

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of )
LEAP WIRELESS INTERNATIONAL, INC. ) File Nos. 0000435789, 0000435815,
Request for Waiver and Extension of ) 0000435820, 0000435830, 0000435857,
Broadband PCS Construction Requirements ) 0000435866, 0000435868, 0000444999,
) 0000445004, 0000445011, 0000445016,
) 0000445592
)

MEMORANDUM OPINION AND ORDER

Adopted: November 8, 2001

Released: November 9, 2001

By the Chief, Commercial Wireless Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, the Commercial Wireless Division of the Wireless Telecommunications Bureau ("Bureau") addresses the request for waiver of, and extension of time to comply with, the five-year construction requirements for broadband Personal Communication Services ("PCS") licenses filed by Leap Wireless International, Inc., on behalf of itself and its affiliates and subsidiaries (collectively, "Leap").

II. BACKGROUND

2. Within the last two years, Leap acquired a number of unconstructed broadband PCS licenses in the post-auction spectrum market. In April 2001, Leap requested an extension of time to meet the five-year construction requirements for thirty-eight of those licenses ("Extension Request").

1 Request for Waiver and Extension of Broadband PCS Construction Requirements originally filed on April 23, 2001 (and amended on April 26, 2001) by Leap Wireless International, Inc., Cricket Licensee I, Inc., Cricket Licensee II, Inc., Cricket Licensee III, Inc., Cricket Licensee V, Inc., Cricket Licensee (Reauction), Inc., and Cricket Licensee (Lakeland), Inc.

2 The original 38 licenses encompassed 31 markets. As described below, Leap withdrew 10 licenses from its Extension Request. See para. 5, infra. For a complete list of the licenses and markets subject to the Extension Request, see Attachment A.

3 See Supplement to Leap Wireless International, Inc.'s Request for Waiver and Extension of the Broadband PCS Construction Requirement, filed June 12, 2001.

("Data Markets").<sup>4</sup> Of the thirty-nine licenses, thirty are 10 MHz D-, E- and F-block licenses, one is a 30 MHz C-block license, and eight are 15 MHz C-block licenses, disaggregated as an option provided in the Commission's installment payment restructuring.<sup>5</sup>

3. On May 8, 2001, the Bureau placed Leap's request on public notice.<sup>6</sup> Eight comments and four reply comments were filed. Five parties supported grant of an extension,<sup>7</sup> five parties opposed grant of an extension,<sup>8</sup> and one party neither supported nor opposed Leap's request, but instead commented generally on the PCS construction requirements.<sup>9</sup>

4. On August 8, 2001, Leap amended its waiver request and provided supplemental information on its progress toward constructing the licenses ("Amended Extension Request").<sup>10</sup> First, Leap withdrew ten of the thirty-nine licenses from its Extension Request.<sup>11</sup> Second, Leap reduced the length of the extensions requested for all the remaining twenty-nine licenses. Specifically, for the six licenses with which it intends to provide voice services ("Voice Licenses"), Leap reduced the length of the extension request to less than four months (*i.e.*, seeking extension from November 4, 2001 until February 28, 2002). For the twenty-three licenses with which it intends to provide data-only services ("Data Licenses"), Leap reduced the length of the extension request to eleven months for two of the licenses and six months for the remaining twenty-one licenses (*i.e.*, seeking extension from November 4, 2001 and April 28, 2002 until October 24, 2002).<sup>12</sup> Finally, Leap also provided information about the steps that it had taken to meet the construction requirements in each of the markets – generally for the Data Markets and specifically for each of the Voice Markets.

### III. DISCUSSION

5. With respect to its 30 MHz C-block license, Leap seeks waiver of section 24.203(a) of the Commission's rules, which requires the licensee to provide coverage to at least one-third of the

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<sup>4</sup> See para. 8, *infra*, for a description of this technology.

<sup>5</sup> See Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, *Second Report and Order and Further Notice of Proposed Rule Making*, WT Docket 97-82, 12 FCC Rcd. 16436 (1997).

<sup>6</sup> See Wireless Telecommunications Bureau Seeks Comment on Leap Wireless International, Inc.'s Request for Waiver and Extension of Broadband PCS Construction Requirements," *Public Notice*, 16 FCC Rcd. 9520 (2001).

<sup>7</sup> See Comments of Summit Wireless, LLC; Alpine PCS, Inc. ("Alpine PCS"); Blooston, Mordkofsky, Dickens, Duffy & Prendergast. See Reply Comments of ComScape Holding, Inc. ("ComScape") and Leap.

<sup>8</sup> See Comments of The Designated Entities Committee for Integrity of the Commission's Processes ("DE Committee"); Cingular Wireless, LLC; Dobson Communications Corp.; and Telephone and Data Systems, Inc. See Reply Comments of DE Committee and Verizon Wireless.

<sup>9</sup> See Comments of Rural Telecommunications Group ("RTG").

<sup>10</sup> Amendment and Supplemental Information Filing of Leap Wireless International, Inc. filed on August 2, 2001 and amended on August 7, 2001 (Amended Extension Request).

<sup>11</sup> See Attachment A for a list of the withdrawn licenses. Of the remaining 29 licenses, 21 are 10 MHz D-, E-, and F-block licenses, one is a 30 MHz C-block license, and seven are 15 MHz C-block licenses, disaggregated as an option provided in the Commission's installment payment restructuring.

<sup>12</sup> Because these licenses were granted at different times, they have different five-year construction deadlines (some fall on November 4, 2001 and the rest fall on April 28, 2002). Leap's request would unify the five-year construction deadline for all 23 of the Data Licenses. We note that Leap revised its deployment plan for six of the licenses from voice to data-only services. See Amended Extension Request at 3.

population in its licensed service area within five years of the initial grant date.<sup>13</sup> With respect to its 10 MHz and 15 MHz licenses, Leap seeks waiver of section 24.203(b) of the Commission's rules, which requires coverage to at least one-quarter of the population in its licensed service area, or a showing of substantial service in the licensed service area, within five years of the initial grant date.<sup>14</sup> In either case, failure by the licensee to meet these requirements would result in forfeiture of the license and the licensee would be ineligible to regain it.<sup>15</sup>

6. Pursuant to section 1.925 of the Commission's rules, waiver may be granted if the petitioner establishes either that: (1) the underlying purpose of the rule would not be served or would be frustrated by application to the instant case, and that grant of the waiver would be in the public interest; or (2) where the petitioner establishes unique or unusual factual circumstances, application of the rule would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.<sup>16</sup> Moreover, pursuant to sections 1.946(e) and 24.843(b) of the Commission's rules, an extension of time to complete construction will be granted if the licensee shows that the failure to complete construction is due to causes beyond its control.<sup>17</sup> Moreover, when adopting the PCS construction requirements, the Commission recognized that there may be cases when certain factors, such as a high level of microwave incumbency or sparse population density, would make compliance difficult.<sup>18</sup> The Commission stated that in instances in which the circumstances are unique and the public interest would be served, it would consider waiving the PCS construction requirements on a case-by-case basis.<sup>19</sup>

#### A. Licenses Deploying Data-Only Service

7. As explained below, we find that the totality of the record supports a limited waiver of the five-year coverage requirements for Leap's twenty-three Data Licenses. Specifically, we find that strict application of the rule would not support the statutory and Commission goals in adopting PCS construction requirements and that a short extension of time for Leap to obtain equipment and deploy advanced services is reasonable given that the equipment will not be available until late spring 2002. We also find that an extension will serve the public interest because it will allow the introduction of new, innovative, advanced services to sparsely-populated areas, promoting competition and ultimately benefiting consumers. Further, even though Leap has held these licenses for a very short time, it has demonstrated diligence in preparing to construct facilities. Therefore, by this Order, we extend the deadline for meeting the five-year coverage requirements of the Data Licenses to October 24, 2002.

8. The record reflects that Leap is committed to using the Data Licenses to provide a new and technologically innovative service. Leap states that, in the Data Markets, it intends to offer a high-

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<sup>13</sup> 47 C.F.R. § 24.203(a). Licensees of 30 MHz blocks must also serve with a signal level sufficient to provide adequate service to at least two-thirds of the population in their licensed area within 10 years of the initial license grant. *Id.* The licensed service area for C-block licenses is a Basic Trading Area ("BTA").

<sup>14</sup> 47 C.F.R. § 24.203(b). The licensed service area for D-, E-, and F- block licenses is also a BTA.

<sup>15</sup> *See* 47 C.F.R. § 24.203(a), (b).

<sup>16</sup> 47 C.F.R. § 1.925. Alternatively, pursuant to section 1.3, the Commission has authority to waive its rules if there is "good cause" to do so. 47 C.F.R. § 1.3. *See also Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

<sup>17</sup> 47 C.F.R. §§ 1.946, 24.843. Section 1.946(e) also states specific circumstances that would not warrant an extension of time to complete construction. 47 C.F.R. § 1.946(e)(2)-(3).

<sup>18</sup> *See* Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, *Memorandum Opinion and Order*, 9 FCC Rcd. 4957, 5019 (1994) (*PCS MO&O*).

<sup>19</sup> *Id.*, citing *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

speed broadband wireless data service, providing customers with internet access at up to 2.4 Mbps throughput over 1.25 MHz channels.<sup>20</sup> Leap intends to provide this service using Qualcomm's 1xEV-DO "high data rate" (HDR) wireless technology. As Leap points out, HDR technology will provide consumers with internet access at data rates comparable to DSL and cable modem services, with the added convenience of portable and mobile access.<sup>21</sup>

9. We find that such deployment is consistent with the one of the statutory goals of performance requirements; specifically, "to promote investment in and rapid deployment of new technologies and service."<sup>22</sup> Leap points out, however, that HDR equipment will not be available until late spring 2002, and that once it becomes available, Leap will require a brief period to deploy and test this new technology. Some of the parties opposing grant of a waiver argue that Leap could use traditional CDMA technology to meet the benchmarks.<sup>23</sup> However, as one of the opposing parties itself pointed out, all of the Data Markets are currently served by two cellular licensees and almost all are currently served by at least one PCS licensee.<sup>24</sup> Leap argues that its research indicates that these small and rural markets will not support an additional carrier for voice services, but will support advanced, data-only services.<sup>25</sup> We find that, when considered along with all other factors discussed herein, it would be counter-productive to require Leap to forgo deploying innovative, advanced services, which can be accomplished in the very near term, and to instead install equipment that would provide services that are nearly identical to those already provided by several carriers in these markets.<sup>26</sup> Furthermore, because the extension of time to construct the Data Licenses is based, at least in part, on the provision of this advanced, data-only service, we condition the grant of waiver on the deployment of advanced data services in the Data Markets in substantially the same manner as described in Leap's Amended Extension Request.<sup>27</sup>

10. We are cognizant of the risks that accompany any decision to extend a construction deadline to provide additional time for a licensee to deploy advanced technology that is not yet available.

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<sup>20</sup> Specifically, Leap intends to deploy Qualcomm's High Data Rate (HDR) technology, which is based on the recently developed industry standard TIA/EIA/IS-856 "CDMA2000, High Rate Packet Data Air Interface Specification," also known as CDMA 1xEV. Leap is focused on implementing the "data only" version of this technology, known as CDMA 1xEV-DO, which is backward compatible with today's CDMA networks, and forward compatible with future 3G networks based on the CDMA2000 standard. According to Qualcomm, 1xEV technology will be embedded in handsets, laptops, notebooks and other fixed, portable and mobile devices to support applications such as e-mail, web browsing, e-commerce, and telematics. Qualcomm notes that 1xEV technology may be overlaid on existing CDMA networks, or deployed as a stand-alone system, *i.e.*, as Leap proposes to do. See <http://www.qualcomm.com/hdr/about.html>.

<sup>21</sup> Amended Extension Request at 2.

<sup>22</sup> See 47 U.S.C. § 309(j)(4)(B).

<sup>23</sup> DE Committee Comments at 14.

<sup>24</sup> DE Committee Comments at 9. Based on industry reports, we believe that a small number of the markets have upwards of four wireless carriers, with some having as many as eight.

<sup>25</sup> Amended Extension Request at 5-6. Leap also states that "the economics of deploying wireless data equipment and infrastructure . . . appear to be more accommodating than for voice in smaller markets." *Id.* at 6.

<sup>26</sup> The Commission stated similar reasoning when it relaxed the PCS construction requirements. See *PCS MO&O*, 9 FCC Rcd. at 5019 ("Finally, since most areas are already served by cellular and SMR providers, we believe it unnecessary to require PCS licensees to provide identical or similar services to areas where it is uneconomic to do so.")

<sup>27</sup> In the event that Leap alters its proposed deployment in these markets by choosing a technology that is currently available, or transfers or assigns the licenses to an entity that does not construct a system similar to that proposed by Leap in the Amended Extension Request, the grant of waiver becomes void and the construction deadlines for these licenses will revert to their original five-year deadlines.

The DE Committee makes this point, suggesting that Leap could use the “next-generation-of-equipment” rationale to gain additional extensions.<sup>28</sup> Industry reports, however, support Leap’s projection that the HDR technology infrastructure will be available by the second quarter of 2002, leaving sufficient time prior to the October deadline to construct facilities and place them in operation.<sup>29</sup> Based on the near-term availability of the equipment and Leap’s demonstrated efforts toward planning and constructing facilities in these and other markets, we are unlikely to consider favorably (and believe Leap is unlikely to seek) any additional extensions for these licenses. Nevertheless, we will closely monitor Leap’s progress toward the new deadline and, as a condition of this waiver, we will require Leap to submit a progress report no later than May 1, 2002, describing its timetable for constructing facilities in each market by the new deadline, including, but not limited to, the schedules for the delivery and deployment of the HDR infrastructure and subscriber equipment.

11. A limited extension of time to deploy the HDR technology also promotes competition and access in these markets. Many of the small and rural markets in question have few, if any, choices in broadband service providers. Leap argues that, at best, consumers may have access to wireline DSL and cable modem services and that penetration of internet access in these markets lags behind the national average.<sup>30</sup> Leap asserts that this low penetration rate is due to lack of access and choices, rather than lack of demand in the marketplace.<sup>31</sup> Granting an extension in this case increases competition in the provision of broadband services in these markets while increasing the number of consumers having access to wireless broadband services.

12. Promoting the construction of wireless systems in the Data Markets also furthers the Commission's stated goal of facilitating nationwide PCS services, especially in sparsely populated areas,<sup>32</sup> as well as the general goal associated with performance requirements of ensuring “prompt delivery of service to rural areas.”<sup>33</sup> In this connection, Leap notes that all of the markets where it seeks relief are small or mid-sized markets, many of which are sparsely populated. The twenty-three Data Licenses in question are situated in twenty different BTA markets. We note that ten of the twenty markets have a population density of less than thirty persons per square mile, ranking in the lower 25% of all markets in terms of population density.<sup>34</sup> Moreover, none of the twenty markets have a total population within the top 100 markets,<sup>35</sup> and there are no counties in the twenty markets that have a total population that fall within the top 110 counties.<sup>36</sup> Furthermore, the fact that Leap intends to provide broadband services, and not traditional voice services, to these sparsely-populated areas furthers the Commission’s goal of

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<sup>28</sup> DE Committee Reply Comments at 10.

<sup>29</sup> See note 19, *supra*. See also, “Spring and Lucent Technologies Conduct Fastest 3G Data Call in the U.S. on Sprint PCS Wireless Network,” Press Release, Lucent Technologies dated April 10, 2001; and “CDMA Carriers Face Standards Conundrum,” Telephony, dated September 10, 2001.

<sup>30</sup> Amended Extension Request at 6.

<sup>31</sup> *Id.*

<sup>32</sup> See, e.g., *PCS MO&O* at 5018 (“ensure that PCS service is made available to as many communities as possible and that spectrum is used efficiently”).

<sup>33</sup> See 47 U.S.C. § 309(j)(4)(B).

<sup>34</sup> Markets with similar densities include Garden City, KS; Big Spring, TX; Selma, AL; and Fargo, ND.

<sup>35</sup> The top 100 out of 487 markets represent approximately 70% of the total U.S. population. Our analysis herein focused on the 487 BTAs encompassing the fifty States. We note that there are an additional six BTAs that make up U.S. territories and possessions.

<sup>36</sup> The top 110 counties make up approximately 45% of the total U.S. population.

bringing advanced services to rural areas.<sup>37</sup> Because a limited extension would promote the provision of advanced services to these sparsely-populated areas, we find that it is in the public interest, but emphasize that we make this determination based on the totality of the circumstances presented to us, and not based solely on this point alone.

13. We also find that an extension is supported by the fact that Leap has demonstrated diligence in its acquisition and construction of the Data Licenses. After being unsuccessful in acquiring spectrum in Commission auctions for several of the markets it wished to serve, Leap turned to the post-auction secondary spectrum markets, purchasing unconstructed licenses with only 7-18 months left before the construction deadlines.<sup>38</sup> The opposing parties argue that Leap acquired the licenses with the knowledge that it was required to meet the requisite construction benchmarks within the period set forth by section 24.203 of the Commission's rules, and therefore, should be held to those benchmarks.<sup>39</sup> The DE Committee also cites section 1.946(e)(3), which states that "the Commission will not grant extension requests solely to allow a transferee or assignee to complete facilities that the transferor or assignor failed to construct."<sup>40</sup> In this case, however, the relatively short time between Leap's acquisition of licenses and the construction deadlines is not the "sole" or even a significant factor in our analysis. Based on the record before us, we find no evidence that Leap purchased the licenses with the intent of obtaining an extension, but rather all indications are that Leap intended to construct these markets within the established deadlines. This is evidenced by Leap's site planning, market research, and deployment in the markets it acquired. Moreover, at the time it filed its Extension Request, Leap was providing service in fourteen other markets,<sup>41</sup> and since filing the original request, Leap has accelerated its construction efforts, as witnessed by the withdrawal of ten licenses from its original request. While we agree with the opposing parties that site acquisition and construction problems do not always justify an extension, we believe Leap has demonstrated its commitment to providing service and has acted with diligence in attempting to overcome obstacles to construction in a very short timeframe. Leap's diligence and intent in constructing the markets is one factor, among those discussed herein that, in the aggregate, warrant waiver of the construction deadline.

14. We disagree with opposing parties who argue that grant of a waiver would be unfair to other licensees who spent resources and capital to timely meet the benchmarks and to other parties who might have sought the opportunity to purchase the instant licenses in the secondary market. All parties holding and pursuing PCS licenses were similarly situated in that they had access to the same information, including the prior statements by the Commission that it would entertain limited waivers of the PCS construction rules under certain unique circumstances, including service to sparsely-populated areas, so long as it is in the public interest. To date, very few parties have sought waivers of the PCS construction deadlines. For those who do seek relief, we will consider each request on a case-by-case basis with emphasis on the specific facts and circumstances that may warrant a waiver. In this way, the Commission treats all license holders, as well as potential license holders, in the same manner.

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<sup>37</sup> See Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, CC Docket No. 98-146, *Second Report*, 15 FCC Rcd. 20913, 20996, 21008 (2000).

<sup>38</sup> *Id.* at 3, 12-13. For 20 of the 23 licenses, Leap had 13 months from Commission consent until the deadline. For 2 of the 23 licenses (the two that Leap is requesting an 11-month extension), Leap had 7 months from Commission consent until the deadline. For the last license, Leap had 18 months from final Commission consent until the deadline.

<sup>39</sup> The DE Committee argues that Leap acquired the licenses at a discount that took into account the short period of time to construct the licenses. DE Committee Comments at 10-11.

<sup>40</sup> 47 C.F.R. § 1.946(e)(3).

<sup>41</sup> Extension Request at 1.

15. Finally, we also disagree with opposing parties who argue that granting relief will disrupt the auction licensing process by allowing Leap to retain licenses that otherwise would be returned to the Commission for reauctioning. Given Leap's intended deployment of advanced services in relatively small and rural markets and the fact that the HDR technology will be available for deployment in less than a year, we conclude that denial of this extension request would only cause delay of technologically innovative services to these markets. We, therefore, find that it is in the public interest to extend Leap's construction deadline six months for twenty-one of the Data Licenses and eleven months for two of the Data Licenses (*i.e.*, to extend the deadline for all twenty-three Data Licenses until October 24, 2002).

## B. Licenses Deploying Voice Service

16. As explained below, we also find that the totality of the record supports a limited waiver of the five-year coverage requirements for Leap's six Voice Licenses. We find that the underlying purpose of the construction rules – in particular, the provision of PCS service to sparsely-populated areas – will be ill-served by strict application of the rule and that an extension would serve the public interest because it will further competition among wireless carriers and provide a wireless alternative to wireline service in mid- and small-sized markets. Therefore, by this Order, we extend the deadline for meeting the five-year coverage requirements of the Voice Licenses to February 28, 2002.

17. Several of the factors for granting an extension of the Data Licenses also apply to the six Voice Licenses. As in the Data Markets, promoting construction of wireless systems in the Voice Markets furthers the Commission's stated goal of facilitating nationwide PCS services, especially in sparsely populated areas.<sup>42</sup> In this connection, Leap describes the six Voice Markets as small to mid-sized markets. In fact, none of these markets have a total population within the top 50 U.S. markets,<sup>43</sup> and there are no counties in the Voice Markets that have a total population within the top 90 counties.<sup>44</sup>

18. A limited extension of time to construct the Voice Licenses would also promote competition among wireless carriers and competition with wireline local telephone service in these markets. According to Leap, its "Cricket" service, which offers consumers flat-rate, unlimited voice services within the local calling area without roaming, is a viable alternative to wireline telephone service for many subscribers.<sup>45</sup> Furthermore, as the Commission has previously noted, Leap's "Cricket" service has encouraged other wireless providers to develop similar offerings.<sup>46</sup> Even though many areas within the instant markets already have multiple competing wireless carriers, we believe it benefits consumers to have as many choices (both in terms of providers and services) as possible in order to promote vigorous competition in the marketplace. Further, Leap points out that, based on experience in other areas of the country, many of Leap's potential customers are consumers who have never purchased wireless service before.<sup>47</sup> So, even if Leap's Cricket service is not technologically innovative, Leap's approach to

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<sup>42</sup> See, e.g., *PCS MO&O* at 5018 ("ensure that PCS service is made available to as many communities as possible and that spectrum is used efficiently").

<sup>43</sup> The top 50 markets represent approximately 60% of the total U.S. population, with the average population of those markets being approximately 3,315,000. The population of the largest Leap Voice Market, Grand Rapids, MI, has less than 33% of the average population in the top 50 markets.

<sup>44</sup> The top 90 counties make up approximately 40% of the total U.S. population.

<sup>45</sup> Extension Request at 1.

<sup>46</sup> See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, *Sixth Report*, FCC 01-192 (rel. Jul 17, 2001) at 34.

<sup>47</sup> Extension Request at 2.

reaching consumers who may be generally overlooked by larger carriers has the potential to increase the diversity in services offered in these markets.

19. Also similar to the Data Markets, we find that an extension is supported by the fact that Leap has demonstrated diligence in its acquisition and construction of the Voice Licenses. The record reflects that Leap diligently pursued these licenses over several years and was only recently able to acquire them because the licenses were tied up in a bankruptcy proceeding.<sup>48</sup> We conclude that much of the timing of the acquisition was beyond Leap's control. The record also reflects that Leap has made significant steps to deploy service in these markets, despite the short period of time since acquiring the licenses. Leap has ordered equipment, is in the process of acquiring sites and obtaining permits over large geographic areas, and will begin construction and deployment as soon as practical. Moreover, for five of the six markets, Leap asserts that, after less than four additional months, it will far exceed the minimum coverage requirement.<sup>49</sup> Therefore, based on the record before us, we believe that Leap has sufficiently demonstrated its commitment to providing voice services to these markets, and find that an extension of slightly less than four months (*i.e.*, until February 28, 2002) to meet the coverage requirements for the six Voice Licenses is in the public interest.

20. Finally, we do not agree with one of the commenters that Leap's request for an extension requires the Commission to provide a blanket waiver of the broadband PCS construction rules to allow an additional year for all carriers to meet their five-year construction requirements.<sup>50</sup> Neither Leap nor the commenting parties provided the Commission with any evidence that there is an industry-wide problem with complying with the construction requirements that would require such a blanket extension.<sup>51</sup> Moreover, we find that revisiting the construction requirements for PCS or wireless licensees in general is beyond the scope of this proceeding.<sup>52</sup>

### C. Continued Restrictions on C-Block and F-Block Licenses

21. Section 24.839(a) of the Commission's rules prohibits the transfer of control or assignment of C- and F-block broadband PCS licenses unless certain conditions are met, including the filing of the application for assignment or transfer of control no sooner than five years after the date of the initial license grant or following the licensee's notification to the Commission that its five-year construction requirement has been satisfied.<sup>53</sup> Moreover, section 1.2111 of the Commission's rules requires that unjust enrichment payments be made to the Commission in circumstances in which C- and F-block licenses are transferred or assigned prior to five years from the date of initial license grant.<sup>54</sup> One

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<sup>48</sup> Leap attempted to acquire the licenses from a bankruptcy court-ordered sale of PCS licenses held by DCR PCS, Inc., a subsidiary of Pocket Communications, Inc. *See* Extension Request at 3-4. The licenses were ultimately purchased by affiliates of Cook Inlet (collectively, "Cook Inlet") on October 12, 2000. Leap immediately began negotiations to acquire the licenses from Cook Inlet, resulting in the parties coming to a final agreement on October 15, 2000.

<sup>49</sup> Leap asserts that, after four additional months, it would achieve: 71% coverage in Grand Rapids, MI (BTA169); 53% coverage in Jackson, MI (BTA209); 63% coverage in Muskegon, MI (BTA310); 34% coverage in Sandusky, OH (BTA403); and 65% coverage in Toledo, OH (BTA444). *See* Amended Extension Request, Exhibit A.

<sup>50</sup> Alpine PCS Comments at 1-2.

<sup>51</sup> In fact, the Commission has received a number of construction notifications recently from broadband PCS licensees and only a very small number of requests for extensions of time to construct.

<sup>52</sup> RTG Comments at 2.

<sup>53</sup> 47 C.F.R. § 24.839(a).

<sup>54</sup> 47 C.F.R. § 1.2111.



commenting party suggested that “the Commission can preserve the integrity of the entrepreneur’s block” by extending these prohibitions as a condition for the extension of time to construct.<sup>55</sup> We agree that these restrictions were intended to coincide with the completion of the five-year construction requirement for broadband PCS licensees.<sup>56</sup> Therefore, because we extend the five-year coverage deadline for certain C- and F-block licenses for Leap, we likewise extend the prohibition of section 24.839 against the transfer of control or assignment of those licenses to non-eligible entities, and the unjust enrichment payment requirements of section 1.2111, for the period of the extension, or until Leap notifies the Commission that it has satisfied the five-year construction requirement for those licenses.

#### IV. ORDERING CLAUSES

22. Accordingly, IT IS ORDERED, pursuant to authority delegated by section 4(i) of the Communications Act, as amended, 47 U.S.C. § 154(i), and by sections 0.331, 1.925, and 1.946 of the Commission’s rules, 47 C.F.R. §§ 0.331, 1.925, 1.946, that the request for waiver and extension of time to comply with the construction requirements for broadband PCS licenses filed by Leap Wireless International, Inc., on behalf of itself and its affiliates and subsidiaries, IS HEREBY GRANTED to the extent described herein, conditioned on the following: (1) Leap Wireless International, Inc. must provide a progress report to the Chief of the Commercial Wireless Division, Wireless Telecommunications Bureau, no later than May 1, 2002, describing the progress toward meeting the construction requirements for the Data Licenses, including, but not limited to, schedules for the delivery and deployment of the HDR infrastructure and subscriber equipment; and (2) the deployment of advanced data services in substantially the same manner described in waiver/extension request that is the subject of the instant proceeding.

23. IT IS FURTHER ORDERED, pursuant to authority delegated by section 4(i) of the Communications Act, as amended, 47 U.S.C. § 154(i), and by section 0.331 of the Commission’s rules, 47 C.F.R. § 0.331, that the requirements of sections 1.2111 and 24.839 of the Commission’s rules, 47 C.F.R. §§ 1.2111, 24.839, be extended for the C- and F-block licenses held by Leap Wireless International, Inc. and its affiliates and subsidiaries, as described herein.

FEDERAL COMMUNICATIONS COMMISSION

William W. Kunze  
Chief, Commercial Wireless Division  
Wireless Telecommunications Bureau

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<sup>55</sup> ComSpace Reply Comments at 2-3.

<sup>56</sup> See Amendment of the Commission’s Rules Regarding Installment Financing for Personal Communications Services (PCS) Licensees, WT Docket No. 97-82, *Sixth Report and Order and Order on Reconsideration*, 15 FCC Rcd. 16266, 16290-91 (2000).



## ATTACHMENT A

## VOICE LICENSES

Licensee	Market	Call Sign
Leap Wireless International, Inc.	BTA005	KNLF487
Cricket Licensee (Reaction), Inc.	BTA169	KNLF500
Cricket Licensee (Reaction), Inc.	BTA209	KNLF505
Cricket Licensee (Reaction), Inc.	BTA310	KNLF516
Cricket Licensee (Reaction), Inc.	BTA403	KNLF523
Cricket Licensee (Reaction), Inc.	BTA444	KNLF528

## DATA LICENSES

Licensee	Market	Call Sign
Cricket Licensee III, Inc.	BTA018	KNLG966
Cricket Licensee I, Inc.	BTA033	KNLF488
Leap Wireless International, Inc.	BTA037	KNLG967
Leap Wireless International, Inc.	BTA054	KNLG968
Cricket Licensee IV, Inc.	BTA119	KNLG970
Cricket Licensee III, Inc.	BTA123	KNLG971
Leap Wireless International, Inc.	BTA132	KNLG972
Leap Wireless International, Inc.	BTA194	KNLG976
Leap Wireless International, Inc.	BTA206	KNLG977
Leap Wireless International, Inc.	BTA207	KNLG978
Leap Wireless International, Inc.	BTA207	KNLG979
Cricket Licensee III, Inc.	BTA234	KNLG983
Cricket Licensee (Lakeland) Inc.	BTA239	KNLG741
Leap Wireless International, Inc.	BTA279	KNLG985
Leap Wireless International, Inc.	BTA282	KNLG986
Cricket Licensee (Reaction), Inc.	BTA307	KNLG668
Cricket Licensee II, Inc.	BTA310	KNLG669
Leap Wireless International, Inc.	BTA349	KNLF520
Leap Wireless International, Inc.	BTA409	KNLG988
Leap Wireless International, Inc.	BTA409	KNLG989
Cricket Licensee III, Inc.	BTA432	KNLG253
Leap Wireless International, Inc.	BTA432	KNLG991
Cricket Licensee (Reaction), Inc.	BTA446	KNLG671

## WITHDRAWN LICENSES

Licensee	Market	Call Sign
Leap Wireless International, Inc.	BTA005	KNLG673
Cricket Licensee II, Inc.	BTA033	KNLF898
Cricket Licensee (Reaction), Inc.	BTA145	KNLG663
Cricket Licensee II, Inc.	BTA169	KNLG664
Cricket Licensee II, Inc.	BTA208	KNLG665
Cricket Licensee II, Inc.	BTA223	KNLG666
Cricket Licensee II, Inc.	BTA241	KNLG667
Cricket Licensee II, Inc.	BTA390	KNLG670
Leap Wireless International, Inc.	BTA455	KNLG672
Cricket Licensee (Reaction), Inc.	BTA458	KNLF734