

LEAP WIRELESS INTERNATIONAL INC

Form POS AM

April 14, 2006

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As filed with the Securities and Exchange Commission on April 14, 2006

Registration No. 333-126246

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

**Post-Effective Amendment No. 1
to
Form S-1
REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933**

LEAP WIRELESS INTERNATIONAL, INC.
(Exact name of registrant as specified in its charter)

Delaware
*(State or other jurisdiction of
incorporation or organization)*

4812
*(Primary Standard Industrial
Classification Code Number)*

33-0811062
*(I.R.S. Employer
Identification Number)*

**10307 Pacific Center Court
San Diego, CA 92121
(858) 882-6000**
*(Address, including zip code, and telephone number, including area code, of
registrant's principal executive offices)*

**S. Douglas Hutcherson
Chief Executive Officer
Leap Wireless International, Inc.
10307 Pacific Center Court
San Diego, CA 92121
(858) 882-6000**
*(Name, address, including zip code, and telephone number,
including area code, of agent for service)*

Copies To:

**Barry M. Clarkson, Esq.
Latham & Watkins LLP
12636 High Bluff Drive, Suite 400
San Diego, CA 92130
(858) 523-5400**

Approximate date of commencement of proposed sale to the public:

From time to time after the effective date of this registration statement.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, as amended (the Securities Act), check the following box.

If this form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ____

If this form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ____

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ____

This Post-Effective Amendment No. 1 to the Registration Statement on Form S-1 (Ref. No. 333-126246) shall hereafter become effective in accordance with the provisions of Section 8(c) of the Securities Act of 1933, as amended.

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The information in this prospectus is not complete and may be changed. Neither we nor the selling stockholders may sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not soliciting offers to buy these securities in any state where the offer or sale is not permitted.

SUBJECT TO COMPLETION, DATED APRIL 14, 2006

PROSPECTUS

16,860,077 Shares

LEAP WIRELESS INTERNATIONAL, INC.

Common Stock

This prospectus relates to up to 16,860,077 shares of our common stock, par value \$0.0001 per share, which may be offered for sale from time to time by the selling stockholders named in this prospectus. The shares of common stock may be sold at fixed prices, prevailing market prices at the times of sale, prices related to the prevailing market prices, varying prices determined at the times of sale or negotiated prices. The shares of common stock offered by this prospectus and any prospectus supplement may be offered by the selling stockholders directly to investors or to or through underwriters, dealers or other agents. We will not receive any of the proceeds from the sale of the shares of common stock sold by the selling stockholders. We will bear all expenses of the offering of common stock, except that the selling stockholders will pay any applicable underwriting fees, discounts or commissions and transfer taxes.

Our common stock is listed for trading on the Nasdaq National Market, under the symbol LEAP. On April 13, 2006, the last reported sale price of our common stock on the Nasdaq National Market was \$47.05 per share.

Investing in our common stock involves risks. See Risk Factors beginning on page 5.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The date of this prospectus is , 2006

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ABOUT THIS PROSPECTUS

This prospectus is part of a resale registration statement that we filed with the Securities and Exchange Commission, or SEC, using a "shelf" registration process. The selling stockholders may offer and sell, from time to time, an aggregate of up to 16,860,077 shares of our common stock under the prospectus. In some cases, the selling stockholders will also be required to provide a prospectus supplement containing specific information about the selling stockholders and the terms on which they are offering and selling our common stock. We may also add, update or change in a prospectus supplement any information contained in this prospectus. You should read this prospectus and any accompanying prospectus supplement, as well as any post-effective amendments to the registration statement of which this prospectus is a part, together with the additional information described under "Where You Can Find More Information" before you make any investment decision.

You should rely only on the information contained in this prospectus. Neither we nor the selling stockholders have authorized anyone to provide you with information different from that contained in this prospectus. We are offering to sell, and seeking offers to buy, shares of our common stock only in jurisdictions where offers and sales are permitted. The information contained in this prospectus is accurate only as of the date of this prospectus, regardless of the time of delivery of this prospectus or any sale of our common stock.

As used in this prospectus, the terms we, our, ours and us refer to Leap Wireless International, Inc., a Delaware corporation and its wholly owned subsidiaries, unless the context suggests otherwise.

MARKET AND INDUSTRY DATA

This prospectus includes market and industry data and other statistical information, which are based on independent industry publications, government publications, reports by market research firms or other published independent sources. Some data are also based on our internal estimates, which are derived from our review of internal surveys as well as independent sources. We have not independently verified this information, or any of the data or analyses underlying such information, and cannot assure you of its accuracy and completeness in any respect. As a result, you should be aware that market and industry data set forth herein, and estimates and beliefs based on such data, may not be reliable. Unless otherwise specified, information relating to population and potential customers, or POPs, is based on 2006 population estimates provided by Claritas Inc.

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PROSPECTUS SUMMARY

This summary highlights selected information from this prospectus and does not contain all the information that you should consider before buying shares in this offering. You should read the entire prospectus carefully, especially Risk Factors and the financial statements and notes, before deciding to invest in shares of our common stock.

Our Company

Leap Wireless International, Inc., or Leap, together with its wholly owned subsidiaries, is a wireless communications carrier that offers digital wireless service in the United States of America, or the U.S., under the brands Cricket® and Jump Mobile. Leap conducts operations through its subsidiaries and has no independent operations or sources of operating revenue other than through dividends and distributions, if any, from its operating subsidiaries. The Cricket and Jump Mobile services are offered by Leap's wholly owned subsidiary, Cricket Communications Inc., or Cricket. The Cricket and Jump Mobile services are also offered in certain markets through Alaska Native Broadband 1 License, LLC, or ANB 1 License, a wholly owned subsidiary of Alaska Native Broadband 1, LLC, or ANB 1, a joint venture in which Cricket owns a 75% non-controlling interest. Although Cricket does not control ANB 1, it has agreements with it which allow Cricket to actively participate in the development of these markets and the provision of Cricket and Jump Mobile services in them.

Cricket Business Overview

We offer wireless voice and data services primarily under the brand Cricket on a flat-rate, unlimited-usage basis without requiring fixed-term contracts. At December 31, 2005, Cricket operated in 19 states and had approximately 1,668,000 customers, and the total potential customers, or POPs, covered by our networks in our operating markets was approximately 27.7 million. As of December 31, 2005, we and ANB 1 License owned wireless licenses covering a total of 70.0 million POPs in the aggregate. We are currently building out and launching the new markets that we and ANB 1 License have acquired, and we anticipate that our combined network footprint will cover over 42 million POPs by the end of 2006.

We believe that our business model is different from most other wireless companies, and that our services primarily target market segments underserved by traditional communications companies. Our Cricket service allows customers to make and receive unlimited calls for a flat monthly rate, without a fixed-term contract or credit check. Most other wireless service providers offer customers a complex array of rate plans that may include additional charges for minutes above a set maximum. This approach may result in monthly service charges that are higher than their customers expect or may cause customers to use the services less than they desire to avoid higher charges.

We have designed the Cricket service to appeal to customers who value unlimited mobile calling with a predictable monthly bill and who make the majority of their calls from within their local area. With wireless penetration in the U.S. estimated at approximately 70% as of December 31, 2005, the majority of existing wireless customers subscribe to post-pay services that require credit approval and a contractual commitment from the subscriber for a period of one year or greater. We believe that customers who require a significantly larger amount of voice usage than average, who are price-sensitive or who prefer not to enter into fixed-term contracts represent a large portion of the remaining growth potential in the U.S. wireless market. We believe we are able to serve this customer segment and generate significant adjusted OIBDA (operating income before depreciation and amortization) performance because of our high quality networks and low customer acquisition and operating costs.

Our premium Cricket service plan offers customers unlimited local and domestic long distance service combined with unlimited use of multiple calling features and messaging services for a flat rate of \$45 per month. We also offer a similar plan without calling features and messaging services for \$40 per month and a service which allows customers to make unlimited calls within a local calling area and receive unlimited calls from any area for a flat rate of \$35 per month. In June 2004 we began offering additional enhancements that include games and other improved data services. In April 2005 we added instant messaging and multimedia (picture) messaging to our

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product portfolio. In May 2005 we introduced our Travel Time[®] roaming option, for our customers who occasionally travel outside their Cricket service area.

We sell our Cricket handsets and service primarily through two channels: Cricket's own retail locations and kiosks (the direct channel); and authorized dealers and distributors, including premier dealers, local market authorized dealers, national retail chains and other indirect distributors (the indirect channel). As of December 31, 2005, we had 90 direct locations and 1,607 indirect distributors. Our direct sales locations were responsible for approximately 32% of our gross customer additions in 2005. Premier dealers, which sell Cricket products, usually exclusively, in stores that look and function similar to our company-owned stores, enhance the in-store experience for customers and expand our brand presence within a market. We had approximately 80 premier dealers deployed at December 31, 2005.

We believe that our business model can be expanded successfully into adjacent and new markets because we offer a differentiated service and an attractive value proposition to our customers at costs significantly lower than most of our competitors. By building or enhancing market clusters, we are able to increase the size of our unlimited local calling area for our customers, while leveraging our existing network investments to improve our economic returns. Examples of our market-cluster strategy include the Fresno, California market we recently launched to complement the Visalia and Modesto, California markets in our Central Valley cluster and the Oregon cluster we intend to create by contributing our Salem and Eugene, Oregon markets to a new joint venture, LCW Wireless, LLC, or LCW Wireless, which owns a license for Portland, Oregon. Examples of our strategic market expansion include the five licenses in central Texas, including Houston, Austin and San Antonio, and the San Diego, California license that we and ANB 1 License acquired in the FCC's Auction #58, all of which meet our internally developed criteria concerning customer demographics and population density which we believe will enable us to offer Cricket service on a cost-competitive basis in those markets.

Cricket Business Strategy

Our business strategy is to (1) target market segments underserved by traditional communications companies, (2) develop and evolve our product and service offerings, (3) build our brand awareness and improve the productivity of our distribution system and (4) enhance our current market clusters and expand into new geographic markets.

We have deployed a state-of-the-art 100% Code Division Multiple Access radio transmission technology, or CDMA 1xRTT, network in each of our markets that delivers high capacity and outstanding quality at a low cost, and that can be easily upgraded to support enhanced capacity. We recently announced our plans to begin deploying in 2006 CDMA2000[®] 1xEV-DO technology in certain existing and new Cricket markets as appropriate to support next generation high-speed data services, such as mobile content, location-based services and high-quality music downloads at speeds of up to 2.4 Megabits per second.

Corporate Information

Leap was formed as a Delaware corporation in June 1998 as a subsidiary of Qualcomm Incorporated, or Qualcomm. Qualcomm distributed the common stock of Leap in a spin-off distribution to Qualcomm's stockholders in September 1998. Under a license from Leap, the Cricket service was first introduced in Chattanooga, Tennessee in March 1999 by Chase Telecommunications, Inc., a company that Leap acquired in March 2000.

In April 2003, Leap, Cricket and substantially all of their subsidiaries filed voluntary petitions for relief under Chapter 11 in federal bankruptcy court. On August 16, 2004, our plan of reorganization became effective and we emerged from Chapter 11 bankruptcy. On that date, a new board of directors of Leap was appointed, Leap's previously existing stock, options and warrants were cancelled, Leap's long-term indebtedness was reduced substantially, and Leap issued 60 million shares of new Leap common stock to two classes of creditors. See Business Chapter 11

Proceedings Under the Bankruptcy Code. On June 29, 2005, Leap became listed on the Nasdaq National Market under the symbol LEAP.

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Our principal executive offices are located at 10307 Pacific Center Court, San Diego, California 92121 and our telephone number at that address is (858) 882-6000. Our principal websites are located at www.leapwireless.com, www.mycricket.com and www.jumpmobile.com. The information contained in, or that can be accessed through, our websites is not part of this prospectus.

Leap and the Leap logo design are U.S. registered trademarks of Leap. Cricket is a U.S. registered trademark of Cricket. In addition, the following are trademarks or service marks of Cricket: Unlimited Access, Unlimited Plus, Unlimited Classic, Jump, Travel Time, Cricket Clicks and the Cricket K.

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The Offering

Common stock offered by the selling stockholders	16,860,077 shares
Common stock outstanding before offering	61,212,528 shares
Common stock outstanding after the offering	61,212,528 shares
Use of proceeds	We will not receive any proceeds from this offering.
Registration rights	We have agreed to use all reasonable efforts to keep the shelf registration statement, of which this prospectus forms a part, effective and current until the date that all of the shares of common stock covered by this prospectus may be freely traded without the effectiveness of such registration statement.
Trading	Our common stock is listed for trading on the Nasdaq National Market under the symbol LEAP.
Risk factors	See Risk Factors and the other information in this prospectus for a discussion of the factors you should carefully consider before deciding to invest in our common stock.

The outstanding share information shown above is based on our shares outstanding as of April 10, 2006, and this information excludes:

600,000 shares of common stock issuable upon the exercise of outstanding warrants at an exercise price of \$16.83;

791,970 shares of common stock available for future issuance under our Employee Stock Purchase Plan;

2,075,519 shares of common stock reserved for issuance upon the exercise of outstanding stock options at a weighted average exercise price of \$30.21;

an aggregate of 1,519,983 shares of common stock available for future issuance under our 2004 Stock Option, Restricted Stock and Deferred Stock Unit Plan; and

additional shares of common stock constituting up to five percent of our outstanding shares, or 3,060,626 shares as of April 10, 2006, which we will be obligated to reserve for potential issuance to CSM Wireless, LLC upon the exercise of CSM's option to put its entire equity interest in LCW Wireless to our subsidiary, Cricket. Subject to certain conditions, we will be obligated to satisfy the put price in cash or in shares of our common stock, or a combination of cash and common stock, in our sole discretion. See Business Arrangements with LCW Wireless.

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RISK FACTORS

You should consider carefully the following information about the risks described below, together with the other information contained in this prospectus before you decide to buy the common stock offered by this prospectus. If any of the following risks actually occurs, our business, financial condition, results of operations and future growth prospects would likely be materially and adversely affected. In these circumstances, the market price of our common stock could decline, and you may lose all or part of the money you paid to buy our common stock.

Risks Related to Our Business and Industry

We Have Experienced Net Losses, and We May Not Be Profitable in the Future.

We experienced net losses of \$8.4 million and \$49.3 million (excluding reorganization items, net) for the five months ended December 31, 2004 and the seven months ended July 31, 2004, respectively. In addition, we experienced net losses of \$597.4 million for the year ended December 31, 2003, \$664.8 million for the year ended December 31, 2002 and \$483.3 million for the year ended December 31, 2001. Although we had net income of \$30.0 million for the year ended December 31, 2005, we may not generate profits in the future on a consistent basis, or at all. If we fail to achieve consistent profitability, that failure could have a negative effect on our financial condition.

We May Not Be Successful in Increasing Our Customer Base Which Would Negatively Affect Our Business Plans and Financial Outlook.

Our growth on a quarter-by-quarter basis has varied substantially in the past. We believe that this uneven growth generally reflects seasonal trends in customer activity, promotional activity, the competition in the wireless telecommunications market, our reduction in spending on capital investments and advertising while we were in bankruptcy, and varying national economic conditions. Our current business plans assume that we will increase our customer base over time, providing us with increased economies of scale. If we are unable to attract and retain a growing customer base, our current business plans and financial outlook may be harmed.

If We Experience High Rates of Customer Turnover or Credit Card Subscription or Dealer Fraud, Our Ability to Become Profitable Will Decrease.

Because we do not require customers to sign fixed-term contracts or pass a credit check, our service is available to a broader customer base than many other wireless providers and, as a result, some of our customers may be more likely to terminate service due to an inability to pay than the average industry customer, particularly during economic downturns. In addition, our rate of customer turnover may be affected by other factors, including the size of our calling areas, our handset or service offerings, customer care concerns, number portability and other competitive factors. Our strategies to address customer turnover may not be successful. A high rate of customer turnover would reduce revenues and increase the total marketing expenditures required to attract the minimum number of replacement customers required to sustain our business plan, which, in turn, could have a material adverse effect on our business, financial condition and results of operations.

Our operating costs can also increase substantially as a result of customer credit card and subscription fraud and dealer fraud. We have implemented a number of strategies and processes to detect and prevent efforts to defraud us, and we believe that our efforts have substantially reduced the types of fraud we have identified. However, if our strategies are not successful in detecting and controlling fraud in the future, it could have a material adverse impact on our financial condition and results of operations.

We Have Made Significant Investment, and Will Continue to Invest, in Joint Ventures and Designated Entities, including ANB 1 and LCW Wireless, That We Do Not Control.

In November 2004, we acquired a 75% non-controlling interest in ANB 1, whose wholly owned subsidiary was awarded certain licenses in Auction #58. In November 2005, we entered into an agreement pursuant to which we will acquire a 73.3% non-controlling interest in LCW Wireless, which owns a wireless license for the Portland, Oregon market and to which we expect to contribute two wireless licenses and our operating assets in Eugene and

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Salem, Oregon. Our participation in these joint ventures is structured as a non-controlling interest in order to comply with FCC rules and regulations. We have agreements with our joint venture partner in ANB 1 and we plan to have similar agreements in connection with future joint venture arrangements we may enter into that are intended to allow us to actively participate in the development of the business of the joint venture. However, these agreements do not provide us with control over the business strategy, financial goals, build-out plans or other operational aspects of any such joint venture. The FCC's rules restrict our ability to acquire controlling interests in such entities during the period that such entities must maintain their eligibility as a designated entity, as defined by the FCC. The entities that control the joint ventures may have interests and goals that are inconsistent or different from ours which could result in the joint venture taking actions that negatively impact our business or financial condition. In addition, if any of the other members of a joint venture files for bankruptcy or otherwise fails to perform its obligations or does not manage the joint venture effectively, we may lose our equity investment in, and any present or future rights to acquire the assets (including wireless licenses) of, such entity.

We Face Increasing Competition Which Could Have a Material Adverse Effect on Demand for the Cricket Service.

In general, the telecommunications industry is very competitive. Some competitors have announced rate plans substantially similar to Cricket's service plans (and have also introduced products that consumers perceive to be similar to Cricket's service plans) in markets in which we offer wireless service. In addition, the competitive pressures of the wireless telecommunications market have caused other carriers to offer service plans with large bundles of minutes of use at low prices which are competing with the predictable and unlimited Cricket calling plans. Some competitors also offer prepaid wireless plans that are being advertised heavily to demographic segments that are strongly represented in Cricket's customer base. These competitive offerings could adversely affect our ability to maintain our pricing and increase or maintain our market penetration. Our competitors may attract more customers because of their stronger market presence and geographic reach. Potential customers may perceive the Cricket service to be less appealing than other wireless plans, which offer more features and options. In addition, existing carriers and potential non-traditional carriers are exploring or have announced the launch of service using new technologies and/or alternative delivery plans.

In addition, some of our competitors are able to offer their customers roaming services on a nationwide basis and at lower rates. We currently offer roaming services on a prepaid basis. Many competitors have substantially greater financial and other resources than we have, and we may not be able to compete successfully. Because of their size and bargaining power, our larger competitors may be able to purchase equipment, supplies and services at lower prices than we can. As consolidation in the industry creates even larger competitors, any purchasing advantages our competitors have may increase, as well as their bargaining power as wholesale providers of roaming services.

We also compete as a wireless alternative to landline service providers in the telecommunications industry. Wireline carriers are also offering unlimited national calling plans and bundled offerings that include wireless and data services. We may not be successful in the long term, or continue to be successful, in our efforts to persuade potential customers to adopt our wireless service in addition to, or in replacement of, their current landline service.

The FCC is pursuing policies designed to increase the number of wireless licenses available in each of our markets. For example, the FCC has adopted rules that allow the partitioning, disaggregation or leasing of PCS and other wireless licenses, and continues to allocate and auction additional spectrum that can be used for wireless services, which may increase the number of our competitors.

We Have Identified Material Weaknesses in Our Internal Control Over Financial Reporting, and Our Business and Stock Price May Be Adversely Affected If We Do Not Remediate All of These Material Weaknesses, or If We Have Other Material Weaknesses in Our Internal Control Over Financial Reporting.

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In connection with their evaluations of our disclosure controls and procedures, our CEO and CFO have concluded that certain material weaknesses in our internal control over financial reporting existed as of September 30, 2004, December 31, 2004, March 31, 2005, June 30, 2005, September 30, 2005 and December 31, 2005 with

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respect to turnover and staffing levels in our accounting, financial reporting and tax departments (arising in part in connection with our now completed bankruptcy proceedings) and the preparation of our income tax provision.

With respect to turnover and staffing, we did not maintain a sufficient complement of personnel with the appropriate skills, training and company-specific experience to identify and address the application of generally accepted accounting principles in complex or non-routine transactions. Specifically, we have experienced staff turnover, and as a result, we have experienced a lack of knowledge transfer to new employees within our accounting, financial reporting and tax functions. In addition, we do not have a full-time director of our tax function. This control deficiency contributed to the material weakness concerning the preparation of our income tax provision described below. Additionally, this control deficiency could result in a misstatement of accounts and disclosures that would result in a material misstatement to our interim or annual consolidated financial statements that would not be prevented or detected. Accordingly, our management has determined that this control deficiency constitutes a material weakness.

With respect to the preparation of our income tax provision, we did not maintain effective controls over our accounting for income taxes. Specifically, we did not have adequate controls designed and in place to ensure the completeness and accuracy of the deferred income tax provision and the related deferred tax assets and liabilities and the related goodwill in conformity with generally accepted accounting principles. This control deficiency resulted in the restatement of our consolidated financial statements for the five months ended December 31, 2004 and the consolidated financial statements for the two months ended September 30, 2004 and the quarters ended March 31, 2005, June 30, 2005 and September 30, 2005, as well as audit adjustments to our 2005 annual consolidated financial statements. Additionally, this control deficiency could result in a misstatement of income tax expense, deferred tax assets and liabilities and the related goodwill that would result in a material misstatement to our interim or annual consolidated financial statements that would not be prevented or detected. Accordingly, our management has determined that this control deficiency constitutes a material weakness.

In connection with their evaluations of our disclosure controls and procedures, our CEO and CFO also previously concluded that certain material weaknesses in our internal control over financial reporting existed as of December 31, 2004 and March 31, 2005 with respect to the application of lease-related accounting principles, fresh-start reporting oversight, and account reconciliation procedures. We believe we have adequately remediated the material weaknesses associated with lease accounting, fresh-start reporting oversight and account reconciliation procedures.

Although we are engaged in remediation efforts with respect to the material weaknesses related to staffing levels and income tax provision preparation, the existence of one or more material weaknesses could result in errors in our financial statements, and substantial costs and resources may be required to rectify any internal control deficiencies. If we cannot produce reliable financial reports, investors could lose confidence in our reported financial information, the market price of our stock could decline significantly, we may be unable to obtain additional financing to operate and expand our business, and our business and financial condition could be harmed.

Our Internal Control Over Financial Reporting Was Not Effective as of December 31, 2005, and Our Business May Be Adversely Affected if We Are Not Able to Implement Effective Control Over Financial Reporting.

Section 404 of the Sarbanes-Oxley Act of 2002 requires companies to do a comprehensive evaluation of their internal control over financial reporting. To comply with this statute, we are required to document and test our internal control over financial reporting; our management is required to assess and issue a report concerning our internal control over financial reporting; and our independent registered public accounting firm is required to attest to and report on management's assessment. We were required to comply with Section 404 of the Sarbanes-Oxley Act in connection with the filing of our Annual Report on Form 10-K for the fiscal year ending December 31, 2005. We conducted a rigorous review of our internal control over financial reporting in order to become compliant with the requirements of

Section 404. The standards that must be met for management to assess our internal control over financial reporting are new and require significant documentation and testing. Our assessment identified the need for remediation of some aspects of our internal control over financial reporting. As described above, our internal control over financial reporting has been subject to certain material weaknesses in the past and is currently subject to

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material weaknesses related to staffing levels and preparation of our income tax provision. Our management concluded and our independent registered public accounting firm has attested and reported that our internal control over financial reporting was not effective as of December 31, 2005. If we are unable to implement effective control over financial reporting, investors could lose confidence in our reported financial information, we may be unable to obtain additional financing to operate and expand our business, and our business and financial condition could be harmed.

Our Primary Business Strategy May Not Succeed in the Long Term.

A major element of our business strategy is to offer consumers service plans that allow unlimited calls for a flat monthly rate without entering into a fixed-term contract or passing a credit check. However, unlike national wireless carriers, we do not seek to provide ubiquitous coverage across the U.S. or all major metropolitan centers, and instead have a smaller network footprint covering only the principal population centers of our various markets. This strategy may not prove to be successful in the long term. From time to time, we also evaluate our service offerings and the demands of our target customers and may modify, change or adjust our service offerings or offer new services. We cannot assure you that these service offerings will be successful or prove to be profitable.

We Expect to Incur Substantial Costs in Connection with the Build-Out of Our New Markets, and any Delays in the Build-Out of Our New Markets Could Adversely Affect Our Business.

Our ability to achieve our strategic objectives will depend in part on the successful, timely and cost-effective build-out of the networks associated with newly acquired FCC licenses, including those owned by ANB 1 License and LCW Wireless, into new markets that complement our clustering strategy or provide strategic expansion opportunities. Large scale construction projects such as the build-out of our new markets may suffer cost-overruns. In addition, the build-out of the networks may be delayed or adversely affected by a variety of factors, uncertainties and contingencies, such as natural disasters, difficulties in obtaining zoning permits or other regulatory approvals, our relationships with our joint venture partners, and the timely performance by third parties of their contractual obligations to construct portions of the networks. Any failure to complete the build-out of our new markets on budget or on time could delay the implementation of our clustering and strategic expansion strategies, and could have a material adverse effect on our results of operations and financial condition.

If We Are Unable to Manage Our Planned Growth, Our Operations Could Be Adversely Impacted.

We have experienced growth in a relatively short period of time and expect to continue to experience growth in the future in our existing and new markets. The management of such growth will require, among other things, continued development of our financial and management controls and management information systems, stringent control of costs, diligent management of our network infrastructure and its growth, increased spending associated with marketing activities and acquisition of new customers, the ability to attract and retain qualified management personnel and the training of new personnel. Failure to successfully manage our expected growth and development could have a material adverse effect on our business, financial condition and results of operations.

The Wireless Industry is Experiencing Rapid Technological Change, and We May Lose Customers if We Fail to Keep Up with These Changes.

The wireless communications industry is experiencing significant technological change, as evidenced by the ongoing improvements in the capacity and quality of digital technology, the development and commercial acceptance of wireless data services, shorter development cycles for new products and enhancements and changes in end-user requirements and preferences. In the future, competitors may seek to provide competing wireless telecommunications service through the use of developing technologies such as Wi-Fi, Wi-Max, and Voice over Internet Protocol, or

VoIP. The cost of implementing or competing against future technological innovations may be prohibitive to us, and we may lose customers if we fail to keep up with these changes.

For example, we have committed a substantial amount of capital to upgrade our network with 1xEV-DO technology to offer advanced data services. However, if such upgrades, technologies or services do not become commercially acceptable, our revenues and competitive position could be materially and adversely affected. We

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cannot assure you that there will be widespread demand for advanced data services or that this demand will develop at a level that will allow us to earn a reasonable return on our investment.

The Loss of Key Personnel and Difficulty Attracting and Retaining Qualified Personnel Could Harm Our Business.

We believe our success depends heavily on the contributions of our employees and on attracting, motivating and retaining our officers and other management and technical personnel. We do not, however, generally provide employment contracts to our employees. If we are unable to attract and retain the qualified employees that we need, our business may be harmed.

We have experienced higher than normal employee turnover in the past, in part because of our bankruptcy, including turnover of individuals at the most senior management levels. We may have difficulty attracting and retaining key personnel in future periods, particularly if we were to experience poor operating or financial performance. The loss of key individuals in the future may have a material adverse impact on our ability to effectively manage and operate our business.

Risks Associated with Wireless Handsets Could Pose Product Liability, Health and Safety Risks That Could Adversely Affect Our Business.

We do not manufacture handsets or other equipment sold by us and generally rely on our suppliers to provide us with safe equipment. Our suppliers are required by applicable law to manufacture their handsets to meet certain governmentally imposed safety criteria. However, even if the handsets we sell meet the regulatory safety criteria, we could be held liable with the equipment manufacturers and suppliers for any harm caused by products we sell if such products are later found to have design or manufacturing defects. We generally have indemnification agreements with the manufacturers who supply us with handsets to protect us from direct losses associated with product liability, but we cannot guarantee that we will be fully protected against all losses associated with a product that is found to be defective.

Media reports have suggested that the use of wireless handsets may be linked to various health concerns, including cancer, and may interfere with various electronic medical devices, including hearing aids and pacemakers. Certain class action lawsuits have been filed in the industry claiming damages for alleged health problems arising from the use of wireless handsets. In addition, interest groups have requested that the FCC investigate claims that wireless technologies pose health concerns and cause interference with airbags, hearing aids and other medical devices. The media has also reported incidents of handset battery malfunction, including reports of batteries that have overheated. Malfunctions have caused at least one major handset manufacturer to recall certain batteries used in its handsets, including batteries in a handset sold by Cricket and other wireless providers.

Concerns over radio frequency emissions and defective products may discourage the use of wireless handsets, which could decrease demand for our services. In addition, if one or more Cricket customers were harmed by a defective product provided to us by the manufacturer and subsequently sold in connection with our services, our ability to add and maintain customers for Cricket service could be materially adversely affected by negative public reactions.

There also are some safety risks associated with the use of wireless handsets while driving. Concerns over these safety risks and the effect of any legislation that has been and may be adopted in response to these risks could limit our ability to sell our wireless service.

We Rely Heavily on Third Parties to Provide Specialized Services; a Failure by Such Parties to Provide the Agreed Services Could Materially Adversely Affect Our Business, Results of Operations and Financial Condition.

We depend heavily on suppliers and contractors with specialized expertise in order for us to efficiently operate our business. In the past, our suppliers, contractors and third-party retailers have not always performed at the levels we expect or at the levels required by their contracts. If key suppliers, contractors or third-party retailers fail to comply with their contracts, fail to meet our performance expectations or refuse or are unable to supply us in the

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future, our business could be severely disrupted. Generally, there are multiple sources for the types of products we purchase. However, some suppliers, including software suppliers, are the exclusive sources of their specific products. In addition, we currently purchase a substantial majority of the handsets we sell from one supplier. Because of the costs and time lags that can be associated with transitioning from one supplier to another, our business could be substantially disrupted if we were required to replace the products or services of one or more major suppliers with products or services from another source, especially if the replacement became necessary on short notice. Any such disruption could have a material adverse affect on our business, results of operations and financial condition.

System Failures Could Result in Higher Churn, Reduced Revenue and Increased Costs, and Could Harm Our Reputation.

Our technical infrastructure (including our network infrastructure and ancillary functions supporting our network such as billing and customer care) is vulnerable to damage or interruption from technology failures, power loss, floods, windstorms, fires, human error, terrorism, intentional wrongdoing, or similar events. Unanticipated problems at our facilities, system failures, hardware or software failures, computer viruses or hacker attacks could affect the quality of our services and cause service interruptions. In addition, we are in the process of upgrading some of our internal network systems, including our billing system, and we cannot assure you that we will not experience delays or interruptions while we transition our data and existing systems onto our new systems. If any of the above events were to occur, we could experience higher churn, reduced revenues and increased costs, any of which could harm our reputation and have a material adverse effect on our business.

We May Not be Successful in Protecting and Enforcing Our Intellectual Property Rights.

We rely on a combination of patent, service mark, trademark, and trade secret laws and contractual restrictions to establish and protect our proprietary rights, all of which only offer limited protection. We endeavor to enter into agreements with our employees and contractors and agreements with parties with whom we do business in order to limit access to and disclosure of our proprietary information. Despite our efforts, the steps we have taken to protect our intellectual property may not prevent the misappropriation of our proprietary rights. Moreover, others may independently develop processes and technologies that are competitive to ours. The enforcement of our intellectual property rights may depend on any legal actions that we may undertake against such infringers being successful, but we cannot be sure that any such actions will be successful, even when our rights have been infringed.

We cannot assure you that our pending, or any future, patent applications will be granted, that any existing or future patents will not be challenged, invalidated or circumvented, that any existing or future patents will be enforceable, or that the rights granted under any patent that may issue will provide competitive advantages to us. Similarly, we cannot assure you that any trademark or service mark registrations will be issued with respect to pending or future applications or that any registered trademarks or service marks will be enforceable or provide adequate protection of our brands.

We May Be Subject to Claims of Infringement Regarding Telecommunications Technologies That Are Protected by Patents and Other Intellectual Property Rights.

Telecommunications technologies are protected by a wide array of patents and other intellectual property rights. As a result, third parties may assert infringement claims against us from time to time based on our general business operations or the specific operation of our wireless network. We generally have indemnification agreements with the manufacturers and suppliers who provide us with the equipment and technology that we use in our business to protect us against possible infringement claims, but we cannot guarantee that we will be fully protected against all losses associated with infringement claims. Whether or not an infringement claim was valid or successful, it could adversely affect our business by diverting management attention, involving us in costly and time-consuming litigation, requiring

us to enter into royalty or licensing agreements (which may not be available on acceptable terms, or at all), or requiring us to redesign our business operations or systems to avoid claims of infringement.

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A third party with a large patent portfolio has contacted us and suggested that we need to obtain a license under a number of its patents in connection with our current business operations. We understand that the third party has initiated similar discussions with other telecommunications carriers. We are evaluating the third party's position but have not yet reached a conclusion as to the validity of its position. If we cannot reach a mutually agreeable resolution with the third party, we may be forced to enter into a licensing or royalty agreement with the third party. We do not currently expect that such an agreement would materially adversely affect our business, but we cannot provide assurance to our investors about the effect of any such license.

Regulation by Government Agencies May Increase Our Costs of Providing Service or Require Us to Change Our Services.

The FCC regulates the licensing, construction, modification, operation, ownership, sale and interconnection of wireless communications systems, as do some state and local regulatory agencies. We cannot assure you that the FCC or any state or local agencies having jurisdiction over our business will not adopt regulations or take other enforcement or other actions that would adversely affect our business, impose new costs or require changes in current or planned operations. In particular, state regulatory agencies are increasingly focused on the quality of service and support that wireless carriers provide to their customers and several agencies have proposed or enacted new and potentially burdensome regulations in this area. In addition, we cannot assure you that the Communications Act of 1934, as amended, or the Communications Act, from which the FCC obtains its authority, will not be further amended in a manner that could be adverse to us.

Our operations are subject to various other regulations, including those regulations promulgated by the Federal Trade Commission, the Federal Aviation Administration, the Environmental Protection Agency, the Occupational Safety and Health Administration and state and local regulatory agencies and legislative bodies. Adverse decisions or regulations of these regulatory bodies could negatively impact our operations and costs of doing business. Because of our smaller size, governmental regulations and orders can significantly increase our costs and affect our competitive position compared to other larger telecommunications providers. We are unable to predict the scope, pace or financial impact of regulations and other policy changes that could be adopted by the various governmental entities that oversee portions of our business.

If Call Volume under Our Cricket Flat Price Plans Exceeds Our Expectations, Our Costs of Providing Service Could Increase, Which Could Have a Material Adverse Effect on Our Competitive Position.

Cricket customers currently use their handsets approximately 1,450 minutes per month, and some markets are experiencing substantially higher call volumes. We offer service plans that bundle certain features, long distance and unlimited local service for a fixed monthly fee to more effectively compete with other telecommunications providers. If customers exceed expected usage, we could face capacity problems and our costs of providing the services could increase. Although we own less spectrum in many of our markets than our competitors, we seek to design our network to accommodate our expected high call volume, and we consistently assess and try to implement technological improvements to increase the efficiency of our wireless spectrum. However, if future wireless use by Cricket customers exceeds the capacity of our network, service quality may suffer. We may be forced to raise the price of Cricket service to reduce volume or otherwise limit the number of new customers, or incur substantial capital expenditures to improve network capacity.

We May Be Unable to Acquire Additional Spectrum in the Future at a Reasonable Cost or on a Timely Basis.

Because we offer unlimited calling services for a fixed fee, our customers' average minutes of use per month is substantially above the U.S. wireless customer average. We intend to meet this demand by utilizing spectrum efficient technologies. There may come a point where we need to acquire additional spectrum in order to maintain an

acceptable grade of service or provide new services to meet increasing customer demands. However, we cannot assure you that additional spectrum would be made available by the FCC on a timely basis or that we will be able to acquire additional spectrum at auction or in the after-market at a reasonable cost. If such additional spectrum is not available to us at that time, our results of operations could be adversely affected.

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Future Declines in the Fair Value of Our Wireless Licenses Could Result in Future Impairment Charges.

During the three months ended June 30, 2003, we recorded an impairment charge of \$171.1 million to reduce the carrying value of our wireless licenses to their estimated fair value. However, as a result of our adoption of fresh-start reporting under American Institute of Certified Public Accountants' Statement of Position 90-7, Financial Reporting by Entities in Reorganization under the Bankruptcy Code, or SOP 90-7, we increased the carrying value of our wireless licenses to \$652.6 million at July 31, 2004, the fair value estimated by management based in part on information provided by an independent valuation consultant. During the year ended December 31, 2005, we recorded impairment charges of \$12.0 million.

The market values of wireless licenses have varied dramatically over the last several years, and may vary significantly in the future. In particular, valuation swings could occur if:

consolidation in the wireless industry allows or requires carriers to sell significant portions of their wireless spectrum holdings;

a sudden large sale of spectrum by one or more wireless providers occurs; or

market prices decline as a result of the bidding activity in upcoming FCC auctions, including the upcoming auction allocated for Advanced Wireless Services.

In addition, the price of wireless licenses could decline as a result of the FCC's pursuit of policies designed to increase the number of wireless licenses available in each of our markets. If the market value of wireless licenses were to decline significantly, the value of our wireless licenses could be subject to non-cash impairment charges. A significant impairment loss could have a material adverse effect on our operating income and on the carrying value of our wireless licenses on our balance sheet.

Declines in Our Operating Performance Could Ultimately Result in an Impairment of Our Indefinite-Lived Assets, Including Goodwill, or Our Long-Lived Assets, Including Property and Equipment.

We assess potential impairments to our long-lived assets, including property and equipment and certain intangible assets, when there is evidence that events or changes in circumstances indicate that the carrying value may not be recoverable. We assess potential impairments to indefinite-lived intangible assets, including goodwill and wireless licenses, annually and when there is evidence that events or changes in circumstances indicate that an impairment condition may exist. If we do not achieve our planned operating results, this may ultimately result in a non-cash impairment charge related to our long-lived and/or our indefinite-lived intangible assets. A significant impairment loss could have a material adverse effect on our operating results and on the carrying value of our goodwill or wireless licenses and/or our long-lived assets on our balance sheet.

We May Incur Higher Than Anticipated Inter-carrier Compensation Costs.

When our customers use our service to call customers of other carriers, we are required under the current inter-carrier compensation scheme to pay the carrier that serves the called party. Similarly, when a customer of another carrier calls one of our customers, that carrier is required to pay us. While in most cases we have been successful in negotiating agreements with other carriers that impose reasonable reciprocal compensation arrangements, some carriers have claimed a right to unilaterally impose what we believe to be unreasonably high charges on us. The FCC is actively considering possible regulatory approaches to address this situation but we cannot assure you that the FCC rulings will be beneficial to us. An adverse ruling or FCC inaction could result in carriers successfully collecting higher inter-carrier fees from us, which could adversely affect our business.

The FCC also is considering making various significant changes to the intercarrier compensation scheme to which we are subject. We cannot predict with any certainty the likely outcome of this FCC proceeding. Some of the alternatives that are under active consideration by the FCC could severely increase the interconnection costs we pay. If we are unable to cost-effectively provide our products and services to customers, our competitive position and business prospects could be materially adversely affected.

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Because Our Consolidated Financial Statements Reflect Fresh-Start Reporting Adjustments Made upon Our Emergence from Bankruptcy, Financial Information in Our Current and Future Financial Statements Will Not Be Comparable to Our Financial Information for Periods Prior to Our Emergence from Bankruptcy.

As a result of adopting fresh-start reporting on July 31, 2004, the carrying values of our wireless licenses and our property and equipment, and the related depreciation and amortization expense, among other things, changed considerably from that reflected in our historical consolidated financial statements. Thus, our current and future balance sheets and results of operations will not be comparable in many respects to our balance sheets and consolidated statements of operations data for periods prior to our adoption of fresh-start reporting. You are not able to compare information reflecting our post-emergence balance sheet data, results of operations and changes in financial condition to information for periods prior to our emergence from bankruptcy without making adjustments for fresh-start reporting.

Our Indebtedness Could Adversely Affect Our Financial Health.

We have now and will continue to have a significant amount of indebtedness. As of December 31, 2005, our total outstanding indebtedness under our secured credit facility was \$594.4 million. We also had \$110 million available for borrowing under our revolving credit facility (which forms part of our secured credit facility). To the extent we raise additional funds in the future, we expect to obtain much of such capital through debt financing. The existing indebtedness under our secured credit facility bears interest at a variable rate, but we have entered into interest rate swap agreements with respect to \$355 million of our indebtedness.

Our substantial indebtedness could have important consequences. For example, it could:

make it more difficult for us to satisfy our debt obligations;

increase our vulnerability to general adverse economic and industry conditions;

impair our ability to obtain additional financing in the future for working capital needs, capital expenditures, building out our network, acquisitions and general corporate purposes;