

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
)  
Amendment of the Commission's Rules ) WT Docket No. 97-82  
Regarding Installment Payment Financing )  
for Personal Communications Services )  
(PCS) Licensees )

**PETITION FOR RECONSIDERATION OR CLARIFICATION**

Leap Wireless International, Inc. ("Leap"),<sup>1/</sup> by its attorneys and pursuant to Section 1.429 of the Commission's rules, hereby submits its Petition for Reconsideration or Clarification of the Commission's *Fourth Report and Order* in the referenced proceeding.<sup>2/</sup> For the reasons set forth below, Leap urges the Commission to clarify or revise its rules so that eligibility to participate as a small business in auctions for spectrum in the PCS C and F Blocks, and to hold such licenses, is governed by the same DE "controlling interest" rule as govern other wireless services that are subject to licensing via competitive bidding.

**Discussion**

When Congress conveyed to the Commission authority to conduct auctions, it mandated that the Commission prescribe rules that would provide certain designated entities ("DEs"), including small businesses, an opportunity to participate meaningfully in auctions. 47 U.S.C. §309(j)(4)(D). When the Commission conducted its first broadband PCS auction that involved spectrum reserved

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<sup>1/</sup> Leap is a recent spinoff from Qualcomm, Inc. Through its wholly owned subsidiary, Cricket Holdings, Inc., Leap is a proposed assignee for several C Block licenses, and currently complies with all applicable designated entity ("DE") rules.

<sup>2/</sup> *Fourth Report and Order*, WET Docket No. 97-82, 63 Fed. Reg. 50791 (Sept. 23, 1998) ("*Fourth R&O*").

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for entrepreneurs and DEs, the Commission had already crafted rules responsive to Congress' mandate. See, e.g., Section 1.2101, *et seq.* (1995). Those rules set forth elaborate revenue and asset limitations for small business and entrepreneurial status and provided clear methodology for assessing how to determine compliance with such rules. *Id.* The Commission specifically provided two exceptions to its generally broad attribution rules governing asset and revenue calculations. These involve the concepts of control groups (of which there are two basic varieties) and publicly traded corporations with widely disbursed voting power. See, 47 CFR §24.709. The Commission's rules have, in total, permitted designated entities to have a substantial presence as licensees of spectrum awarded pursuant to auctions. Nevertheless, eager to learn from its experience in early auctions, in the last year the Commission has appropriately refined substantially those initial concepts.

In at least five separate major rule making proceedings, the Commission has properly determined to replace the concept of a "control group" with the broader, and more easy to understand and implement, concept of "controlling interest", as defined by *de facto* and *de jure* control. This new standard for assessing compliance with DE and small business eligibility was first adopted in the context of the Local Multipoint Distribution Service.<sup>3/</sup> The Commission then extended the new definition to govern generally all wireless services subject to auctions.<sup>4/</sup> When the Commission

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<sup>3/</sup> *Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rulemaking*, 12 FCC Rcd 12545, 12686-96 (1997) ("*LADS Order*").

<sup>4/</sup> *Third Report and Order Second Further Notice of Proposed Rulemaking*, 13 FCC Rcd 374 (1997) ("*Third R&O*").

updated service rules for other specific auctions, it revised them to include the controlling interest standard.<sup>5/</sup>

The only auctionable services to which the controlling interest standard does not yet apply appear to be broadband PCS Block C and F.<sup>6/</sup> It is this determination that Leap seeks now to have clarified or reconsidered.

The benefits of switching to the controlling interest standard is well chronicled in the numerous decisions during which the Commission adopted the new standard. See, *Third R&O, supra*, (para. 186), where the Commission explained that the new standard "would provide flexibility that will enable legitimate small businesses to attract passive financing in a highly competitive and evolving telecommunications marketplace". These benefits apply to all services, and that is why, with the exception of broadband PCS, the Commission has revised its rules for all other DE services to reflect this.

With respect to the retention of the control group standard for broadband PCS Block C and F, it appears as though the Commission's overriding desire was to retain stability, at least throughout the contemplated C Block reauction. *Fifth R&O, supra*. Leap submits that this objective, while laudable, should not suffice to hold back this spectrum from the more flexible and progressive controlling interest standard that applies to all other spectrum. This is particularly so in view of the

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<sup>5/</sup> *Third Report and Order; Fifth Notice of Proposed Rulemaking*, 12 FCC Rcd 10943, 11069-70 (1997) ("220 MHz Order") ; *Report and Order*, 12 FCC Rcd 10785 (1997); and *LADS Order, supra*, at 12691; *Second Report and Order*, FCC 98-157 (July 14, 1998) ("*LMS Order*").

<sup>6/</sup> See, *Fifth R&O*, 9 FCC Rcd 5532 (1994); see, also, *Fifth MO&O*, 10 FCC Rcd 403 (1994) ("*Fifth R&O*").

fact that application of the controlling interest standard would increase the number of entities eligible for the upcoming.<sup>6/</sup> Thus, no consideration need be given to the prospect of otherwise eligible entities being cast aside by changes in the rules.<sup>7/</sup> More importantly, any increase in this number of entities that would be eligible to participate at auctions would serve the public interest by increasing competition at the auction, or at least offsetting in part the reduction in competition that would result from termination of the installment payment program.

As noted by the Commission, and above, the primary benefits from changing the eligibility rules involve efficiencies that would result during the course of system operation. Specifically, by removing artificial definitions of "control", licensees would be able to have more flexibility in chartering growth. Were the Commission's new controlling interest rule to apply, licensees would be able to obtain financing in a greater number of ways, limited only by the fact that the DEs would have to retain *de jure* and *de facto* control of the licenses at issue. This would in no way undermine the Commission's DE program, as evidenced by the fact that the Commission has already adopted these very same changes in numerous other services.

There is yet another reason why this change is both necessary and appropriate: regulatory parity. When the Congress conveyed auction authority, it also mandated that the Commission

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<sup>6/</sup> In view of the Commission's determination to end installment payment programs, the number of competing entities at the upcoming reauction could be very small. The public interest would be benefitted by the increasing competition in the reauction that would result form broadened eligibility.

<sup>7/</sup> Regardless of whether this change is made, it is important to appreciate that the rules governing the C Block auction have already been revised in substantial part. Thus, there is no sanctity that should be associated with retaining in tact old rules. (Among other things, the installment payment opportunities previously available have been ended.)

implement a program of regulatory parity. 47 U.S.C. §332(c). Pursuant to this policy, various communications providers are to compete in the marketplace on the merits of their offerings. To the extent possible, regulations should not serve to impact on the competitive position of various carriers. In this regard, both Congress and the Commission have come to appreciate the ever increasing overlap in competition among various services. By applying its controlling interest standard to broadband Blocks C and F, the Commission can create regulatory parity between services provided over those licenses and the host of other services licensed to DEs that compete, in some form, either directly or indirectly, for customers, and that are themselves governed by the controlling interest standard.

**Conclusion**

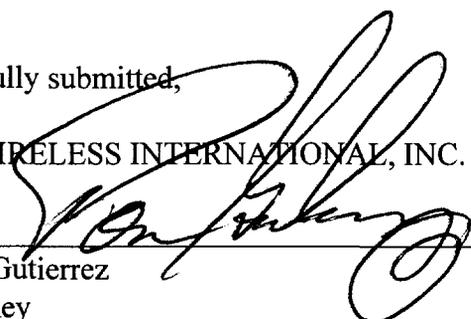
The Commission's auction and DE processes have been unqualified successes. With each succeeding auction the Commission has refined its processes. In the DE area, the most recent refinement has substituted the controlling interest standard for the control group standard generally. The lone exception to this change is the C and F Block rules. By this petition, Leap urges the Commission to bring the rules for C and F Blocks into concert with those for all other wireless services.

Respectfully submitted,

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