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 ON THE MISSOULA PLAN OF LEAP WIRELESS INTERNATIONAL, INC.

Leap Wireless International, Inc., on behalf of itself and its affiliated entities (collectively "Leap") hereby offers these reply comments. Leap continues to believe that "bill and keep" is the optimal compensation arrangement among carriers and accordingly supports CTIA and other commenting parties who recommend that the Commission not adopt the Missoula Plan. More specifically, these comments focus on two key aspects of intercarrier compensation that are of particular interest to Leap and its consumers and that would be adversely impacted by the Missoula Plan: (a) adoption and implementation of consumer-friendly, economically efficient, and competitively neutral compensation for the exchange of all types of traffic, which remains bill-and-keep; and (b) preservation of existing interconnection principles and requirements, including the ability to interconnect directly at any technically feasible point or indirectly using cost-based transit services from larger incumbent local exchange companies ("ILECs").

I. INTRODUCTION

Leap, through its subsidiary Cricket Communications, Inc., provides consumers with state-of-the-art mobile wireless services in packages targeted to meet the needs of those consumers who are under-served by more traditional wireless service offerings. As of September 30, 2006, Leap and its joint venture partners provided wireless service to approximately 1,967,000 customers in 22 states under its Cricket® brand. Leap's service offers an affordable alternative to traditional wireless and landline services and is somewhat unique in that it offers unlimited local and long distance airtime and unlimited text messaging for a low, flat monthly fee, with no signed contract. Consequently, Leap's customers often use its service in a manner similar to wireline customers. Indeed, 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.

Intercarrier compensation has been and remains a significant cost of doing business for Leap and other wireless carriers. Leap pays reciprocal compensation to landline carriers for the termination of traffic within a Major Trading Area ("MTA"); pays access charges for the termination of traffic between MTAs; pays Leap's share of the facilities used to interconnect its network with other carriers' networks; and pays charges to transit traffic to carriers with whom Leap is not directly interconnected. Leap makes these payments predominantly to ILECs, and with the exception of reciprocal compensation when the traffic balance favors Leap, Leap receives no intercarrier compensation. To the extent that an intercarrier compensation scheme maintains or increases the level of Leap's current payments, that scheme places upward pressure on Leap's retail rates and reduces Leap's ability to provide consumers with a fully effective alternative to landline telecommunications service.

The Missoula Plan is just such a compensation scheme. That Plan would retain the obligation to pay access charges and reciprocal compensation (albeit at somewhat reduced rates) and effectively would require Leap to pay substantially higher rates for interconnection facilities and transiting service. The Missoula Plan thus takes intercarrier compensation in the wrong direction. As Leap has strongly recommended in its previous comments in this docket, bill-and-keep compensation, in conjunction with existing interconnection principles and requirements, is the only intercarrier compensation mechanism that is economically rational and competitively neutral, to the ultimate benefit of all telecommunications consumers.[1]

II. DISCUSSION

A. The Commission Should Adopt Bill-and-Keep Compensation, Not the Missoula Plan.

The concept of per-minute-of-use intercarrier compensation, at least in its current form, is of relatively recent vintage. The imposition of access charges, and later reciprocal compensation, occurred only after the break-up of the former Bell system in 1984. Prior to that time, the ILECs exchanged traffic primarily on a bill-and-keep basis. Whatever costs the carriers incurred to originate and terminate such traffic were included in their rate base and thus recovered through the rates each charged its end user customers.

Bill-and-keep has not been confined to monopoly environments. Wireless carriers, which

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[1] *E.g.*, Comments of Leap Wireless International, Inc. (May 23, 2005); Reply Comments of Leap Wireless International, Inc. (July 20, 2005).

have always operated in an effectively competitive environment and have never enjoyed exclusive service territories with virtually guaranteed rates of return, have always avoided the payment of explicit intercarrier compensation to the extent possible. Wireless carriers do not impose access charges on interexchange carriers. Nor do wireless carriers impose or pay reciprocal compensation for the exchange of intraMTA traffic in the absence of an agreement to do so. Again, the operating principle is that carriers recover their costs from their end user customers, not from each other.

Explicit intercarrier compensation arose as a response to the introduction of landline competition – first in the long distance market and subsequently in the local markets. Such compensation ostensibly serves the purpose of compensating a carrier for the costs it incurs to provide access to its network to end user customers of another carrier. Unfortunately, the mechanisms developed to implement this concept have also had the objective of preserving the revenues from implicit cross-subsidies that existed when a single carrier provided all telecommunications services. Even more unfortunately, the intercarrier compensation rates and their application have become increasingly complex and have often been developed and used as a means of exporting one carrier's costs to other carriers and have given rise to unintended arbitrage opportunities.

The Missoula Plan does not resolve this dilemma. The Plan perpetuates the distinction between originating and terminating "toll" as opposed to "local" traffic, even though no commenting party contends that any functional or cost differential exists. The Plan continues to have, at its heart, the objective of preserving ILEC revenues,[2] and even its supporters state only that the Plan "reduces" or "minimizes" (not eliminates) arbitrage opportunities.[3] The Plan, moreover, is no less dizzyingly complex than the current system and leaves issues unresolved or in a state of hopeless ambiguity that will engender, not foreclose, arbitrage opportunities and future disputes.[4]

Missoula Plan proponents nevertheless contend that it is a substantial improvement over the current system,[5] while other commenting parties believe it provides a good framework for improvement.[6] Other commenting parties vehemently disagree.[7] Plan supporters also note that they include representatives from all industry segments and that the Plan has broader support than any other proposal.[8] Opponents, however, are equally diverse.[9]

Such discussions largely miss the point. The Commission's objective should not be to replace one fundamentally flawed system with another fundamentally flawed system, whether it

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[2] *E.g.*, Comments of CTIA – the Wireless Association on the Missoula Plan at 26-32 (Oct. 25, 2006) ("CTIA Comments"); Comments of the National Association of State Utility Consumer Advocates on the Missoula Plan at 20-23 (Oct. 25, 2006) ("NASUCA Comments").

[3] Comments of the Supporters of the Missoula Plan at 12 (Oct. 25, 2006) ("Plan Supporter Comments"); Comments of the United States Telecom Association on the Public Notice Regarding the Missoula Plan at 5 (Oct. 25, 2006) ("USTA Comments").

[4] *E.g.*, NASUCA Comments at 15-18; Comments of Verizon on the Missoula Plan at 17-30 (Oct. 25, 2006) ("Verizon Comments").

[5] Plan Supporter Comments at 5-13; USTA Comments at 2-13.

[6] *E.g.*, National Telecommunications Cooperative Association Initial Comments at 3-5 (Oct. 25, 2006).

[7] *E.g.*, CTIA Comments; Comments of COMPTEL (Oct. 25, 2006).

[8] Plan Supporter Comments at 1.

[9] *See, e.g.*, CTIA Comments (wireless carriers); Comments of COMPTEL (competitive local exchange carriers); NASUCA Comments (consumer advocates); Comments of the New York

is accurately characterized as "better" or not. Nor should the Commission necessarily give more credence to a proposal simply because members of different industry segments support it, particularly when some of those members represent only different operations within the same company.[10] The Commission, rather, should evaluate the Plan under the criteria it previously established in this proceeding and should have as its objective adoption of an intercarrier compensation mechanism that fixes the problems with the current system.

Adoption of the Missoula Plan would not achieve any of the Commission's stated goals of (1) promoting economic efficiency, (2) preserving universal service, and (3) eliminating regulatory distinctions unrelated to costs and advancing competitive and technological neutrality.[11] Indeed, the Missoula Plan does little more than proverbially rearrange deck chairs on the Titanic. The Commission needs to recognize the state of the telecommunications industry as it is today (and will be in the foreseeable future), not as it existed in the past, with a view toward adopting a plan for intercarrier compensation that reflects a far more competitive marketplace and that does not protect the revenues of former monopoly service providers.

Bill-and-keep is just such a plan, particularly with respect to wireline-wireless exchange of traffic. Wireless subscribers outnumber landline subscribers, and the traffic between wireless and landline networks is approaching – and in many cases achieving – balance.[12] As Leap's

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State Department of Public Service (state utility commission); Verizon Comments (ILEC).

[10] AT&T Inc., BellSouth Corporation, and Cingular Wireless LLC are listed as individual supporters of the Missoula Plan, but they are, or soon will be, part of the same company. Indeed, Cingular is the only wireless carrier that has expressed support for the Plan.

[11] CTIA Comments at 6-8.

[12] *Id*. at 2-5.

flat-rated pricing plan and comparable offerings by other wireless service providers become increasingly popular, the Commission should anticipate that wireless and wireline subscribers will make equal use of each other's networks to the extent that they do not already do so. Bill-and-keep ensures that carriers recover their network costs from their end user customers, as they should in an effectively competitive market, rather than from competitors. Retaining explicit compensation for the exchange of traffic under these circumstances, as the Missoula Plan proposes, would only burden wireless carriers and their customers with ILECs' legacy revenue requirements and the unnecessary administrative chores of measuring, recording, and billing for exchanged traffic to the ultimate detriment of all telecommunications consumers.

B. The Commission Should Retain Its Existing Interconnection Principles, Rather than Adopt the Changes Proposed in the Missoula Plan.

The Missoula Plan proposes to substantially alter the current requirements for interconnection of telecommunications networks by giving ILECs (rather than the requesting carrier) the ability to designate the point(s) of interconnection, requiring interconnecting carriers to pay special access (rather than cost-based) rates if they choose to interconnect at a different point, and permitting the ILECs to charge retail (rather than cost-based) rates for transit service used to interconnect indirectly with another carrier. CTIA accurately characterizes this aspect of the Missoula Plan as a solution in search of a problem.[13] Indeed, Plan supporters say nothing more in defense of these Plan provisions than that network interconnection issues "have been a source of prolonged and protracted regulatory battles since the Act was passed in 1996."[14] The

[13] CTIA Comments at 9.

[14] Plan Supporter Comments at 8.

existence of disputes, however, does not justify a solution that effectively resolves those disputes in favor of the ILECs.

The referenced "regulatory battles," moreover, have largely resulted not from uncertainty over the legal requirements but from the ILECs' disagreement with those requirements. The Telecommunications Act of 1996 ("Act") expressly requires ILECs to provide interconnection to requesting companies "at any technically feasible point within the carrier's network."[15] The Missoula Plan would eviscerate that requirement by imposing a substantially higher cost on requesting carriers who choose a point on an ILEC's network that is different than the point the ILEC has designated for interconnection. Similarly, the Commission has consistently interpreted the Act – including in this docket – to authorize requesting carriers to choose one point of interconnection ("POI") per LATA,[16] and the Missoula Plan would financially penalize, if not preclude altogether, a carrier's choice of that option. Congress and the Commission have previously struck a balance between ILECs and requesting carriers over interconnection. The Missoula Plan seeks to alter that balance by tipping the scales in favor of the ILECs so that ILECs will no longer need to challenge the existing requirements. The Commission should reject such self-serving advocacy, particularly when the result is inevitably higher prices for consumers.

Leap has established interconnection facilities and arrangements with the ILECs with which Leap exchanges traffic in the areas it serves, including indirect interconnections with

[15] 47 U.S.C. § 251(c)(2)(B).

[16] *E.g.*, Further Notice of Proposed Rulemaking, FCC 05-33, ¶ 87 (rel. March 3, 2005).

small rural ILECs via transit services provided by the regional Bell operating company ("RBOC"). Leap has no current disputes with any ILECs concerning the location, rates, or cost-sharing of those facilities and services. Adoption of the Missoula Plan, however, would require Leap to incur significant expense either to maintain its current interconnections or transition them to the facilities and arrangements called for under the Plan. The Plan supporters offer no justification for imposing these additional costs onto Leap and its customers, and none exists. The Commission thus should refuse to alter the existing interconnection requirements to accommodate the ILECs' disagreement with those requirements.

III. CONCLUSION

Leap, CTIA, and other wireless commenters have previously explained that a transition to bill-and-keep, in conjunction with maintenance of current interconnection principles and requirements, is the consumer-friendly, economically efficient, and competitively neutral means of reforming the current intercarrier compensation scheme. The Missoula Plan does not alter that recommendation. The Missoula Plan would perpetuate the flawed premises on which the current system is based and would burden the ability of wireless carriers and other competing telecommunications service providers to provide consumers with effective alternatives to ILEC

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landline services. The Commission, therefore, should refuse to adopt the Missoula Plan and should implement Leap's and the other wireless carriers' recommendations.

Respectfully submitted,

LEAP WIRELESS INTERNATIONAL, INC.

By ___/s/___________________________________

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