) ("Commission precedent does not permit unreasonable call blocking by carriers").

"reasonable" decisions about interconnection and carriage.[41] Consumers also have the right to block 900 calls and unwanted inbound calls to address various consumer protection issues with such calls that have been recognized by the Commission.[42] Thus, the Commission has never held, as North County suggests, that every carrier must transmit every call under every circumstance. Consequently, our inquiry does not begin and end with the mere facts that Cricket is a common carrier and North County seeks to provide access by its 900 service customers to Cricket's subscribers. We examine the preponderance of the evidence in light of the totality of the relevant circumstances to determine whether North County has met its burden of proving that Cricket's conduct violates Section 201(b).[43]

17. We find that North County has not met its burden. The reasonableness of Cricket's practices must be evaluated in light of the well documented and significant consumer harms associated with pay-per-call services and 900 numbers. The ability of 900 service providers to charge more than the

[41] *See Establishing Just and Reasonable Rates for Local Exchange Carriers*, Declaratory Ruling and Order, 22 FCC Rcd 11629, 11629 at para. 1 (WCB 2007) (*Access Charge Declaratory Ruling and Order*); *Access Charge Eighth Report and Order*, 19 FCC Rcd at 9137-38, paras. 59-61; Access *Charge Seventh Report and Order*, 16 FCC Rcd at 9961, para. 96 (all barring only "unreasonable" refusals to transmit calls); *AT&T v. FCC*, 317 F.3d at 233 ("The inclusion of that term ['reasonable'] in the statute [Section 201(a)] implies that a common carrier may lawfully deny service to a customer in some circumstances, whatever its effect upon universal service. The question is, were there here such circumstances or, more precisely, could the Commission reasonably so conclude?").

[42] *See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling and Order, 30 FCC Rcd 7961, 8034-37 at paras. 154, 158 (2015) ("The Commission has established that *consumers* have a right to block calls.") (*TCPA Declaratory Ruling*); *Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation*, Report and Order and Further Notice of Proposed Rule Making, 6 FCC Rcd 4736, 4741, para. 15 (1991) (local exchange carriers (LECs) can offer blocking and screening services to assist in the prevention of toll fraud); *Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation*, Third Report and Order, 11 FCC Rcd 17021, 17031, para. 16 (1996) (declining to require LECs to provide international blocking to residential customers); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 19 FCC Rcd 12475, 12508, para. 74 (2004) (Telecommunications relay services (TRS) providers also "are capable of providing anonymous call rejection . . . as long as the TRS consumer seeking to use [this] feature[], whether the calling party or the called party, subscribes to the service."); *2007 Declaratory Ruling,* 22 FCC Rcd at 11631-32, paras. 6, 7 n.21 (noting that a previous Commission call-blocking decision had "no effect on the right of individual end users to choose to block incoming calls from unwanted callers."). In 2011 and 2012, the Commission reiterated that previous call-blocking concerns had arisen as carriers attempted "self-help" methods for avoiding certain access charges, intercarrier compensation charges, or termination charges through the discriminatory blocking of calls to rural rate-of-return local exchange carriers. *See* note 40 *supra*. Thus, the Commission's call-blocking concerns historically relate to carriers or their underlying providers blocking calls at their own discretion without providing consumers any choice or, indeed, even notice of the practice.

[43] It is well established that the complainant in a Section 208 formal complaint proceeding has the burden of establishing, by a preponderance of the evidence, that the defendant has violated the Act or Commission rules or orders. *Contel of the South, Inc., et al. v. Operator Communications, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 548, 552, para. 10 (2008); *Consumer.Net v. AT&T Corp.*, Order, 15 FCC Rcd 281, 284-85, para. 6 (1999); *Consumer.Net, LLC and Russ Smith v. Verizon Communications, Inc.*, Memorandum Opinion and Order, 25 FCC Rcd 2737, 2740, para. 10 (EB 2010); *Paul Demoss, Paul Demoss Trading As 1-800-America, and America's Gift Foundation, Inc. v. Sprint Communications Company, L.P.*, Memorandum Opinion and Order, 23 FCC Rcd 5547, 5550, para. 15 (EB 2008). *See also Orloff v. Vodafone Airtouch*, Memorandum Opinion and Order, 17 FCC Rcd 8987, 8995-99 at paras. 26-26 (2002), *aff'd sub. nom.*, *Orloff v. FCC*, 352 F.3d 415 (D.C. Cir. 2003) ("With respect to the Commission's interpretation of [Section] 202 as applied to CMRS, the 'generality of these terms' – unjust, unreasonable – 'opens a rather large area for the free play of agency discretion, limited of course by the familiar "arbitrary" and "capricious" standard in the Administrative Procedure Act . . . .'") (citations omitted), *cert. denied*, 542 U.S. 937 (2004).

usual transmission rates for calls to 900 numbers has led to fraudulent, deceptive, and abusive practices by them, and has triggered substantial consumer confusion and dissatisfaction, since at least the late 1980s.[44] Congress and the Commission addressed these consumer harms by adopting Section 228 and its implementing rules.[45] Among other things, LECs were required to give consumers the ability to block 900 calls.[46]

18. CMRS consumers, like LEC subscribers, are subject to the same potential consumer harms and abuses associated with pay-per-call and 900 number services.[47] At the same time, the record includes no credible specific evidence that Cricket subscribers consider its policy to be unreasonable,[48] and there is clear indication that the demand for such services has substantially diminished in recent years.[49] There also is no dispute that Cricket clearly discloses to its customers in the terms and conditions of its service agreement that it will not transmit 900 calls, and that Cricket's customers accept those terms and conditions when subscribing for its service.[50] Taking all of these circumstances into account, we find that North County has failed to show that Cricket's conduct violates Section 201(b).

19. As a separate and independent ground for our decision, we believe that North County has failed to satisfy its burden of demonstrating that Cricket's policy is unjust or unreasonable in light of the practical difficulties it would face in providing North County with interconnection. There is no dispute that North County does not have an interconnection agreement with Cricket, or that North County does not have direct interconnection with Cricket.[51] The preponderance of the evidence in the record reflects that Cricket's interconnection agreement with the intermediate carrier that provides connection with North County does not provide for the purchase of the interconnection trunk types necessary to carry 900

[44] Among the many identified consumer harms associated with 900 calls were: (i) easy access by children to adult-oriented material; (ii) false or deceptive disclosures about rates, products, and services; and (iii) unwitting accumulation—by children and adults—of substantial pay-per-call charges. *See, e.g.*, *900 Service 1991 NPRM*, 6 FCC Rcd at 1857, paras. 5-8; *900 Service 1991 Report and Order*, 6 FCC Rcd at 6166-68, paras. 2, 12, nn. 2, 9, 14, 15, 17, 6178, n.117; *900 Service 1993 NPRM & NOI*, 8 FCC Rcd at 2332, para. 6; *900 Service 1993 Report & Order*, 8 FCC Rcd at 6885, paras. 2-3; *900 Service 1996 Order & NPRM*, 11 FCC Rcd at 14739-43, paras. 3-4, 6-12; *900 Service 2004 Order & NPRM*, 19 FCC Rcd at 13463-65, paras. 4-7, 13468, paras. 15-17.

[45] *See* The Telephone Disclosure and Dispute Resolution Act of 1992, Pub. L. 192-556, 106 Stat. 4181 (1992) (*codified at* 47 U.S.C. § 228); The Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996); 47 CFR §§ 64.1501-1515.

[46] *See* 47 U.S.C. § 228(c)(5); 47 CFR § 64.1508.

[47] Significantly, the Commission also has addressed consumer complaints against mobile providers regarding charges for information services similar to those offered via 900 numbers. *See, e.g.*, *T-Mobile USA, Inc., Unauthorized Third-Party Billing Charges*, Order, 29 FCC Rcd 15111 (EB 2014), *AT&T Mobility LLC, Unauthorized Third-party Billing Charges*, Order, 29 FCC Rcd 11803 (EB 2014), *In the Matter of Assist 123, LLC*, Consent Decree, 29 FCC Rcd 8250 (EB 2014). *See also Agencies Investigate Unauthorized Customer Billings at Sprint*, N.Y. Times, Dec. 17, 2014 at http://www.nytimes.com/2014/12/18/technology/sprint-is-sued-over-cellphone-bill-cramming.html?_r=0.

[48] *See* paragraph 4 and note 16 *supra*.

[49] *See 900 Service 2004 Order & NPRM*, 19 FCC Rcd at 13470, para. 20. (stating that, in just a four year period from 1999 through 2002, the number of 900 NXX codes in use declined by well over 50%, to fewer than 206). *See also Telecommunications Relay Services And Speech-To-Speech Services For Individuals With Hearing And Speech Disabilities Waivers Of ITRS Mandatory Minimum Standards*, Report and Order, 29 FCC Rcd 10697, 10707 (2014) at para. 19 and n.88 (citing an AT&T report noting a decline in calls to pay-per-call services across the telecommunications industry).

[50] *See* Joint Statement at 2, para. 5.

[51] *See* Joint Statement at 2, para. 3; 3, para. 8.

calls.[52] In addition, the evidence reflects that Cricket's network does not have the capability to offer individual consumers the ability to block access to 900 numbers, and that modifying its network would be costly, cumbersome, and not entirely effective, especially when a customer is roaming.[53] Cricket also would have to attempt to purchase 900 transport services, which (as noted above) may no longer be available from interexchange carriers.[54]

20. Finally, we note that North County's reliance on the Commission's 1993 *NAIS Declaratory Ruling* is unavailing.[55] In that ruling, the Commission acted to preempt South Carolina law facilitating blocking of intrastate 900 calls *by local exchange carriers* and discussed the importance of providing consumers with access to 900 services. In doing so, the Commission concluded that "our policy for interstate 900 services [does not] permi[t] local exchange carriers voluntarily to implement automatic default blocking for interstate 900 services."[56] However, North County identifies no application of this policy to CMRS providers. Indeed, at the time the pay-per-call rules were adopted in the early and mid-1990s, usage of mobile service was still relatively limited.[57] Those rules applied only to interexchange carriers and LECs and had no application to CMRS providers.[58] Moreover, since the *NAIS Declaratory Ruling*, the Commission has recognized that the use of 900 numbers has significantly declined in recent years, and that the shape of the pay-per-call industry, technology, and regulatory

[52] *See, e.g.*, Answer at 8, paras. 15-17; Casarez Declaration at 4, para. 10; Complaint Exhibit 3, Cricket/PacBell ICA at 5, §§ 1.4-1.5, 12, § 2.1.7; Defendants' Interrogatory Responses at 2-3; Defendants' Supplemental Interrogatory Responses at 3-5; Defendants' Second Supplemental Interrogatory Responses at 2-4, 8; Cricket Brief at 5-6; Cricket Reply Brief at 8-9; *but see* Complaint at 6, paras. 15-17; North County's Request for Additional Discovery at 5-6; North County's Reply to Late-Filed Declarations at 9-11.

[53] *See, e.g.*, Answer Legal Analysis at 9, 11-12; Cricket Opening Brief at 6, 12-13; Cricket Reply Brief at 6-8; Casarez Declaration at 2-4, paras. 6-10; Defendants' Interrogatory Responses at 2-3, 7-8; Defendants' Supplemental Responses to North County Communications, Inc.'s Second and Third Set of Interrogatories, Bureau ID Number EB-08-MD-008 (filed Mar. 19, 2009) (Defendants' Supplemental Interrogatory Responses) at 2-3; Defendants' Second Supplemental Interrogatory Responses at 2-4; *but see* North County Reply at 15-16; North County Opening Brief at 4-8 (but not the documents and text excluded by the Letter Ruling dated July 10, 2009 from Alexander P. Starr, Chief, MDRD, EB, FCC, to Michael B. Hazzard, Counsel for North County, and Suzanne K. Toller, Counsel for Cricket, Bureau ID Number EB-08-MD-008 (July 10, 2009 Letter Ruling)); North County Reply Brief at 12; North County's Request for Additional Discovery at 3-5; North County's Reply to Late-Filed Declarations at 4-11.

[54] *See* paragraph 12 and note 31 *supra*.

[55] Complaint Legal Analysis at 5-6.

[56] *See NAIS Declaratory Ruling*, 8 FCC Rcd at 700 para. 13; 9 FCC Rcd at 4162 para. 18.

[57] It is therefore likely that few, if any, consumers were accessing 900 services via mobile providers at that time. *See, e.g.*, *Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, Sixteenth Report, 28 FCC Rcd 3700, 3978 at Appendix B, Table B-1 (2013) (showing that in 1992 there were only about 11 million wireless connections in the United States as compared with almost 316 million connections in 2011); Industry Analysis and Technology Division, Wireline Competition Bureau, *Trends in Telephone Service*, at 3-5, Table 3.3 (Sept. 2010) (showing that in 1992, personal consumption expenditures for telecommunications were 93% for wireline service and only 7% for wireless service).

[58] *900 Service 1991 Report and Order*, 6 FCC Rcd 6166 para. 1. Similarly, the later requirements imposed by Congress that subscribers be permitted to block 900 calls have extended only to a common carrier "that provides local exchange service." 47 U.S.C. § 228(b)(5). *See also* 47 C.F.R. § 64.1508(a) (obligation of "[l]ocal exchange carriers"). Congress specifically excluded CMRS providers from the statutory definition of local exchange carriers, "except to the extent that the Commission finds that such service should be included in the definition of such term." 47 U.S.C. § 153(32). The Commission has thus far expressly declined to make any such finding. *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499, 15995-96 at paras. 1004-06 (1996); *Eric James Glazier,* 17 FCC Rcd 16747, 16747 & n.6 (WTB 2002).

perspectives have changed considerably since the Commission's 900 service rules took effect.[59] In sum, we are not persuaded that in these circumstances, in this adjudicatory proceeding at the request of another carrier, Section 201(b) should be applied to extend to Cricket an obligation that the Commission has previously not determined to extend to CMRS providers generally.

21. Accordingly, based on the facts and record of this case, we conclude that North County has failed to meet its burden of proving that Cricket's practice of not carrying 900 calls based upon its customers' written agreement is unreasonable under Section 201(b) of the Act. We therefore deny Count II of North County's Complaint.

IV. ORDERING CLAUSES

22. **IT IS ORDERED**, pursuant to Sections 4(i), 4(j), 201, and 208 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 201, and 208, and Sections 0.111, 0.311 and 1.720-1.736 of the Commission's rules, 47 C.F.R. §§ 0.111, 0311, 1.720-1.736, that Count I of North County Communications Corp.'s Complaint **IS DISMISSED**.

23. **IT IS FURTHER ORDERED**, pursuant to Sections 4(i), 4(j), 201, and 208 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 201, and 208, and Sections 0.111, 0.311 and 1.720-1.736 of the Commission's rules, 47 C.F.R. §§ 0.111, 0311, 1.720-1.736, that Count II of North County Communications Corp.'s Complaint **IS DENIED**.

24. **IT IS FURTHER ORDERED**, pursuant to Sections 4(i), 4(j), 201, and 208 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 201, and 208, and Sections 0.111, 0.311 and 1.720-1.736 of the Commission's rules, 47 C.F.R. §§ 0.111, 0311, 1.720-1.736, that Cricket Communications, Inc.'s Motion to Dismiss is moot and therefore **IS DISMISSED**.

FEDERAL COMMUNICATIONS COMMISSION

Travis LeBlanc
Chief
Enforcement Bureau

[59] *See 900 Service 2004 Order & NPRM*, 19 FCC Rcd at 13463, para. 2.