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

In the Matter of	)	
	)	
Developing a Unified Intercarrier Compensation Regime	)	WCB Docket No. 01-92
	)	
	)	
T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs		

COMMENTS OF LEAP WIRELESS INTERNATIONAL, INC.

Leap Wireless International, Inc., on behalf of itself and its affiliated entities (collectively, "Leap"), submits these comments in connection with the recently filed petitions for reconsideration filed by several parties to the order[1] in the above-captioned proceeding.[2]

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. Leap's service offers an affordable alternative to traditional

[1] Declaratory Ruling and Report and Order, CC Docket No. 01-92 (rel. Feb. 24, 2005) ("T-Mobile Order").

[2] Petitions for Reconsideration or Clarification have been filed by the American Association of Paging Carriers ("AAPC"), MetroPCS Communications, Inc. ("MetroPCS"), the Missouri Small Telephone Company Group ("Missouri Group"), the Rural Cellular Association ("RCA"), and T-Mobile USA, Inc. ("T-Mobile").

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.

As a competitor and a carrier that relies on interconnection with incumbent local exchange carriers ("ILECs"), Leap generally supports the Commission's going-forward prohibition in the *T-Mobile Order* on the use of ILEC tariffs to impose intercarrier compensation obligations with respect to non-access CMRS traffic. However, Leap also supports several of the clarifications that have been proposed by petitioners, and correspondingly, opposes proposals that would expand the Section 252 negotiation and arbitration framework beyond the substantive obligations to which Congress intended it to apply.

Specifically, Leap supports the limited clarifications of the *T-Mobile Order* (and attendant rule changes) proposed by MetroPCS. Leap agrees that the operative facts and governing law pertaining to CLECs warrant extension of the Commission's wireless tariff prohibition to these carriers, as well. As MetroPCS explains, CLEC tariffs generally are not subject to the same substantive ratemaking and review standards as ILECs, and therefore CLECs are in many instances able to charge unilaterally-imposed, unreasonably high termination rates

on CMRS providers with little to no regulatory oversight.[3] Furthermore, permitting CLECs to continue to file and enforce unilaterally-imposed termination tariffs merely perpetuates regulatory arbitrage opportunities for these carriers, and provides them with no incentive to enter into negotiations where they would be required to pay reciprocal compensation to CMRS carriers.

On the other hand, Leap also agrees that no policy concerns regarding possible asymmetries in bargaining power are present in CLEC-CMRS provider negotiations that would warrant or justify an extension of 252 negotiation and arbitration processes to CLECs.[4] Leap accordingly agrees with MetroPCS that the Commission should clarify (i) that CLEC wireless termination tariffs should be prohibited, and (ii) that because the parties generally have equal bargaining power, bill and keep should be the appropriate CMRS/CLEC default mechanism absent a mutually acceptable interconnection arrangement.

In addition, Leap agrees with the RCA that extending Section 252 negotiation and arbitration processes for invocation by ILECs against CMRS carriers has a highly questionable legal basis, since by the express terms of the statute, the Section 251-252 framework applies only to ILECs.[5] Leap does not necessarily oppose the use of some type of Section 252-like framework as a means to address the agreement and dispute resolution process among ILECs and CMRS providers with respect to the transport and termination of traffic. But Leap

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[3] *See MetroPCS Petition* at 7-10.
[4] *See id.* at 11-15.
[5] *See RCA Petition* at 4-6.

emphatically agrees that, at a minimum, new Section 20.11(f) of the rules should be limited only to the explicit empowerment of ILECs to require a CMRS provider to negotiate a reciprocal compensation arrangement in the absence of an interconnection agreement.[6] The Commission should clarify that it was not the Commission's action or intent to impose Section 251(c) interconnection obligations upon CMRS carriers.

Finally, Leap agrees with T-Mobile that the Commission should expressly invoke alternative jurisdictional bases in the Communications Act in order to impose its proxy pricing rules as the interim wireless termination pricing rules that will apply to ILECs and CMRS carriers pending the negotiation or arbitration of reciprocal wireless termination rates. To the extent that the grounding of the proxy pricing rules on Sections 251 and 252 of the Act, along with attendant judicial decisions construing these provisions, have created uncertainty as to the validity of those rules, the Commission can easily address the problem by affirming its authority under other portions of the Act, such as Section 332(c) (1) (B) and 201(a), to impose or re-impose the rules for the proffered purpose.[7]

Leap appreciates the Commission's consideration of these comments.

Respectfully submitted,

LEAP WIRELESS INTERNATIONAL, INC.

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[6] *Id.* at 7.

[7] *See T-Mobile Petition* at 5. *See also RCA Petition* at 10 (suggesting use of Section 251(b) as a basis for imposing rules to govern LECs in negotiating reciprocal compensation arrangements).

/s/

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