

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

In the Matter of)	
)	
Wireless Telecommunications Bureau Seeks)	WT Docket No. 11-186
Comment on the State of Mobile)	
Wireless Competition)	
)	

**REPLY COMMENTS OF LEAP WIRELESS INTERNATIONAL, INC.
AND CRICKET COMMUNICATIONS, INC.**

Leap Wireless International, Inc. and Cricket Communications, Inc. (collectively “Leap”) hereby submit reply comments and data in response to the Commission’s Public Notice soliciting input and data for its Sixteenth Annual Report on the State of Competition in Mobile Wireless, including Commercial Mobile Radio Services.¹

INTRODUCTION

Leap is a leading provider of affordable, flat-rate, pay-in-advance and prepaid wireless services with no overage charges. Leap’s services require no activation or termination fees, no credit checks, and no contracts. Leap’s customer base traditionally has comprised value-oriented and low-income consumers who prize the value and predictability of Leap’s service offerings.

Leap is pleased to provide the Commission with information regarding its performance and business developments since the Commission’s Fifteenth Wireless Competition Report. As discussed in greater detail below, Leap has remained an innovator, with industry-altering

¹ *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Radio Services*, WT Docket No. 11-186, Public Notice, DA 11-1856 (Nov. 3, 2011) (“Public Notice”).

products and services. This year, Leap rolled out the industry's first unlimited mobile music service, Muve Music, which provides consumers with unlimited downloads from a library containing millions of songs. Over 270,000 customers subscribed to Muve Music as of October 31, 2011, approximately nine months after the service launched. Leap has also pursued a significant nationwide retail expansion with major retailers such as Best Buy, Wal-Mart, and Dollar General, facilitated by its wholesale arrangement with Sprint. During 2011, Leap has also continued to offer a broad selection of affordable, high performance smart phones to the pay-in-advance customer segment, and has begun the initial deployment of LTE technology over its network footprint.

The Commission has noted that industry concentration has been increasing at the national level. Against this backdrop, Leap believes that the Commission must continue to monitor wireless competition at a granular level, including analysis of critical wholesale inputs such as spectrum and data roaming. The Commission should continue to take steps to ensure a level wireless playing field so that all carriers have access to the inputs that they need to provide robust competition and deliver the products and services that consumers demand.

DISCUSSION

I. LEAP CONTINUES TO BE AN INNOVATOR WITH AN EXPANDING NATIONAL PRESENCE

In 2011, Leap continued its tradition of innovation and consumer-oriented products and services. In this section, Leap describes its major competitive initiatives and performance.

Distribution – In 2011, Leap has launched approximately 400 Cricket-branded retail outlets.² In September 2011, it launched nationwide retail distribution, and began its presence in

² See Leap Wireless, "3Q11 Earnings Conference Call," at 22 (Oct. 31, 2011), available at: <http://tinyurl.com/7tp5tmr>.

major national retailers such as Wal-Mart, Best Buy, and Dollar General. Leap expects that its products will be available in more than 11,000 national retail locations by the end of 2011.³ This expanded distribution outside of Leap's network footprint is enabled by its wholesale agreement with Sprint.

Devices – During 2011, Leap continued to enhance its device lineup with a broad array of smartphones and Muve Music devices. Importantly, Leap has helped lead the distribution of affordable, high performance devices in the pay-in-advance sector, providing low-cost mobile data services to a large segment of the population that does not have ready access to home computers. Leap currently offers its no-contract customers a selection of 21 handsets, including 8 smartphones and 13 feature phones. Five of these 21 devices are enabled to deliver Leap's unlimited Muve Music product.⁴

Services – In January, 2011, Leap introduced a ground-breaking music service, Muve Music, which offers customers unlimited downloads from a library that contains millions of songs. By May, Muve Music was available in all Cricket markets,⁵ and by the end of October, Muve Music had over 270,000 customers.⁶ Muve Music customers report the highest customer satisfaction with a new product in Leap's history. Muve customers download on average approximately 400 songs per month, and since launch have downloaded more than 150 million

³ *Id.* at 22, 24.

⁴ *Id.* at 22.

⁵ See Press Release, "Cricket Turns up the Volume: Muve Music Now Available in All Cricket Markets," (May 2, 2011), available at <http://leapwireless.mediaroom.com/index.php?s=13383&item=34218>.

⁶ See Leap Wireless, "3Q11 Earnings Conference Call," at 23 (Oct. 31, 2011), available at: <http://tinyurl.com/7tp5tmr>.

songs.⁷ Muve Music customers listen to music on their Muve devices an average of two to three hours per day.

In addition, Leap has continued its flagship Cricket Wireless pay-in-advance service and PayGo prepaid service, each with no long-term contracts, no credit check requirements, and no activation or termination fees. Leap also offers Cricket Broadband, an unlimited mobile broadband service. However, as a result of strong customer adoption of Leap's smartphones and other new devices, it has reduced its marketing focus on broadband modem service.⁸ Current pricing for Leap's plans is available on the Cricket Wireless website, www.mycricket.com.

Network – Leap plans to deploy next-generation LTE network technology over the next two to three years. It plans to launch a commercial market prior to the end of 2011, and to cover approximately 25 million POPs with LTE in 2012.⁹

Subscribers – Leap had approximately 5,755,000 customers at the end of the third quarter of 2011.¹⁰ This represented a 13.1 percent increase from the third quarter of 2010, and reflected in part the addition of approximately 323,000 former customers of Pocket Communications, which Leap acquired in the fourth quarter of 2010.¹¹

Usage – In 2011, the average voice usage of Leap customers is approximately 1,500 voice minutes and 40 text messages per month per subscriber.

⁷ *Id.*

⁸ *See* Leap Wireless International, Inc., 10-Q Quarterly Report, at 36-37 (filed Nov. 3, 2011), available at: <http://investor.leapwireless.com/phoenix.zhtml?c=95536&p=irol-sec>.

⁹ *See* Press Release, "Leap Reports Third Quarter Results," (Oct. 31, 2011), available at: <http://leapwireless.mediaroom.com/index.php?s=13383&item=77895>.

¹⁰ *Id.*

¹¹ *Id.*

II. THE COMMISSION SHOULD USE ITS ANALYSIS OF WIRELESS COMPETITION TO ENSURE THAT CARRIERS HAVE ACCESS TO CRITICAL INPUTS

Wireless carriers such as Leap rely on inputs such as spectrum and data roaming agreements in order to provide their customers with the highest quality service. To ensure that the Commission conducts a comprehensive review of competition in the wireless industry, Leap encourages the Commission to review whether small and midsized carriers are able to access the inputs necessary to provide wireless service. Leap encourages the Commission, based on this analysis, to craft policies that will ensure that small and midsized carriers have fair and reasonable access to these critical inputs and are able to provide a strong competitive presence over the longer term.

A. Data Roaming

Leap continues to view the availability of data roaming on commercially reasonable terms and conditions to be exceptionally important. Leap applauds the Commission's *Data Roaming Order*¹² and intends to vigorously defend it in the D.C. Circuit.

Leap encourages the Commission to continue to monitor the state of data roaming agreements and ensure that small and midsized competitive carriers do in fact have access to data roaming on commercially reasonable terms and conditions, and to take further action when necessary to ensure that this critical input is available to small and midsized carriers. The *Data Roaming Order* was a welcome step, but it has not ensured that the market for data roaming is fully competitive. The largest nationwide carriers continue to have diminished incentives to enter into data roaming agreements, and they continue to have much greater bargaining power

¹² *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, Second Report and Order, WT Docket No. 05-265 (rel. April 7, 2011).

relative to small and midsized carriers. As the Commission’s Staff recently recognized, a “roaming agreement between two providers can be difficult to negotiate when there is limited mutual interest.”¹³ Even if the *Data Roaming Order* prohibits the largest carriers from refusing to negotiate outright, they continue to have numerous tools in their arsenal to delay entering into agreements, or to demand terms and conditions that impair the ability of competitive carriers to compete. The *Data Roaming Order*’s standard of commercial reasonableness remains sufficiently vague and undefined that it has not fully resolved these concerns.

Leap agrees with MetroPCS that the roaming negotiations may become even more problematic for 4G LTE data roaming.¹⁴ Successful data roaming depends on handsets that are compatible with both the host and roaming carriers’ networks. Because carriers are deploying LTE in different bands of spectrum, LTE deployment may become Balkanized, which could sharply reduce the (already small) number of nationwide facilities-based carriers with which each smaller carrier is compatible. This will give the largest carriers even greater control over negotiations.

The Commission therefore should acknowledge in its upcoming wireless competition report that the market for data roaming is not fully competitive, and has not become meaningfully more competitive since the last report. The Commission should use these findings as a catalyst to promote competition in the data roaming market by, among other things, defining more precisely what constitutes commercially reasonable terms and conditions (including rates), and implementing arbitration procedures pursuant to the *Data Roaming Order* that will provide rapid and definitive resolution of disputes.

¹³ *FCC Staff Analysis and Findings on AT&T and T-Mobile Transaction*, WT Docket No. 11-65, ¶ 67 (filed Nov. 29, 2011) (“*Staff Report*”).

¹⁴ *See* Comments of MetroPCS Communications Inc., WT Docket No. 11-186, at 23 (filed Dec. 5, 2011).

B. Spectrum

Spectrum remains the lifeblood of wireless carriers. The demand for real-time voice, video, music, and gaming applications has led to an enormous surge in data usage, which necessitates a greater supply of spectrum to meet consumer needs.

Currently, a significant amount of scarce spectrum is in the hands of the largest carriers, and consolidation in the industry has, at the same time, resulted in consolidation of spectrum. Furthermore, in the next few years, spectrum availability will continue as a “zero sum” game in which access in the aftermarket will be the only avenue available to small and midsized players. The Commission’s efforts to auction AWS-2 and -3 spectrum have stalled, the 700 MHz D-Block is in the midst of possible Congressional re-allocation to public safety, and the re-purposing and incentive auctions of broadcast television spectrum, while promising, are likely years away given the need for Congressional authority and implementation issues to be resolved. Thus, the consolidation of spectrum in the hands of the largest nationwide carriers risks cementing the status quo.

It is particularly critical that the Commission find opportunities to make spectrum available to small and midsized carriers. It is these carriers that have brought wireless service to rural areas, have brought the benefits of broadband to many underserved populations, and have driven innovation in the wireless industry. Leap’s business model, for example, has attracted low-income and value-seeking consumers, many of whom cannot afford or qualify for broadband service from other carriers. The Commission cannot achieve its goal of enabling all Americans to reap the benefits of broadband service without giving small and midsized carriers the resources that they need to serve consumers who are unserved or underserved by the largest national carriers.

As part of an initiative to help small and midsized carriers deploy spectrum, the Commission should relax the interim buildout requirements for 700 MHz A Block holders. This is a spectrum band that is critical for LTE deployment, and was acquired principally by small and midsized carriers, including many rural carriers. These carriers face challenges in reaching deployment milestones in light of interference issues surrounding broadcast from Channel 51 and the lack of a vibrant interoperable device ecosystem that encompasses the A Block. The Commission should work with A Block holders to maximize the use and facilitate the deployment of that spectrum.

When new spectrum auctions do become a reality, Leap urges the Commission to ensure that small and midsized carriers have a realistic opportunity to obtain spectrum in those auctions. To promote a level playing field, the Commission should employ rigorous eligibility requirements that ensure that the largest nationwide carriers do not control auction after auction and increase their already dominant positions. Failure to do so risks increasing the already high industry concentration levels. Section 309(j)(3) of the Communications Act requires the Commission to design its bidding rules with the objective of “avoiding excessive concentration of licenses” and “disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.”¹⁵ Allowing the largest carriers, which already control significant amounts of mobile broadband spectrum, to accumulate more spectrum in subsequent auctions to the exclusion of competitive carriers would directly contradict these principles.

Finally, Leap encourages the Commission to continue to work with NTIA and Congress to find new sources of spectrum. As this Commission has recognized, “the growth of wireless

¹⁵ 47 U.S.C. § 309(j)(3).

broadband will be constrained if government does not make spectrum available to enable network expansion and technology upgrades.”¹⁶ The tremendous increase in data usage will create ever increasing demands for spectrum, and the Commission should continue to work to find additional sources of spectrum for mobile wireless broadband use.

CONCLUSION

Leap is pleased to provide the foregoing information for the Commission’s annual analysis of wireless competition. Leap looks forward to continuing to work cooperatively with the Commission to ensure a level playing field for all wireless carriers and a competitive environment for consumers.

Respectfully submitted,

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December 20, 2011

¹⁶ National Broadband Plan at 77.