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

In re) **Case Nos. 03-03470-A11 through**
) **03-03535-A11**
LEAP WIRELESS INTERNATIONAL
INC., and CRICKET COMMUNICATIONS, (Jointly Administered)
INC., et al.,)
)
) **Debtors.**) **Adv. Proc. No. 04-90381**
)
) **Fed. Tax Id. Nos. 33-0811062 and**
33-79924)
) **MEMORANDUM DECISION**
) **CRICKET COMMUNICATIONS, INC., a**
) **Delaware corporation,**)
)
) **Plaintiff,**)
)
) **v.**)
)
) **OFFICE OF STATE ASSESSED**)
) **PROPERTIES, a public entity within the**)
) **State of Tennessee, BARRY M. MURPHY,**)
) **Director of State Assessed Properties,**)
) **ANDERSON COUNTY, a public entity)**)
) **within the State of Tennessee, PATSY**)
) **STAIR-LOMELL, Trustee for Anderson**)
) **County, BLOUNT COUNTY, a public entity**)
) **within the State of Tennessee, SCOTT**)
) **GRAVES, Trustee for Blount County, CITY**)
) **OF KNOX, a public entity with the State of**)
) **Tennessee, DAISY W MADISON, Treasurer**)
) **for the City of Knox, CHEATHAM**)
) **COUNTY, a public entity within the State of**)
) **Tennessee, DOT JONES, Trustee for**)
) **Cheatham County, HAMILTON COUNTY,**)
) **a public entity within the State of Tennessee,**)

1 **CARL E. LEVI, Trustee for Hamilton)**
 2 **County, KNOX COUNTY, a public entity)**
 3 **within the State of Tennessee, MIKE LOWE,)**
 4 **Trustee for Knox County, CITY OF)**
 5 **KNOXVILLE, a public entity within the)**
 6 **State of Tennessee, CHRIS KINNEY, Senior)**
 7 **Director of the Department of Finance and)**
 8 **Accountability for the City of Knoxville,)**
 9 **CITY OF MARYVILLE, a public entity)**
 10 **within the State of Tennessee, DEBORAH P.)**
 11 **CAUGHRON, Recorder for the City of)**
 12 **Maryville, MAURY COUNTY, a public)**
 13 **entity within the State of Tennessee, STEVE)**
 14 **KONZ, Trustee for Maury County, CITY)**
 15 **OF MEMPHIS, public entity the State of)**
 16 **Tennessee, MARIE KIRK OWENS, City)**
 17 **Treasurer for the City of Memphis,)**
 18 **NASHVILLE AND DAVIDSON COUNTY,)**
 19 **a public entity within the State of Tennessee,)**
 20 **CHARLIE CALDWELL, Metropolitan)**
 21 **Trustee for Nashville and Davidson County,)**
 22 **ROBERTSON COUNTY, a public entity)**
 23 **within the State of Tennessee, SANDRA F.)**
 24 **HEAD, Trustee for Robertson County,)**
 25 **SEVIER COUNTY, a public entity within)**
 26 **the State of Tennessee, JETTIE B. CLABO,)**
 27 **Trustee for Sevier County, SHELBY)**
 28 **COUNTY, a public entity within the State)**
of Tennessee, BOB PATTERSON, Trustee)
for Shelby County, SUMNER COUNTY, a)
public entity within the State of Tennessee,)
BETTY M. GREGORY, Trustee for Sumner)
County, WILSON COUNTY, a public)
entity within the State of Tennessee,)
ERNEST LASATER, Trustee for Wilson)
County and DOES 1 through 20, inclusive,)
Defendants.)

I.

INTRODUCTION

Cricket Communications, Inc. (“Debtor”) moves for summary judgment on its claim for declaratory relief against defendants Knox County, a public entity within the State of Tennessee and Mike Lowe, Trustee for Knox County (collectively “Knox”). Debtor seeks a declaration that Knox’s claim for 2003 utility taxes (“2003 Tax Claim”) is not an administrative claim; that Debtor’s liability for the late-filed 2003 Tax Claim was

1 barred and discharged; and that Knox’s statutory lien securing its 2003 Tax Claim was
2 permanently expunged (“Motion”).

3 The Motion is premised primarily upon the doctrine of res judicata. Specifically,
4 Debtor contends that because Knox failed to object to the terms of the plan of
5 reorganization (“Plan”), or to seek relief from either the Claims Bar Date Order or the
6 Confirmation Order which are final orders, res judicata bars Knox from receiving a
7 distribution under the Plan on account of its 2003 Tax Claim. Further, it contends Knox
8 is permanently barred and enjoined from collecting its 2003 Tax Claim as a personal
9 liability of the Debtor or enforcing its lien against any of the Debtor’s property.

10 Knox disputes Debtor’s arguments, asserting that it was denied due process in the
11 expungement of its lien, and that its 2003 Tax Claim either relates back as an amendment
12 to its timely-filed proof of claim for 2002 utility taxes (“2002 Tax Claim”) or it is an
13 administrative claim.

14 The Court granted summary judgment in part and denied it in part. The Court
15 ruled that Knox’s 2003 Tax Claim is not an administrative claim, but that this claim
16 relates back as an amendment to Knox’s 2002 Tax Claim consistent with the Court’s
17 reasoning in *In re Grivas*, 123 B.R. 876, 878-9 (Bankr. S.D. Cal. 1991)(recognizing that
18 courts have generally allowed untimely amendments to tax claims where the amendment
19 merely adds the same type of tax claim for the years following the timely-filed tax
20 period). Further, the Court ruled that Knox’s lien securing its 2003 Tax Claim was not
21 expunged, and Knox can enforce its lien against the Debtor’s property post-confirmation
22 notwithstanding the language in the final Bar Date Order and the Plan Confirmation
23 Order because Knox was denied due process in the expungement of its lien.

24 At the hearing, the parties requested clarification as to whether Knox’s 2003 Tax
25 Claim relates back as both a “priority and secured” claim entitled to both treatments
26 under the Debtor’s Plan. Having understood that Knox was asserting only a “priority”
27 claim under the Plan, and having been unable to review the proofs of claims in
28

1 preparation for the Motion, the Court took this issue under submission.¹

2 **II.**

3 **FACTS**

4 Debtor is one of sixty-six jointly-administered related entities that filed voluntary
5 chapter 11 bankruptcy petitions on April 13, 2003 (collectively “Debtors”). As part of
6 their package of Emergency First Day Motions, Debtors sought and obtained a Claims
7 Bar Date Order setting a deadline of July 28, 2003 for governmental agencies to file their
8 proofs of claims. The Claims Bar Date Order, and the Notice of Deadline for Filing
9 Proofs of Claims – which was the document that was actually mailed to creditors --
10 specified that all persons and entities, whether secured or unsecured, must file proofs of
11 claims by the Bar Date Deadline or they would be forever barred from voting upon or
12 receiving any distribution in any of the Debtors’ cases. [Docket # 31 and 229]²

13 On June 9, 2003, Knox timely filed proof of claim No. 470 asserting a “secured”
14 utility tax claim of \$139,204.58 for the 2002 tax year. The attached documents indicate
15 Knox’s lien is a statutory tax lien imposed pursuant to Tennessee Code Annotated § 67-5-
16 2101.

17 By order entered October 22, 2003, Debtors confirmed their Fifth Amended Joint
18 Plan of Reorganization. The Plan incorporates the terms of the Claims Bar Date Order.
19 The “discharge” provision includes the same language as the Claims Bar Date Order
20 forever barring and permanently enjoining all persons from asserting any claims or liens
21

22 ¹ Debtor utilized Poorman-Douglas Corp. as its claims processing agent throughout this case.
23 Therefore, all proofs of claims were supposed to be filed with Poorman-Douglas for processing, and the
24 Court does not image or maintain copies of these claims. To assist the Court’s ruling on the Motion,
25 Debtor has since filed the proofs of claims as Docket # 122.

26 ² Additionally, the Claims Bar Date Order provided that any creditor who fails to timely file a proof
27 of claim by the Bar Date Deadline shall be forever barred, estopped and enjoined from asserting such claim
28 against the Debtors, and the Debtors and their property shall be forever discharged from any and all liability
or indebtedness with respect to such claim. However, it is undisputed that the Claims Bar Date Order was
not served on Knox, and this language was *not* in the Bar Date Notice mailed to creditors.

1 The general rule is that amendments to claims are freely allowed for curing defects
2 in the original proof of claim, providing greater detail to a previously-filed proof of claim,
3 or pleading new theories on previously filed facts. Fed. R. Bank. P. 7015; *Grivas*, 123
4 B.R. at 878. Untimely amendments which present an entirely new claim will not be
5 allowed. *Grivas* at 878; *Matter of Alliance Operating Corp.*, 60 F.3d 1174, 1175 (5th
6 Cir. 1995).

7 There are benchmarks in a case after which the filing of an amended claim will be
8 more carefully scrutinized. *Grivas* at 878; *Alliance Operating Corp.* at 1175. The initial
9 benchmark is the passing of the claims bar date. *Grivas* at 878; *Alliance Operating*
10 *Corp.*, 60 F.3d at 1175. Another benchmark is the passing of the plan confirmation date.
11 *Alliance Operating Corp.* at 1175; *Hollstein v. Brill*, 987 F.2d 1268, 1270 (7th Cir.
12 1993). The reason for greater scrutiny after the passing of these benchmarks is to assure
13 that creditors who did not timely assert their claims do not unfairly or inappropriately
14 dilute the distribution available for unsecured creditors. *Alliance Operating Corp.* at
15 1175-76.

16 The key factors behind allowing an untimely amendment are the foreseeability
17 of the amendment, *i.e.*, whether the original proof of claim gave notice of the existence,
18 nature and amount of the amended claim; and whether from the perspective of unsecured
19 creditors, the amended claim will result in a reclassification that may affect their
20 distribution under the plan. *Id.* at 1176.

21 In reviewing these factors, the Fifth Circuit in *Alliance Operating Corp.* affirmed
22 the bankruptcy court's disallowance of an untimely amendment filed post-confirmation.
23 The circuit reasoned that the amendment was not foreseeable because the bankruptcy
24 court did not have notice of the priority nature of the claim from the original unsecured
25 proof of claim even if it was widely known that this type of claim (worker's
26 compensation insurance premiums) is generally afforded priority status. *Id.* Further, it
27 reasoned that the amount of the amended claim was significant, and the reclassification
28 was not "minor" in an absolute sense when viewed from the perspective of unsecured

1 creditors whose claims could be affected by a change in the distributions under the plan.
2 *Id.* at 1177. Accordingly, the circuit concluded that under the circumstances, the
3 amendment was properly disallowed as presenting an entirely new claim. *Id.*

4 In this case, the Court already ruled that Knox’s late-filed 2003 Tax Claim relates
5 back as an amendment to its timely-filed 2002 Tax Claim because the filing of the same
6 type of tax claim for the following tax year is foreseeable.³ Additionally, the Court rules
7 that the amendment relates back as both a “priority and secured” claim such that Knox
8 is entitled to both treatments under the Plan. The critical factor is that Knox timely filed
9 a “secured” proof of claim thereby giving notice of its intention to assert priority over all
10 other creditors with respect to its utility tax claim. Since Knox is entitled to only a single
11 satisfaction of its claim, from the perspective of unsecured creditors, they are still junior
12 in priority so nothing significant has changed.

13 **V.**

14 **CONCLUSION**

15 Knox’s proof of claim No. 2147 asserting \$278,052.18 for its 2002 and 2003 Tax
16 Claim will be deemed to relate back as an amendment to Knox’s timely-filed “secured”
17 proof of claim No. 470 for 2002 utility taxes. The amended claim will be deemed both
18 a “priority and secured” claim such that it is entitled to both treatments under the Plan.
19 The amended claim does not change the type of the claim, or its status as a claim that is
20 entitled to payment ahead of general unsecured creditors. Whether it is paid as a
21 “secured” claim or a “priority” unsecured claim, general unsecured creditors are still
22 junior in priority so nothing significant has changed. Knox is directed to prepare and
23 lodge an order within ten days of entry of this Memorandum Decision.

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³ The Debtor did not contest the Court’s tentative ruling on this relation-back issue. *See* Transcript
28 of July 28, 2005 hearing at 16:25-25 through 17:1-22, Docket # 124.

1 Dated: _____

LOUISE DE CARL ADLER, Judge

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[Revised July 1985]

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3 **UNITED STATES BANKRUPTCY COURT**
4 **SOUTHERN DISTRICT OF CALIFORNIA**

5 Case Nos. 03-03470-A11 through 03-03535-A11
6 Adv. Proc. No. 04-90381
7 Case Name: In Re: LEAP WIRELESS INTERNATIONAL etc., et al.

8
9 **CERTIFICATE OF MAILING**

10 The undersigned, a regularly appointed and qualified clerk in the Office of the United
11 States Bankruptcy Court for the Southern District of California, at San Diego, hereby certifies
12 that a true copy of the attached document, to-wit:

13 **MEMORANDUM DECISION**
14 **[Re: KNOX COUNTY]**

15 was enclosed in a stamped and sealed envelope and mailed to the following parties at their
16 respective addresses listed below:

17
18 *PLEASE SEE ATTACHED SERVICE LIST*

19
20 The envelope(s) containing the above document was deposited in a regular United
21 States mail box in the City of San Diego in said district on August 19, 2005.

22
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24 CAD 168 Roma London, Deputy Clerk

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SERVICE LIST

Leap Wireless International, etc., et al.
Case Nos. 03-03470-A11 through 03-03535-A11
Adversary Proceeding No. 04-90381
[Re: Knox County]

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