

Federal Communications Commission  
Washington, D.C. 20554

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CC Docket No. 99-200

September 14, 2001

William S. Carnell  
Latham & Watkins  
555 11<sup>th</sup> Street NW  
Washington, DC 20004-1304

Re: Leap Wireless International, Inc. Request for Waiver of Numbering Resource Utilization Threshold Requirement of Commission Rule 52.12(h); Leap Wireless International, Inc. Request for Emergency Assignment of Three NXX Codes in the 412 NPA and Request for Confidentiality

Dear Mr. Carnell:

This letter addresses the petitions<sup>1</sup> filed by Leap Wireless International, Inc. (Leap) seeking waiver of section 52.15(h) of the Federal Communications Commission's (Commission's) rules, which requires carriers to meet a 60% utilization threshold before obtaining additional numbering resources in a given rate center.<sup>2</sup> Specifically, Leap requests three growth central office (CO) codes in each of the 602 and 480 area codes in Phoenix, Arizona, and three growth CO codes in the 412 area code in Pittsburgh, Pennsylvania. As discussed below, we grant, in part, Leap's request for the Phoenix area. We, however, decline to grant Leap's request for the Pittsburgh area.

According to Leap, its Cricket "Comfortable Wireless" service offers consumers flat-rate fixed wireless service.<sup>3</sup> Leap asserts that the high demand for this service allows it to reach the 60% utilization threshold very soon after the service is launched but not in sufficient time to apply for and activate additional numbering resources.<sup>4</sup> Leap therefore requests a waiver of the utilization threshold requirement

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<sup>1</sup> Leap Wireless International, Inc. Request for Waiver of Numbering Resource Utilization Threshold Requirement of Commission Rule 52.15(h), filed July 17, 2001 (July 17 Petition); Leap Wireless International, Inc. Request for Emergency Assignment of Three NXX Codes in the 412 NPA and Request for Confidentiality, filed July 27, 2001 (July 27 Petition).

<sup>2</sup> 47 U.S.C. § 52.15(h). The Commission established the utilization threshold as a mechanism to verify carriers' actual need for additional numbering resources.

<sup>3</sup> July 17 Petition at 3.

<sup>4</sup> *Id.* at 3-5. Since the effective date for CO code activation in most instances is at least 66 days after the CO code application is filed, carriers normally must maintain a minimum 66 day inventory; Leap claims it is unable to maintain the requisite inventory due to customer demand.

to prevent an interruption of service in the Phoenix and Pittsburgh areas.

Phoenix. Leap reports that it launched service in the Phoenix market on August 9, 2001.<sup>5</sup> Based on its past market penetration levels, it expects to reach 60% utilization in Phoenix within seven weeks of launch and expects to exhaust its initial CO codes within ten weeks of launch.<sup>6</sup> As a result, Leap expects to have exhausted its numbering resources, and therefore become unable to activate new customers, for approximately three weeks before additional numbering resources can be activated.<sup>7</sup>

The Commission has plenary jurisdiction over those portions of the North American Numbering Plan that pertain to the United States.<sup>8</sup> Section 1.3 of the Commission's rules authorizes the Commission to suspend, revoke, amend, or waive its rules for good cause shown.<sup>9</sup> In demonstrating good cause, an applicant for a waiver "faces a high hurdle even at the starting gate."<sup>10</sup> Moreover, the Commission must in its decision "explain why deviation [from its rules] better serves the public interest."<sup>11</sup>

We have reviewed Leap's petition and find that, based on its successful launch of Cricket service in similar markets, Leap has adequately demonstrated that it will likely run out of numbering resources before it can secure additional numbering resources in the absence of a waiver of our rules. We thus find that Leap has shown good cause for a waiver of the requirement to meet the 60% utilization threshold prior to receiving additional numbering resources in its Phoenix market. We further find that it is in the public interest to grant the requested waiver in the Phoenix market, where there is no apparent shortage of numbering resources, because of the demonstrated consumer demand for Leap's Cricket service. Therefore, by copy of this letter, we direct the North American Numbering Plan Administrator to assign and release to Leap two CO codes in each of the 602 and 480 area codes.

This limited waiver of the utilization threshold is for the sole purpose of allowing Leap to continue to provide service in the 602 and 480 area codes. Leap will be required to meet the utilization threshold before receiving additional numbering resources in the Phoenix market. We decline to grant Leap three CO codes in each of the 602 and 480 area codes as requested because we believe that with a total inventory of 130,000 numbers in the Phoenix market,<sup>12</sup> Leap should be able to meet the 60% utilization threshold prior to needing additional numbering resources to serve its customers (at which time it may seek additional numbering resources through the normal CO code application process). If Leap should find that it needs additional numbering resources prior to satisfying the 60% utilization threshold and can demonstrate that it will run out of numbering resources before a growth CO code can be activated, it should so advise the Common Carrier Bureau in writing. We will at that time consider whether Leap is likely to meet its

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<sup>5</sup> Declaration of Matthew P. Stoiber, dated July 12, 2001, para. 2.

<sup>6</sup> July 17 Petition at 4-5.

<sup>7</sup> *Id.* at 5.

<sup>8</sup> 47 U.S.C. § 251(e).

<sup>9</sup> 47 C.F.R. § 1.3.

<sup>10</sup> *See* WAIT Radio v. FCC, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

<sup>11</sup> *See* Northeast Cellular Telephone Company, L.P. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>12</sup> Leap currently has 9 CO codes in the Phoenix market, or a total of 90,000 numbers. The additional 4 CO codes (40,000 numbers) will bring Leap's inventory to 130,000 numbers.

expected demand such that a waiver for a third growth CO code in each of the 602 and 480 area codes is warranted.

Pittsburgh. Leap requests assignment of three CO codes to meet anticipated consumer demand in its Pittsburgh market. Leap was assigned growth CO codes in the 412 area code in April, May, and July, 2001.<sup>13</sup> According to Leap, however, it will not have enough numbering resources to meet expected demand before all of the recently assigned CO codes become effective.<sup>14</sup>

We decline to grant the relief requested by Leap for the Pittsburgh area at this time. The 412 area code is in jeopardy and subject to a number conservation plan developed by the industry and adopted by the Pennsylvania Public Utility Commission (PAPUC). As of August 31, approximately 90 CO codes remain in the 412 area code, and are being assigned through a lottery at the rate of six growth CO codes per month.<sup>15</sup> The Commission has delegated authority to state commissions to determine the appropriate conservation plan for area codes that are in jeopardy. We are therefore reluctant to alter the PAPUC's conservation plan currently in place. We also believe that to assign Leap additional resources ahead of other carriers that may be faced with the same inability to serve consumers without additional numbering resources would not be in the public interest because such relief would be inconsistent with our goal of ensuring competitively neutral access to numbering resources<sup>16</sup> and would undermine the conservation plan that has been established for the 412 area code. Finally, without regard to whether Leap currently meets the 60% utilization threshold, an assignment of additional CO codes would not afford Leap the relief it seeks because of the approximate 66-day activation period required for new CO codes. In fact, Leap was awarded in a recent lottery an additional CO code that is scheduled to be assigned in September or October 2001, and is expected to become effective approximately 50 days after the date of assignment. Any additional assignment that we authorize would not likely take effect sooner.

We therefore decline to disturb the PAPUC's conservation plan by directing that Leap be assigned additional numbering resources outside the rationing plan. We believe that Leap, with its recently assigned and pending assignment of numbering resources in its Pittsburgh market, should be able to meet not only customer demand but also the 60% utilization threshold in its Pittsburgh market once the numbering resources it has been assigned are activated.

Sincerely,

Jeffrey J. Carlisle  
Senior Deputy Chief, Common Carrier Bureau

cc: Ron Conners, Director, North American Numbering Plan Administrator

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<sup>13</sup> July 27 Petition at 2.

<sup>14</sup> *Id.*

<sup>15</sup> We also note that the PUPUC has recently established a new overlay area code in the Pittsburgh area, the 878 NPA, which will increase the available numbering resources in the area.

<sup>16</sup> Numbering Resource Optimization, *Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 7574, 7578, para. 3 (2000).