BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
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Developing a Unified Intercarrier Compensation Regime	)	**CC Docket No. 01-92**
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REPLY COMMENTS OF LEAP WIRELESS INTERNATIONAL, INC.

Leap Wireless International, Inc., on behalf of itself and its affiliated entities (collectively, "Leap"), hereby offers these reply comments in connection with the above-captioned Notice of Proposed Rulemaking.[1] Leap believes that "bill and keep" is the optimal compensation arrangement among carriers, but that the market power enjoyed by ILECs often leads private negotiations between CMRS carriers and ILECs often to achieve a sub-optimal result. The Commission should therefore address this market failure by instituting a bill and keep compensation scheme.

I. BACKGROUND

Leap is an Entrepreneurs' Block licensee and a Small Business under the Commission's rules.[2] It holds C, D, E and F block PCS licenses in a number of BTAs

[1] Developing a Unified Intercarrier Compensation Regime, CC Dkt. No. 01-92, *Notice of Proposed Rulemaking* (rel. Apr. 27, 2001) (the "Notice").

[2] *See* AirGate Wireless L.L.C. and Cricket Holdings, Inc., *Memorandum Opinion and Order*, 14 FCC Rcd 11,827 (WTB 1999), *aff'd*, Applications of AirGate Wireless, L.L.C., et al., FCC File Nos. 0000002035, et al. *Memorandum Opinion and Order* (rel. July 27, 2000).

throughout the United States, primarily in small to midsized markets that larger carriers regard as "second tier." Leap began offering service in Chattanooga in 1999, and has now expanded to provide wireless service to nearly half a million customers in 26 BTAs throughout the United States. Leap is currently engaged in an aggressive program of build-out in its various markets, and will launch service in a new market approximately once every two weeks between now and the close of 2001.

Leap provides service under the Cricket® brand, a service concept unlike most traditional wireless offerings, that has proven to be extremely successful with consumers. Cricket subscribers receive *unlimited* local airtime for one low monthly fee - $29.95 to $34.95, depending upon the market. This extraordinary value is particularly appealing to the mass consumer market; a demographic that has been left relatively underserved by more expensive traditional service offerings. Many of Cricket's customers are blue-collar or clerical workers and have relatively low incomes.

Leap's success shows that it has been able to reach out and bring unique value to this previously underserved demographic. Seventy percent of Cricket customers have never had wireless service before. Yet they embrace the Cricket model, which delivers an all-digital, crystal-clear signal with few blocked or dropped calls. The simple one-rate, all-you-can-talk billing structure provides predictability and certainty to consumers who might be scared off by unexpected airtime fees or roaming charges, and it is familiar to every user of wireline service.

In fact, Leap provides a service that resembles wireline telephony in everything except its immobility. Unsurprisingly, Leap often finds itself competing with landline carriers for customers. The average Cricket subscriber uses almost 1,200 minutes a month. Forty percent of its customers use Cricket as their primary phone; many of these (and many more) use

Cricket as an alternative to a second landline. And seven percent report that they have disconnected their landline entirely.

Leap therefore has a unique perspective on the subject of intercarrier compensation. It is a CMRS carrier, but its customer base uses the Cricket service in a way that resembles landline usage. And, perhaps most importantly for the current proceeding, Leap competes directly with the incumbent landline providers with whom it must negotiate interconnection agreements.

II. THE POWER ENJOYED BY ILECS REQUIRES COMMISSION INTERVENTION.

As several commenters recognized, market forces alone cannot be relied upon to reach the socially optimal solution to intercarrier compensation.[3] Simply put, ILECs hold the power in any negotiation with a CMRS carrier. Because ILECs can effectively dictate their own terms to CMRS carriers, any negotiation between the two will be skewed in its outcome, and will not lead to a socially optimal result.

Experience, and the record evidence, shows that both the calling party and the called party benefit from the completion of a telephone call.[4] Indeed, the structure of most traditional wireless plans illustrate this fact: subscribers are willing to pay the same rate whether they place the call or receive it. Thus, landline subscribers benefit from their ability to receive CMRS calls. Yet an ILEC has little incentive to ensure that its customers receive this benefit. ILEC customers generally pay the same rate regardless of what calls they receive, or what calls they are able to receive. A rational ILEC therefore would conclude that it had little to gain by interconnecting with a new CMRS carrier.

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[3] *See, e.g.*, CTIA Comments at 16-18.

[4] *See, e.g.*, AT&T Comments at 24-29.

Yet to the CMRS carrier, ILEC interconnection is everything. No carrier could survive if its customers are unable to place calls to ILEC customers. A wireless phone without interconnection is little more than a walkie-talkie.

The point of course is not that an ILEC would refuse to interconnect with a CMRS carrier, but rather that the ILEC will hold all the power in any negotiation. And absent regulatory intervention they may use this power to dictate terms to relatively powerless CMRS carriers.[5] ILECs might use their power to extract anticompetitive rents from CMRS carriers, and more importantly in the case of Leap, they might use this power to stifle or place at a competitive disadvantage innovative new services. Faced with competition from an upstart wireless carrier like Leap, an ILEC would have every incentive to impede Leap's service offerings, or at least to ensure that they were more expensive than a perfectly competitive interconnection market would allow.

Because the market for CMRS – ILEC interconnection is flawed by the power enjoyed by ILECs, government intervention is necessary to ensure that the ILECs do not abuse this power, to the detriment of society.

III. BILL AND KEEP IS THE OPTIMAL BILLING ARRANGEMENT AND SHOULD BE ADOPTED BY THE COMMISSION.

In seeking a solution to the problem posed by ILEC power, the Commission should attempt so far as possible to replicate the result that would be reached by private negotiations in the absence of uneven market power. That result is plain: bill and keep.

[5] The Commission long ago recognized this problem, as in the early days of cellular the ILECs often charged cellular carriers exorbitant rates both for originating and terminating calls. *See generally CMRS Second Report and Order*.

ILECs, who wield relatively equal power in interconnection negotiations with one another, have always adopted bill and keep among themselves.[6] This demonstrates that bill and keep in fact *would* be the result of private negations, absent a significant disparity in bargaining power.

The reasons that ILECs adopt bill and keep among each other are clear, and consideration of those reasons would lead one to conclude – even absent the fact that in reality bill and keep is the result reached by a functioning market – that bill and keep is the socially optimal result. These reasons boil down to two facts: bill and keep reduces administrative costs, and it sends efficient price signals.

As many commenters have pointed out, any sort of positive pricing produces substantial administrative costs.[7] Carriers must invest in monitoring equipment, they must maintain and operate that equipment, they must gather and collect call traffic data, and they must prepare and collect invoices. On the receiving end, carriers must receive and examine the originating carrier's invoices, determine their validity, and provide for their payment. Regulators, too, expend substantial resources on the oversight required by any positive pricing regime. And all these costs are incurred when the system operates smoothly: further (and substantial) administrative costs result when disputes arise among carriers, or when the system otherwise breaks down. But these costs are unnecessary. The simple brilliance of bill and keep is that it eliminates these administrative costs.

Furthermore, bill and keep sends efficient price signals. Positive pricing, with its complex fictions and averaged rates, leaves much to be desired in its accuracy. For any given

[6] *See, e.g.,* CTIA Comments at 16.

[7] *See, e.g.*, Verizon Comments at 17-20; CTIA Comments at 28-29.

call, one can only hope to approximate the actual cost to a carrier of terminating that call. And any inaccuracy in this approximation will of course send inefficient price signals to the respective carriers, and may provide perverse incentives and opportunities for socially inefficient (and detrimental) arbitrage.

But even were positive pricing to be perfectly accurate – even if there was some perfect methodology that would allow carriers to determine the actual cost of terminating a call – positive pricing still would provide inefficient price signals, for it would send those signals to the wrong party. A basic tenet of economically optimal relations among private parties is that each party should bear those costs that it can control or avoid.[8] By thus allocating costs, the parties are incentivized towards maximum efficiency: each bears the full burden of its own inefficient behavior, or reaps the full gain from its efficient behavior. In the context of intercarrier compensation, this proposition dictates that the originating carrier should bear all the costs of originating calls, while the terminating carrier should bear all the costs of terminating them. Under such a scheme, each is properly incentivized and can be expected to best control and optimize its network costs.

This efficiency exists regardless of the relative traffic flow between or among carriers. Arguments based upon a supposed "imbalance" of traffic miss a critical point. Both parties to a telephone call benefit from that call. Again, the experience of many wireless carriers shows that consumers are willing to pay for incoming calls as well as outgoing. The terminating carrier's customer benefits by receiving a call, and (regardless of whether the carrier internalizes the cost or passes it on to the subscriber) the terminating carrier should accept the cost of its customer's telephone conversation.

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[8] *Cf., e.g.*, Richard A. Posner, *Economic Analysis of Law* (3d ed.) 82-83 (1986).

IV. CONCLUSION

Because ILECs have all the power in any negotiation with a CMRS carrier, they may extract anticompetitive profits, and stifle or hinder innovative new entrants (and potential competitors) like Leap. The Commission should act to address the imbalance of power in ILEC-CMRS interconnection negotiations in order to achieve the socially optimal result. Bill and keep provides that result, and should therefore be adopted by the Commission.

Respectfully Submitted,

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