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

In the Matter of Developing a Unified Intercarrier Compensation Regime	)))))	WCB Docket No. 01-92

COMMENTS OF LEAP WIRELESS INTERNATIONAL, INC.

Leap Wireless International, Inc., on behalf of itself and its affiliated entities (collectively, "Leap"), submits these opening comments in the above-captioned Further Notice of Proposed Rulemaking ("FNPRM").[1] In addition to fully supporting the CTIA Principles,[2] these comments focus on a few key aspects of intercarrier compensation that are of particular interest to Leap and its consumers. Specifically, Leap urges the Commission to: (i) implement a prompt transition to bill-and-keep for all types of traffic; (ii) reaffirm general principles of interconnection that ensure that competitive and wireless carriers have the option to interconnect indirectly, that ILECs have the obligation to transit traffic, and that carriers may seek relief at the Commission in the event of interconnection disputes; and (iii) establish universal service reform that is based on forward-looking costs and that does not result in increased subsidies to incumbent carriers.

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1 *Developing a Unified Intercarrier Compensation Regime*, FCC 05-33, CC Docket No. 01-92, Further Notice of Proposed Rulemaking ("IC FNPRM") (Mar. 3, 2005).

2 Letter from Steve Largent, CTIA, to Marlene H. Dortch, Federal Communications Commission (November 29, 2004) ("CTIA ex parte").

I. INTRODUCTION

Leap, through its subsidiary Cricket Communications, Inc., provides consumers with state-of-the art mobile wireless services in a package targeted to meet the needs of those consumers who are under-served by more traditional wireless service offerings. As of December 31, 2004, Leap provided wireless service to approximately 1.57 million customers in 39 markets in 20 states under its Cricket® brand.[3] Leap's service offers an affordable alternative to traditional wireless and landline services and is somewhat unique in that it offers ***unlimited local airtime*** for a low, flat monthly fee, with no signed contract. Consequently, Leap's customers often utilize its service in a manner similar to wireline customers; in addition, a majority of Leap's customers have cut the cord and do not subscribe to wireline service. Leap is able to offer its high-quality, low-cost mobile service in large part because it has streamlined its back-office functions and operates its network economically.

Leap fully agrees with the Commission's articulated goals with regard to intercarrier compensation, particularly with the goals for establishing a scheme that promotes economic efficiency and technological and competitive neutrality.[4] Unfortunately, none of the currently filed intercarrier reform proposals encourage such efficiency or neutrality. Instead, the current proposals, such as the ICF

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[3] Leap is an Entrepreneurs' Block licensee and Small Business under the Commission's rules and holds C, D, E, and F block PCS licenses primarily in small to mid-sized markets.

[4] *IC FNPRM* at paras. 31-33 (establishing that economic efficiency, preservation of universal service, competitive and technological neutrality are some of the key considerations in reforming the intercarrier compensation regime).

proposal, tend to be biased toward certain sectors, such as the wireline industry, at the expense of other services and technologies. Such proposals are harmful in that they impede the development or growth of certain services or technologies, and fail to recognize the increasing prominence and use among consumers of other technologies, such as wireless. The Commission should ensure that an intercarrier compensation scheme does not pose competitive disadvantages to specific industries or sectors.

In this regard, Leap believes that the CTIA Principles (which in some respects mirror the Commission's goals) offer a useful and neutral guideline for formulating a new compensation scheme. These principles advocate: (i) ensuring reforms (including universal service) are focused on consumers and not geared toward ensuring revenues for certain carriers such as ILECs; (ii) promoting economic efficiency and competition; (iii) establishing technology neutral rules; (iv) ensuring that carriers recover network costs from their own end-user customers; (v) creating targeted universal service support that is no higher than necessary to ensure affordable end-user rates; and (vi) establishing rules that are administratively simple.[5]

In addition to supporting the CTIA Principles, which are central for reforming intercarrier compensation in a manner that both benefits consumers and fosters competition, Leap offers its specific thoughts and perspective regarding the inefficiencies and difficulties of the current intercarrier compensation regime. This

[5] *See* CTIA ex parte.

perspective has been formed partially through Leap's experiences as a competitor and a carrier that relies on interconnection with incumbent local exchange carriers ("ILECs"). As Leap has previously noted in this proceeding, one of the difficulties with the current compensation scheme is that it allows "ILECs …[to] use their power to extract anticompetitive rents from CMRS carriers, and …[to] use this power to stifle or place at a competitive disadvantage innovative new services."[6] Moreover, as a smaller carrier that depends upon being able to operate efficiently, Leap observes that the current intercarrier compensation scheme imposes significant administrative costs and hurdles for competitive carriers. Given the numerous inefficiencies and inequities in the current Calling Party Network Pays ("CPNP") system, Leap believes that the best way to achieve the Commission's objectives and the CTIA Principles is through an intercarrier compensation system of bill-and-keep. Moreover, in order to promote competition and ensure technological neutrality, the Commission should reaffirm that carriers may interconnect *indirectly* with the incumbent LEC and that the Communications Act of 1934, as amended by the 1996 Telecommunications Act ("Act"), imposes transiting obligations on the ILEC. The Commission should also make itself available as a forum for resolving interconnection disputes. Finally, the Commission should not adopt any proposal (including the ICF proposal) that would permit universal service fund ("USF") subsidies to increase in order to replace lost revenues for ILECs.

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[6] Leap Reply Comments, WCB Docket No. 01-92 (Nov. 5, 2001) at 4.

II. DISCUSSION

A. Bill-and-Keep is the Most Economically Efficient and Technology Neutral Intercarrier Compensation Method

The Commission in its initial NPRM sought comment on whether it should ultimately migrate toward a unified intercarrier compensation scheme of bill-and-keep for all types of services and traffic (including traffic subject to reciprocal compensation and inter- and intra-state access).[7] Many parties filed comments in support of such an approach, including Leap.[8] Since that time, there have been numerous proposals for intercarrier compensation filed advocating variations on bill-and-keep or CPNP payment schemes. Many of these proposals advocate reductions in intercarrier compensation rates, but do not establish bill-and-keep as the ultimate goal. Even the proposals that advocate bill-and-keep do not propose it for all types of traffic, and generally include a lengthy transition period.[9] Leap does not support any of these proposals in entirety. Instead, for the reasons discussed below, Leap supports a transition to bill-and-keep for *all types of traffic* (traffic subject to access charge and reciprocal compensation) *expeditiously and without undue delay.*

Leap agrees with Commission staff that migrating away from the current system to a regime of bill-and-keep would eliminate many of the problems with the

[7] *Developing a Unified Intercarrier Compensation Regime*, FCC 01-132, CC Docket No. 01-92, Notice of Proposed Rulemaking (2001).

[8] *See, e.g.*, AT&T Wireless comments; BellSouth reply comments; CTIA comments; Nextel comments; SBC comments; Triton PCS comments; Verizon Wireless comments.

[9] *See, e.g.*, ICF Proposal.

current intercarrier CPNP compensation scheme.[10] One of the primary problems with the current regime is that it is inequitable, discriminatory, and not competitively neutral.[11] Specifically, as CTIA has noted, the current regime results in inequities between different types of carriers. For example, commercial mobile radio service ("CMRS") carriers are often unable to collect access charges for terminating inter-exchange inter-Major Trading Area ("MTA") traffic, although CMRS carriers have to compensate LECs for the same function.[12] Further, the current regime allows some carriers, such as ILECs, to shift the costs of their network to other carriers and their customers. Moreover, in some cases, LECs impose inflated access charges that do not even reflect actual network costs. Similarly, the current regime arbitrarily imposes different terminating rates upon different types of carriers (again without justification based on technology or costs).[13]

In contrast, a bill-and-keep approach treats all customers, carriers and categories of traffic equally,[14] and in so doing, promotes competitive and technological neutrality, which further benefits customers because they do not have to pay artificial or inflated rates. Specifically, as the Staff Report recognizes, bill-

[10] Staff Report at 102-104.

[11] *See* Staff Report at 102-103.

[12] CTIA ex parte at 2.

[13] Staff Report at 103. The Staff Report notes that interexchange carriers pay access rates from 0.6 cents to 1.8 cents per minute, while LECs pay average reciprocal compensation rates of 0.2 cents per minute to terminate traffic

[14] Staff Report at 104.

and-keep eliminates arbitrary regulatory distinctions between certain types of traffic that are not based on actual economic cost differences[15] and which no longer make sense in a world of evolving new technologies where communications are becoming increasingly borderless. For example, wireless or IP-based telephone traffic is neither "local" nor "long distance" in the traditional sense of wireline services and a unified bill-and-keep system recognizes that these traditional geographic distinctions are arbitrary and irrelevant today.

Treating all technologies and services neutrally and equally will allow competitive technologies and services to thrive without market distortions. The current system encourages carriers to engage in certain inefficiencies or arbitrage such as when LECs route traffic bound toward CMRS carriers through interexchange carriers ("IXCs") in order to avoid paying reciprocal compensation and to obtain access charges; it is the customer who ultimately bears the burden of this arbitrage by paying the inflated access charges.[16] Under bill-and-keep, there would be no incentive for carriers to engage in arbitrage by structuring their service offerings or networks in a certain manner simply in order to save costs or gain revenue.

Bill-and-keep also eliminates the current compensation regime's administrative inefficiencies and costs. As the Commission staff has recognized, there is substantial regulatory oversight required under a CPNP regime, including

[15] Staff Report at 104.

[16] Further, as the Commission noted in its NPRM, some carriers have structured their business to capture reciprocal compensation payments.

regulation of termination rates that carriers charge each other.[17] Staff correctly observes that some of the negative impacts from such regulation are the costs and resources that regulators and carriers expend in developing compensation rates and litigating over such rates, all of which results in market uncertainty.[18] In contrast to the current system, bill-and-keep would eliminate the need for rate-regulation and generally result in "substantially less regulatory intervention."[19]

Moreover, under the current regime, a significant portion of carriers' time and resources are spent on negotiating agreements and making intercarrier payments. Such costs have disproportionate impacts on smaller carriers like Leap. Leap knows firsthand the difficulty in reaching equitable reciprocal compensation arrangements with ILECs for the exchange of traffic given that the ILECs maintain bottleneck control over the terminating network. As Leap noted in its reply comments earlier in this docket, the "ILECs can effectively dictate their own terms to CMRS carriers, [thus] any negotiation between the two will be skewed in its outcome, and will not lead to a socially optimal result."[20] Indeed, Leap has been forced to spend significant resources to establish monitoring equipment to collect traffic data, create billing systems, verify bills and make payments under the

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[17] Staff Report at 106. As Qwest observed, the development of competition, along with various carriers deploying different network technologies and services, further complicates the ability of regulators to establish a single CPNP regulatory scheme for intercarrier cost recovery.

[18] Staff Report at 106.

[19] Staff Report at 107.

[20] Leap Reply Comments at 3.

current intercarrier compensation system.[21] Thus, bill-and-keep is the most economically efficient approach in that it eliminates these unnecessary transaction costs and instead would require carriers to recover costs of their network from their own end-users. As a result, carriers would have the incentive to operate as efficiently as possible.

Some of the parties opposed to bill-and-keep raise concerns that such a system is "confiscatory" or denies ILECs of revenues.[22] Such concerns are unfounded and irrelevant. As an initial matter, the purpose of intercarrier compensation should *not* be to guarantee ILEC revenues or to preserve a discriminatory and inequitable access charge and reciprocal compensation regime. The purpose of intercarrier compensation should be to establish a rational, competively neutral, and efficient system for compensating network costs. Accordingly, to the extent that carriers lose revenues from access charges or reciprocal compensation, carriers will be forced to become more efficient. This system would benefit consumers and facilitate inter-modal competition because it ensures that consumers do not unnecessarily subsidize other carriers' network costs, and sends the correct price signals for new services and technologies.

Moreover, the Commission should reject arguments that bill-and-keep is not "competitively neutral" because it favors carriers with balanced traffic, such as

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[21] In addition, these administrative costs (traffic records, bills, intercarrier negotiations) disproportionately burden a smaller carrier such as Leap.

[22] *See, e.g., Expanded Portland Group ex parte* (November 2, 2004) at 15-16.

ILECs.[23] As a practical matter, Leap notes that its own experience illustrates that wireless services can be utilized in a manner similar to wireline telephones and that the traffic it exchanges with LECs is roughly balanced or nearly 50/50 mobile-to-land.[24] In addition, the Staff Report accurately notes that concerns about traffic balance reflect an erroneous assumption that the calling party's network should bear all the costs of a call.[25] As Leap (as well as other parties) have correctly noted previously in this proceeding, both parties to a telephone call benefit from that call.[26] Moreover, wireless carriers' experience demonstrates 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."[27]

For the foregoing reasons, Leap urges the Commission to implement an immediate transition to bill-and-keep and to reject the ICF proposal's timeframe of a seven-year migration to bill-and-keep. Such a gradual migration to bill-and-keep fails to eliminate the serious issues with the current regime cited above, and instead perpetuates inefficiencies and inequities.[28]

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[23] *See* Staff Report at 104 (citing arguments against bill-and-keep).

[24] Indeed, Leap has been able to enter into bill-and-keep agreements with some ILECs because its mobile-to-land traffic is approximately 50/50.

[25] Staff Report at 104.

[26] Leap Reply at 6.

[27] Leap Reply at 6.

[28] Although Western Wireless proposes a shorter timeframe, it is also still too lengthy.

B. The Commission Should Reaffirm and Clarify Basic Interconnection Rights and Obligations and Provide a Venue for Interconnection Disputes

Consistent with the guiding CTIA Principles for promoting competitive and technological neutrality, economic efficiency, and administrative simplicity, Leap urges the Commission to reaffirm some basic interconnection rights. Among the most critical rights that the Commission should reaffirm is that carriers may interconnect with other carrier networks *indirectly* pursuant to Section 251(a) of the Act, and that, implicit in this right, is the obligation of ILECs to provide transiting service.[29]

The Commission notes in the FNPRM that indirect interconnection is "a form of interconnection explicitly recognized and supported by the Act."[30] Specifically, Section 251(a)(1) of the Act provides that every telecommunications carrier has the duty "to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers." Accordingly, there is no question that carriers should be able to establish indirect interconnection with carriers for the termination of traffic at a technically feasible point of interconnection. Indirect interconnection is not only legally mandated, but also is in many cases the most efficient form of interconnection. Requiring every carrier to interconnect directly with any other carrier would effectively duplicate the ILEC network and would be extremely

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Western Wireless Proposal (Four-year period with a longer transition period for small rural ILECs).

[29] *See IC FNPRM* at paras. 127-129.

[30] *IC FNPRM* at para. 125.

wasteful. and expensive. The Commission should reaffirm that a carrier must permit another carrier to interconnect *indirectly* as required by the law.

In order for this right to indirect interconnection to be effective, however, carriers must have access to transit services by ILECs at cost-based rates. While acknowledging in the FNPRM that currently *all* carriers – competitive LECs, CMRS carriers, and rural LECs – utilize transit services from the ILECs to facilitate indirect interconnection with each other, the Commission has yet to rule on whether the Act imposes a transiting obligation on carriers such as the ILEC. The FNPRM seeks comment on this issue.[31]

Leap recommends that the Commission clarify that the ILEC has such a transiting obligation, because without such an obligation, there would be no guarantee that a carrier could exchange traffic where it is indirectly interconnected. By establishing indirect interconnection rights under Section 251(a)(1), the Act contemplates that a carrier may send its traffic to another carrier through a third party carrier that provides transiting service. Without establishing that ILECs have a transiting obligation, the language in section 251(a) permitting carriers to interconnect indirectly and Section 251(b)(5) requiring reciprocal compensation arrangements for the *transport and termination* of traffic would be rendered meaningless. Moreover, it is clear that the Act imposing a transiting obligation on the ILEC. Section 251(c)(2) of the Act specifically provides that an ILEC must *route*

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[31] *IC FNPRM* at para. 125-129.

traffic where it is interconnected with another carrier.[32] Section 201(a)'s requirement that common carriers furnish communication service upon reasonable request provides yet another basis for imposing such a transiting obligation on carriers. The absence of such an obligation would result in economic inefficiency, administrative waste, and competitive disparities.

The Commission should further establish that pricing for transiting service should be established at total element long run increment cost ("TELRIC") rates. As discussed above, Section 251(c)(2) of the Act requires the ILEC to provide interconnection for the purpose of transmitting and *routing* telephone exchange service and exchange access. Moreover, Section 252(d)(1) provides that state commission determinations of the rates for the interconnection of facilities and equipment for purposes of Section 251(c)(2) shall be based on cost. Accordingly, there is ample legal basis for requiring TELRIC-based transiting rates of ILECs. In addition, as a policy matter, an obligation that such service be provided at cost-based rate would prevent ILECs from extracting monopoly profits and would further promote competitive and technological neutrality. In other words, setting the rate for transiting service at TELRIC will ensure that customers do not pay bloated rates for service, and will encourage ILECs to upgrade or deploy cost-efficient networks.

Finally, the Commission should reaffirm that carriers may have the option to

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[32] 47 U.S.C. Section 251(c)(2) (ILEC must provide interconnection with a requesting telecommunications carrier for the "*transmission and routing* of telephone exchange service and exchange access).

seek the resolution of interconnection disputes at the Commission if they so choose. The Commission has established that carriers may bring complaints against other carriers in the event of a violation or dispute over interconnection obligations.[33] Such a right is critical, because in certain cases, state commissions may not have the resources to resolve a dispute or for some other reason, the Commission may be better equipped to address an issue.

C. The Commission Should Establish a Unified Universal Service Fund

Although a bill-and-keep regime may affect the level of universal service support for ILECs, the Commission should refrain from attempting to maintain ILEC subsidies that would only perpetuate inefficiencies in the system. Accordingly, Leap urges the Commission to reject proposals that attempt to ensure that ILEC revenues are maintained at current levels and instead recommends that universal service be reformed based on a forward-looking, least-cost mechanism.

The Act establishes that the goals of universal service are to ensure that consumers in rural and non-rural areas have access to quality services at reasonably comparable rates. 47 U.S.C. Section 254(b)(3). Consistent with these requirements, the Commission's goal in reforming the universal service mechanism

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[33] *See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, FCC 96-325, CC Docket No. 96-98, First Report and Order (1996) ("First Local Competition Report and Order") at paras. 124-129 (noting that parties have a variety of options for relief when provisions of the Act have been violated, including filing requests for declaratory rulings or complaints with the FCC alleging violations of Sections 251 and 252). Moreover, as the 8th Circuit recognized, independent of the 1996 Act, "section 332(c)(1)(B) gives the FCC authority to order LECs to interconnect with CMRS carriers," and the FCC "has the authority to issue the rules of special concern to CMRS providers" pertaining to interconnection. *See Iowa Utilities Board v. FCC*, 120 F.3d 753, 800 (8th Cir. 1997). Given this special authority, the FCC should especially provide a venue for interconnection complaints and concerns raised by wireless carriers.

should be to ensure that consumers are able to afford telephone service in high cost areas at comparable levels to other consumers. However, the goal of universal service is *not to ensure that ILECs maintain their revenues* – as proposed by parties such as the ICF and NARUC. These proposals violate the fundamental principles of universal service, as well as the Commission's goal of economic efficiency and competitive and technological neutrality by focusing on lost ILEC revenue, instead of on the efficient costs of providing services in high-cost areas. Ultimately, these inefficiencies and subsidies are transferred to the consumer in higher rates that include legacy costs.

Leap believes that the CTIA Principles provide the correct guidance for implementing a universal service fund that is consistent with the Act and the Commission's goals. Specifically, universal service reform should not focus on revenue neutrality and should instead ensure that universal service support is targeted and limited to amounts no higher than necessary to ensure affordable end-user rates. Accordingly, Leap agrees with CTIA that a "single, unified high-cost universal service support mechanism that calculates support based on the forward-looking economic costs of serving customers in a particular geographic area"[34] is the most efficient and pro-competitive method for reforming universal service. Toward this end, Leap notes that assessing support for universal service over the widest base of contributors (including all providers of interstate telecommunications), based on interstate telecommunications revenues is the most competitively neutral

[34] CTIA Principle 5, CTIA Ex Parte at 3.

solution.

Respectfully submitted this 23rd day of May 2005,

LEAP WIRELESS INTERNATIONAL, INC.

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