

LEAP WIRELESS INTERNATIONAL INC

Form 8-K

March 06, 2006

Table of Contents

**SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549**

**FORM 8-K
CURRENT REPORT**

**Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934**

Date of report (Date of earliest event reported): February 28, 2006

LEAP WIRELESS INTERNATIONAL, INC.

(Exact Name of Registrant as Specified in Charter)

Delaware

000-29752

33-0811062

(State or Other Jurisdiction of
Incorporation)

(Commission
File Number)

(I.R.S. Employer
Identification No.)

**10307 Pacific Center Court
San Diego, California 92121**

(Address of Principal Executive Offices)

(858) 882-6000

(Registrant's telephone number, including area code)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (*see* General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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TABLE OF CONTENTS

Item 2.02 Results of Operations and Financial Condition.

Item 4.02 Non-Reliance on Previously Issued Financial Statements or a Related Audit Report or Completed Interim Review.

Item 9.01. Financial Statements and Exhibits.

SIGNATURES

EXHIBIT 99.1

Table of Contents

Item 2.02 Results of Operations and Financial Condition.

On March 6, 2006, Leap Wireless International, Inc. (the Company) issued a press release announcing the intention to restate the financial statements contained in its previously filed Quarterly Reports on Form 10-Q for the periods ended September 30, 2004, March 31, 2005, June 30, 2005 and September 30, 2005, and the financial information as of and for the five months ended December 31, 2004 included in the financial statements contained in its Annual Report on Form 10-K for the year ended December 31, 2004. A copy of the press release is furnished and attached hereto as Exhibit 99.1 and is incorporated herein by reference. The information in this Item 2.02 and the exhibit attached hereto are being furnished and shall not be deemed filed for purposes of the Securities Exchange Act of 1934, as amended, nor shall it be deemed incorporated by reference in any filing under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, except as shall be expressly stated by specific reference in such filing.

Item 4.02 Non-Reliance on Previously Issued Financial Statements or a Related Audit Report or Completed Interim Review.

(a) On February 28, 2006, the management and Audit Committee of the Company concluded that (i) the financial information as of and for the five months ended December 31, 2004 included in the audited consolidated financial statements included in the Company's Annual Report on Form 10-K for the year ended December 31, 2004, and the unaudited interim consolidated financial statements included in each of the Company's Quarterly Reports on Form 10-Q for the quarterly periods ended September 30, 2004, March 31, 2005, June 30, 2005 and September 30, 2005, should be restated to correct for errors identified during the preparation of the Company's annual income tax provision for the year ended December 31, 2005, and (ii) because of these errors such previously filed financial statements should no longer be relied upon.

The restatements result from: (i) errors in the calculation of the tax bases of certain wireless licenses and deferred taxes associated with tax deductible goodwill, (ii) errors in the accounting for the release of the valuation allowance on deferred tax assets recorded in fresh-start reporting, and (iii) the determination that the netting of deferred tax assets associated with wireless licenses against deferred tax liabilities associated with wireless licenses was not appropriate, as well as the resulting error in the calculation of the valuation allowance on the license-related deferred tax assets. These errors arose in connection with the Company's implementation of fresh-start reporting on July 31, 2004 pursuant to Statement of Position 90-7, Financial Reporting by Entities in Reorganization under the Bankruptcy Code.

These errors were identified by management during the Company's preparation of its annual income tax provision for the year ended December 31, 2005. The adjustments result from the correction of accounting errors and are not attributable to any misconduct by Company employees.

The Company has not yet completed its assessment of the items described above. However, the Company expects that the correction of these errors will result in non-cash adjustments to the Company's goodwill, other long-term liabilities, accumulated deficit, income tax expense, net income (loss), comprehensive income (loss) and basic and diluted net income (loss) per share. The restatements are not expected to affect previously reported revenues, operating income or cash flows from operations, or to impact cash taxes paid or owed. The Company plans to include restated financial information for all of the periods described above in its upcoming Annual Report on Form 10-K for the year ended December 31, 2005, and to amend its Quarterly Reports on Form 10-Q for the fiscal quarters ended March 31, 2005, June 30, 2005 and September 30, 2005 shortly following the filing of its 2005 Annual Report on Form 10-K.

Table of Contents

The adjustments to be made to the Company's financial statements for the five months ended December 31, 2004 and the nine months ended September 30, 2005 are expected to fall within the ranges summarized below. There can be no assurance, however, that final results will not differ materially from these preliminary findings:

	<u>As of and for the five months ended December 31, 2004 (in thousands, except per share data)</u>	<u>As of and for the nine months ended September 30, 2005 (in thousands, except per share data)</u>
Increase in goodwill	\$120,000 to \$135,000	\$100,000 to \$115,000
Increase in other long-term liabilities	\$120,000 to \$135,000	\$ 85,000 to \$100,000
Decrease in income tax expense	\$ 500 to \$ 1,500	\$ 16,000 to \$ 19,000
Improvement in net income (loss)	\$ 500 to \$ 1,500	\$ 16,000 to \$ 19,000
Improvement in net income (loss) per diluted share	\$0.00 to \$0.02	\$0.26 to \$0.31

The restatements described above may result in defaults under the \$710 million senior secured credit agreement among Cricket Communications, Inc., Leap Wireless International, Inc., Bank of America, N.A. and a syndicate of lenders. We expect to continue to make scheduled payments of principal and interest under such credit agreement. We intend to obtain waivers of the potential defaults resulting from the restatements from the required lenders under the credit agreement. Unless waived by the required lenders, an event of default would permit the administrative agent to exercise its remedies under the credit agreement, including declaring all outstanding debt under the agreement to be immediately due and payable. We believe that the required lenders will agree to waive any defaults that may occur as a result of the restatements, however, such actions cannot be assured.

We previously reported that our disclosure controls and procedures were ineffective as of September 30, 2004, December 31, 2004, March 31, 2005, June 30, 2005 and September 30, 2005 due to the existence of material weaknesses in our internal control over financial reporting at those dates. We had reported that the Company's accounting and financial reporting functions required additional personnel with appropriate skills and training and Company-specific experience to identify and address the application of technical accounting literature as of each of the dates listed above and that we had inadequate oversight of the fresh-start reporting adjustments recorded as of July 31, 2004 in connection with the Company's emergence from bankruptcy. These control deficiencies could result in a misstatement of accounts or disclosures that would result in a material misstatement to the Company's interim or annual consolidated financial statements that would not be prevented or detected, and management concluded that the control deficiencies that existed as of each of the dates listed above constituted material weakness. While the Company has not yet completed the evaluation of the internal control implications of the restatements described in this Current Report on Form 8-K, our management believes that these restatements are an additional effect of the material weaknesses previously reported.

The Company's management and Audit Committee have discussed the matters disclosed in this Current Report on Form 8-K with the Company's independent registered public accounting firm.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

Exhibit No.	Description
99.1	Press Release, dated March 6, 2006

Table of Contents

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

LEAP WIRELESS INTERNATIONAL, INC.

Date: March 6, 2006

By /s/ Dean Luvisa

Name: Dean Luvisa

Title: Acting Chief Financial Officer