

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

Petition for Arbitration of Unresolved)
Issues in a Section 251(b)(5) Agreement) Case No. _____
with Leap Wireless International, Inc. and)
Cricket Communications, Inc.)

**VERIFIED PETITION
FOR ARBITRATION OF A TRAFFIC TERMINATION AGREEMENT
UNDER THE TELECOMMUNICATIONS ACT OF 1996**

COMES NOW Lathrop Telephone Company (“Petitioner”) pursuant to the Telecommunications Act of 1996 (the “Act”), 47 U.S.C. §§251 and 252, Federal Communications Commission (“FCC”) Rule 47 C.F.R §20.11, and Missouri Public Service Commission (“Commission”) Rule 4 CSR 240-36.040, and for its Petition for Arbitration of unresolved issues remaining in the negotiation between Petitioner and Leap Wireless International, Inc. and Cricket Communications, Inc. (“Cricket” or “Respondent”) for a Traffic Termination Agreement (“the Agreement”) states to the Commission as follows:

I. INTRODUCTION

1. Petitioner is small rural local exchange carrier (LEC) operating in the State of Missouri. In Case No. TC-2002-1077, Petitioner filed a Certificate from the Missouri Secretary of State showing that it is in good standing in the State of Missouri which Petitioner requests be incorporated by reference in this case. Petitioners’ legal name, mailing address, and contact person are as follows:

Lathrop Telephone Company
Rod Cotton
P.O. Box 167
Princeton, MO 64673
rcotton@grm.net

Petitioner is a telecommunications carrier as defined by the Act, providing “basic local telecommunications services” and “exchange access services”, as those terms are defined in Section 386.020, RSMo 2000. Petitioner has no pending actions or final unsatisfied judgments or decisions against it in any state or federal agency or court which involve customer service or rates for which action, judgment, or decision has occurred within three (3) years of the date of this Petition. Petitioner has no overdue annual reports or Commission assessment fees.

2. All communications and submissions in this proceeding should be served upon the following designated contacts for the Petitioners:

W.R. England, III/Brian T. McCartney
Brydon, Swearingen & England, P.C.
312 East Capitol Avenue, P.O. Box 456
Jefferson City, MO 65102-0456
trip@brydonlaw.com
bmccartney@brydonlaw.com
(573) 635-7166
(573) 634-7431 (Fax)

3. Petitioner provides telecommunications service in rural areas of Missouri. As part of this service, Petitioner provides the facilities and services necessary to complete wireless-originated calls to customers in its Missouri exchange. The wireless-originated traffic is terminated to Petitioner over common trunk groups owned by AT&T Missouri (f/k/a Southwestern Bell Telephone Company d/b/a SBC).

4. Respondent is a commercial mobile radio service (“CMRS” or “wireless”) telecommunications provider operating in the State of Missouri and delivering wireless-originated calls for termination to Petitioner’s Missouri exchange. To best of Petitioner’s knowledge and belief Respondent Leap Wireless International, Inc. operates in Missouri

through its subsidiary Cricket Communications, Inc. under the name(s) of Cricket and/or Jump Mobile.

5. On the same date that this Petition is filed it is being served upon the following contact for Respondent:

Dan Graf
Leap Wireless International, Inc.
Director of Interconnect
10307 Pacific Center Court
San Diego, CA 92121
dgraf@leapwireless.com

6. On April 23, 2007, Petitioner sent a request for negotiation to Respondent via both electronic mail and overnight delivery - Federal Express. (See Attachment A, which is attached to and incorporated within this document.)

7. Negotiations have failed to produce a voluntary agreement as to all terms of a Traffic Termination Agreement.

8. Petitioner is filing this petition with the Commission more than 135 days and less than 160 days after Petitioner sent the request for negotiation and had it delivered to Respondent. The attached copy of the request for negotiation demonstrates that this Petition complies with the time requirements of 47 U.S.C. §252(b)(1) and 4 CSR 240-36.040(2). See Attachment A.

9. Petitioner has approved Traffic Termination Agreements with all major wireless carriers, including Alltel, Cingular, Nextel, Sprint PCS, T-Mobile, Verizon Wireless, and U.S. Cellular. Petitioner has provided Leap with all seven (7) of these approved Traffic Termination Agreements, but Leap has refused to identify any one of

those agreements as a starting point for negotiations or for purposes of an “opt-in” agreement. Therefore, a copy of Petitioner’s arbitrated agreement with T-Mobile is attached to this Petition as a proposed agreement. See Attachment B. This proposed Agreement includes the fundamental organizational clauses and subjects contained in numerous other negotiated agreements that this Commission has approved between similarly situated small rural telephone companies and other similarly situated CMRS Providers. The proposed Agreement complies fully with both Missouri law and Section 252(e) of the Act because the proposed Agreement is consistent with the public interest, convenience and necessity, and it does not discriminate against any telecommunications carrier.

II. COMMISSION ARBITRATION AUTHORITY AND PROCEDURE

10. Under the Act, the Commission has the authority to arbitrate the issues remaining in a negotiation as requested by Petitioner. Specifically, Section 252(b) of the Act provides:

AGREEMENTS ARRIVED AT THROUGH COMPULSORY ARBITRATION.

(1) **ARBITRATION.** During the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State Commission to arbitrate any open issues.

47 U.S.C. §252.

11. 4 CSR 240-36.040 of the Rules and Regulations of the Public Service Commission sets forth the procedure for requesting and conducting arbitration.

III. UNRESOLVED ISSUES

12. Petitioner requests arbitration of the remaining unresolved issues in order to obtain an approved agreement and resolution of all issues which have surrounded the termination of wireless originated traffic and which will obviate future disputes for the term of the approved agreement. The following is a statement of each unresolved issue with a listing of both parties' positions on each unresolved issue as understood by Petitioner to the best of its knowledge and belief. This listing utilizes numbers corresponding to the sections of the proposed Agreement. Documentation supporting Petitioner's position is attached.

A. Form of Agreement (See Attachment B)

Petitioner has provided Respondent copies of all of its arbitrated and negotiated agreements with Alltel, Cingular, Nextel, Sprint PCS, T-Mobile, Verizon Wireless, and U.S. Cellular. Respondent has not yet chosen any of these agreements as a starting place for negotiations or for an "opt-in" agreement under the Telecommunications Act, so Petitioner is unable to determine whether the form of agreement will be an issue at this time. Therefore, for its proposed agreement Petitioner is attaching a copy of its arbitrated agreement with T-Mobile that was arbitrated and approved by the PSC as Attachment B.

B. Traffic Factor (*Appendix 1*)

The Parties disagree on the appropriate traffic factor for mobile-to-land/land-to-mobile (MTL/LTM) traffic. In other agreements, Petitioner has arbitrated or negotiated an acceptable traffic factor, but the parties have been unable to agree upon an appropriate MTL/LTM factor in this case. Lathrop has requested that Leap provide a

traffic study and/or provide NPA/NXX data so that Lathrop can conduct its own traffic study. To date, Leap has refused to provide a traffic study or NPA/NXX information that would allow Lathrop to conduct its own traffic study. Lathrop is unable to conduct a traffic study using OCN.

(1.) ***Petitioner's Position.*** Petitioner proposes to use an 80/20 MTL/LTM traffic factor with an agreement to true-up the factor in 3-6 months based on actual traffic studies.

(2.) ***Respondent's Position.*** Respondent has not agreed to a traffic factor and Respondent's last offer was for a 60/40 MTL/LTM split.

C. Other Issues

As of the filing date of this Petition, Respondent has not identified any other issues beyond the MTL/LTM factor, so Petitioner is unable at this time to state whether there are any other unresolved issues.

IV. CONCLUSION

WHEREFORE, Petitioner respectfully requests the Commission to issue an Order: (1) appointing an arbitrator to schedule an initial arbitration meeting as soon as possible and to resolve this matter; (2) adopting Petitioner's position on all issues and approving an Agreement setting forth both the voluntarily agreed terms and also the arbitrated matters and terms; and (3) granting such other relief as is reasonable under the circumstances.

RESPECTFULLY SUBMITTED,

/s/ Brian T. McCartney

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Brian T. McCartney Mo. #47788
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Attorneys for Petitioners

LIST OF ATTACHMENTS

Attachment A Request for Negotiation

Attachment B Proposed Agreement

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was sent by U.S. Mail, postage prepaid, and/or via electronic mail, or hand-delivered on this 27th day of September, 2007, to the following parties:

General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102
gencounsel@psc.mo.gov

Michael F. Dandino
Office of the Public Counsel
P.O. Box 7800
Jefferson City, Missouri 65102
opcservice@ded.mo.gov
mike.dandino@ded.mo.gov

Dan Graf
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10307 Pacific Center Court
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/s/ Brian T. McCartney

Brian T. McCartney