BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems	)	CC Docket No. 94-102
	)	
	)	

PETITION FOR LIMITED WAIVER AND BRIEF EXTENSION OF LEAP WIRELESS INTERNATIONAL, INC.

LEAP WIRELESS INTERNATIONAL, INC.

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REQUEST FOR LIMITED WAIVER AND BRIEF EXTENSION OF LEAP WIRELESS INTERNATIONAL, INC.

Leap Wireless International, Inc., on behalf of itself and its affiliated entities (collectively, "Leap"), hereby requests a limited waiver of the Commission's Enhanced 911 ("E911") Phase II deployment rules and a concomitant three-month extension of the December 31, 2005 implementation deadline by which 95% of Leap's active subscriber handsets must be location compatible (the "December 2005 Deadline").[1]

Leap seeks this limited waiver and extension pursuant to 47 C.F.R. § 1.3 and the E911 waiver standards established in the *E911 Fourth Memorandum Opinion and Order*.[2] Historically, Leap has demonstrated a diligent focus upon and history of beating the Commission's E911 deployment milestones (and in spite of undergoing a major restructuring process along the way). As a result, Leap is very close to meeting the December 2005 Deadline on schedule. As of October 20, 2005, 91% of Leap's customer base had GPS-enabled handsets.[3]

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[1] 47 C.F.R. § 20.18(g) (1) (v).

[2] In the Matter of Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, *Fourth Memorandum Opinion and Order*, 15 FCC Rcd 17442 (2000) ("E911 Fourth Memorandum Opinion and Order"), at ¶ 44.

[3] *See Leap's 13th E911 Quarterly Report* (Nov. 1, 2005) at 2.

While it is possible that Leap will be fully E911 compliant by the December 2005 Deadline, meeting the 95% benchmark will be a very close call. Presently, Leap forecasts that it likely will have 93% GPS-capable handsets deployed by the end of year. Thus, Leap believes that it is prudent to request from the Commission a brief three-month extension of the December 2005 Deadline to ensure that it is in full compliance with the Commission's E911 rules.

Leap's waiver is justified by "good cause."[4] Leap's track record shows that Leap has taken concrete steps to "come as close as possible to full compliance" by the December 2005 Deadline.[5] Furthermore, Leap's request for a brief deadline extension is "specific, focused and targeted in scope," and evidences a "clear path to full compliance" with the Commission's E911 rules.[6] Finally, a limited waiver of the type requested is consistent with the public interest and will not undermine the public safety benefits underlying the Commission's E911 rules and policies.

I. BACKGROUND

A. Overview of Leap Service

Leap has led the wireless industry in offering consumers unlimited mobile wireless services within in a local service area for a reasonable flat monthly rate and without a contract or requiring its customers to meet a pre-determined credit standard. This extraordinary pricing structure brings the benefits of mobile wireless service to many consumers who might otherwise be unable to obtain it. Leap also draws customers who want more predictable bills or who want to avoid potentially huge overage charges. Leap has been able to provide high-quality, low-cost mobile wireless service in large part because it (i) has deployed a high capacity, state-

[4] 47 C.F.R. § 1.3.

[5] *E911 Fourth Memorandum Opinion* at ¶ 44.

[6] *Id.*

of-the-art CDMA network, (ii) has streamlined its back-office functions, and (iii) operates its network extremely efficiently.

As of September 30, 2005, Leap served approximately 1.62 million customers in 20 states.[7] Those numbers, however, do not reflect Leap's unique customer base. Within this population are many traditionally under-served customers: 64 percent of Leap's subscribers have household incomes of less than $35,000 per year, and 40 percent are Hispanic or African-American. The usage patterns of Leap's customers are also vastly different from those of other carriers: The average Leap customer uses 1,500 minutes per month (nearly an hour a day, every day), while the industry average is 600 minutes per month.[8] Indeed, a majority of Leap's customers have "cut the cord" and abandoned their landlines altogether: 93 percent use Leap as their primary phone service—far outpacing the industry average on both counts.[9]

B. Leap Has Focused on Deploying E911-Compliant Handsets in Spite of Formidable Obstacles

Leap has diligently pursued compliance with the Commission's E911 rules, in spite of significant challenges. For example, as a smaller, regional carrier, Leap historically has lacked the leverage to push CDMA handset manufacturers towards E911-compliant solutions. In addition, certain of the features that have made Leap's Cricket service extremely customer friendly – such as the absence of credit-check requirements and long-term service contract requirements – have made Leap's task in pursuing E911 compliance more difficult because Leap

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[7] Results of internal company research.

[8] Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, WT Docket No. 05-71, *Tenth Report*, FCC 05-173, at ¶ 199 (Sept. 30, 2005) ("*Tenth Annual Report*").

[9] *Id.*; *see also id.*, at ¶ 196 & n.492 (citing surveys reporting that, for second half of 2004, approximately six percent of adults lived in households with only wireless phones; *id.*, at ¶ 197 (2004 survey showed that nine percent of all households receive almost all their calls wirelessly).

cannot subsidize its handsets to the same extent as most other carriers. And Leap was forced to pursue E911 compliance in recent years while enduring a wholesale financial restructuring of the company.[10]

All of this said, Leap has aggressively and diligently pursued compliance with the Commission's E911 deadlines, and has significantly exceeded all milestones to date, as evidenced by its quarterly E911 progress reports.[11] Leap also has enjoyed excellent working relationships with its affected Public Safety Answering Points ("PSAPS"). Leap has been proactive to resolve any PSAP issues and has been responsive to PSAP requests.

Leap also has taken steps such as rebates, service credits and other incentives to affirmatively encourage long-term Cricket customers to stay with the Cricket service while upgrading to a GPS-capable handset. For example, Leap has run various promotions whereby it gives a service credit up to the full price of a new phone for long-term Cricket customers who upgrade to a new handset (all of which are GPS-capable).

II. LEAP HAS MET THE COMMISSION'S E911 WAIVER STANDARD

The Commission may waive any of its rules for good cause shown.[12] In the context of E-911 implementation, the Commission has recognized that "factors outside [a carrier's] control" might prevent carriers from timely implementing E-911 Phase II.[13] In light of the important safety goals surrounding E911 compliance, the Commission has stated that it will

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[10] *See In the Matter of Leap Wireless International, Inc. and its subsidiaries, Debtors-in-Possession, and Leap Wireless International, Inc. and its subsidiaries*, 19 FCC Rcd 14909 (2004).

[11] *See, e.g., Leap's 8th E911 Quarterly Report* (Aug. 1, 2004) (summarizing progress in exceeding E911 Phase II milestones).

[12] *See, e.g., WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

[13] *E911 Fourth Memorandum Opinion* ¶ 45.

grant only waivers that are "focused and limited in scope, and with a clear path to full compliance."[14] And the Commission has indicated that carriers must document the "concrete steps" a carrier has made and will make towards compliance.[15]

Leap's waiver request falls squarely within the standard for relief. Leap's request is justified by the following factors:

- **Leap's History of Diligent E911 Milestone Compliance, Even in the Wake of Major Financial Restructuring**

As mentioned, Leap was able to significantly exceed all prior E911 compliance milestones, even under the burden of a major financial restructuring. Leap nonetheless is now only a few percentage points away from full compliance, and indeed, stands far ahead of many other carriers in the industry. This diligence should be taken into account as a factor in considering Leap's instant request.[16]

- **Leap's Service Model and Unique Customer Base, Which is Somewhat Resistant to Handset Upgrades**

Unless a customer is affirmatively forced to upgrade his or her handset, that upgrade decision essentially is outside of the carrier's control. Leap's unique service model and customer base exacerbate this challenge. Many subscribers attracted to the no-frills, low-cost nature of Cricket service are less receptive to more robust feature sets and functionalities in upgraded wireless phones that would otherwise entice customers in more affluent demographics

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[14] *Id.* ¶ 44.

[15] *Id.*

[16] *See In the Matter of Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; E911 Phase II Compliance Deadlines for Tier III Carriers*, Order, 20 FCC Rcd 7709 (2005) ("April 2005 Waiver Order") (citing diligence in pursuing Phase II solution as waiver factor).

to swap out their existing handsets. This unique feature of Leap's customer base should be considered by the Commission in granting the instant request.

- **The Lack of PSAP Readiness to Accommodate the December 2005 Deadline**

Several wireless carriers that have requested E911 waivers have highlighted the current lack of PSAP readiness to accommodate the December 2005 Deadline.[17] Indeed, as the National Association of Regulatory Utility Commissioners ("NARUC") recently observed in connection with the pending joint request by CTIA – The Wireless Association and the Rural Cellular Association for industry-wide relief:

> Both safety and convenience factors impede progress towards [the December 2005 Deadline]. Phase II E911 service is not available in the majority of U.S. counties. Only six states and the District of Columbia have accomplished the upgrades necessary to receive and utilize location data sent by wireless callers in most places within the state. Sixteen states have upgraded less than ten percent of their counties and six of those have not finished a single county.[18]

Leap agrees with other carriers and with NARUC that the failure of PSAP upgrades to synch up with the December 2005 Deadline is another factor placing a drag on customer acceptance of handset upgrades –and one that justifies an extension of the milestone. There is little reason for customers – at least for now – to go to the trouble to upgrade their mobile telephones with GPS capability when that capability will be useless to them in most geographic locations.

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[17] *See, e.g., Verizon Wireless, Request for Limited Waiver* (Oct. 17, 2005), at 26-30; *Sprint Nextel Corporation, Request for Limited Waiver* (Sept. 29, 2005), at 28-35.

[18] In the Matter of Joint Petition for Suspension or Waiver of the Location-Capable Handset Penetration Deadline, WT Docket No. 05-288, *Initial Comments of the National Association of Regulatory Utility Commissioners Supporting the Joint Petition for Suspension or Waiver of the Location-Capable Handset Penetration Deadline* (Oct. 17, 2005) ("NARUC E911 Comments"), at 3.

- **Leap's Efforts to Encourage Handset Upgrades**

Leap began selling GPS-capable handsets on June 30, 2002 and exceeded the 25% an 50% interim benchmarks for selling GPS-capable handsets. On May 30, 2004, 99.44% of handsets sold by Leap were GPS-capable. Since that time, every handset activated on the Leap network has been GPS-capable. And in spite of the challenges mentioned above, Leap has taken affirmative steps to encourage its legacy subscribers with older handsets to upgrade their handsets through service credits programs. In short, Leap has not taken a "minimalist approach to compliance,"[19] but has affirmatively sought to promote it.

- **Leap's Substantial Progress in Achieving the Penetration of ALI-capable Handsets, the Minimal Nature of Leap's Requested Three-Month Extension and a Clear Path to Compliance**

Leap's requested extension is also supported by its minimal nature.[20] Leap estimates that approximately three thousand existing customers each month upgrade to a GPS-capable handset. Using that metric, and because it only sells GPS-capable handsets, Leap believes that with a minimal three-month extension, it is on a "clear path" to be fully compliant with the 95% penetration benchmark by March 31, 2006.

III. THE PUBLIC INTEREST WILL NOT BE HARMED NOR THE PURPOSES OF THE E911 RULES UNDERMINED BY THE REQUESTED LIMITED WAIVER AND EXTENSION

The public interest will not be harmed by the very brief deadline extension that Leap seeks here. In fact, given the lack of PSAP readiness, for Leap to take affirmative measures to force its customers to upgrade their handsets by the December 2005 Deadline would likely cause public interest harm. Again as NARUC has observed:

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[19] *E911 Fourth Memorandum Opinion* ¶ 45.

[20] *See, e.g., April 2005 Waiver Order* (fact that benchmark relief sought was "minimal" justified waiver grant).

> Some customers are understandably reluctant to upgrade to location-capable handsets until the PSAP can use the data the handset generates. Nor does it make sense to require such customers to do so. Requiring customers to change out their handsets in areas that do not yet have wireless E911 service available provides no benefit to the customer. Even in those areas where the PSAP upgrades have been completed, some consumers will not want to go through the hassle of replacing a functioning handset. The process of learning new features, reformatting speed dials and other settings, and purchasing accessories often outweighs location capability. This is particularly true for customers in rural areas. Rural residents with three watt analog phones are unlikely to want to exchange them for digital phones that frequently offer less coverage.[21]

Similarly, NENA/Monitor have warned against the consequences of blindly authoritarian enforcement of the December 2005 Deadline, noting that this "would likely result in the unintended consequence of forcing consumers who have not already voluntarily upgraded their handsets to surrender their legacy handsets," which in turn "would create a net disservice to public safety and policy goals, and create a potential for consumer backlash in areas where PSAPs have not been deployed." [22]

IV. CONCLUSION

Leap has demonstrated its commitment to full compliance with the Commission's E911 rules, remains committed to meeting the Commission's 95% GPS-capable handset penetration benchmark and is poised to do so. For the reasons set forth herein, Leap respectfully requests that the Commission grant a limited waiver of Section 20.18(g) (1) (v) of its rules and grant to Leap the brief extension of the December 2005 Deadline requested herein.

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[21] *NARUC E911 Comments* at 3.

[22] Monitor Group Report, "Analysis of the E9-1-1 Challenge," December 2003.

Respectfully submitted,

LEAP WIRELESS INTERNATIONAL, INC.

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Its attorneys

November 11, 2005

DECLARATION OF LAURIE ITKIN

I, Laurie Itkin, hereby declare as follows:

1. I am Director, Government Affairs, for Leap Wireless International, Inc. and its subsidiary, Cricket Communications, Inc. (collectively, "Leap"). I have been involved in monitoring and implementing Leap's E911 Phase II compliance efforts. I am familiar with and have personal knowledge of the matters and factual assertions set forth in the foregoing Petition for Limited Waiver and Brief Extension of Leap Wireless International, Inc. ("Petition").

2. I have reviewed the Petition. I declare under penalty of perjury that the facts set forth therein are true and correct to the best of my knowledge, information and belief:

Laurie Itkin