Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	WC Docket No. 03-109
Lifeline and Link Up	)	
	)	WC Docket No. 06-122
Universal Service Contribution Methodology	)	CC Docket No. 96-98
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 01-92
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 99-68
	)	WC Docket No. 04-36
Intercarrier Compensation for ISP-Bound Traffic	)	CC Docket No. 99-200
IP-Enabled Services	)	
Numbering Resource Optimization	)	

OPENING COMMENTS OF
LEAP WIRELESS INTERNATIONAL, INC.,
ON NOVEMBER 5, 2008 ORDER AND FURTHER NOTICE

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November 26, 2008

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Leap Wireless International, Inc., on behalf of itself and its affiliated entities (collectively "Leap") submits these opening comments in response to the Commission's Order on Remand and Report and Order and Further Notice of Proposed Rulemaking released on November 5, 2008 ("FNPRM").

I. SUMMARY

Leap generally supports the opening comments being filed by CTIA, of which Leap is a member, but Leap also is providing separate comments to emphasize four issues in which Leap's interests are particularly impacted:

First, the Commission has appropriately modified its proposed revisions to universal service fund ("USF") contribution assessments for prepaid wireless service plans, but the Commission should recognize that not all such plans are based on the purchase of a certain number of minutes. Leap has introduced a prepaid plan that provides unlimited usage on a per-day basis. The USF assessments on customers of that service should be tailored accordingly, and the Commission should establish the principle that USF contributions by subscribers of future wireless prepaid plans will be consistent with the retail pricing structure of those plans.

Second, the Commission should not eliminate universal service funding for wireless eligible telecommunications carriers ("ETCs"). Such action would be fundamentally inconsistent with the Commission's focus on broadband deployment in rural areas. Leap is currently designated as an ETC in only one state but is exploring obtaining designation in additional states. The Commission should encourage companies like Leap to expand their wireless voice and broadband service offerings in rural areas by continuing to make USF funding available on a technologically neutral basis.

Third, Leap continues to support the position it has consistently taken before the Commission that "bill and keep" is the optimal compensation arrangement among carriers for the transport and termination of traffic. Bill and keep is consistent with the Commission's ultimate goals, and as the Commission has recognized in the past, competition will continue to be distorted as long as an intercarrier compensation regime exists in which carriers have the incentive and opportunity to recover their costs from other carriers, rather than from their end user customers.

Finally, the Commission should ensure that *all* carriers deliver their originating traffic to the edge of the terminating carrier's network. The alternative proposed order in Appendix C of the FNPRM would relieve rural incumbent local exchange carriers ("LECs") of this responsibility and thus would inappropriately shift their costs of originating traffic to Leap and other providers who operate in rural service territories. In addition, wireless carriers rely on transit providers to exchange traffic with other carriers, particularly in rural areas. The Commission should affirm the major incumbent LECs' obligation to provide transit service at cost-based rates as part of their interconnection obligations under federal law.

Leap, therefore, recommends that the Commission modify its proposed reform of USF and intercarrier compensation consistent with these comments.

II. 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.

Leap and its joint venture partners provide wireless service in 30 states under the 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 and multi-media 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"); access charges for the termination of traffic between MTAs; Leap's share of the facilities used to interconnect its network with other carriers' networks; and charges to transit traffic to carriers with whom Leap is not directly interconnected. Leap makes these payments predominantly to incumbent LECs and with the exception of reciprocal compensation when the traffic balance favors Leap, Leap receives no intercarrier compensation. Any scheme that requires Leap to compensate other carriers for the exchange of traffic hampers Leap's ability to provide consumers with a fully effective alternative to landline telecommunications service.

USF contribution mechanisms also have a substantial impact on Leap and its customers. Leap certainly agrees that everyone who makes use of the public switched telecommunications network ("PSTN") should be required to pay their fair share of the costs of providing universal access to that network. The devil is in the details of what constitutes a "fair share" to a particular service or class of customers. An appropriate contribution mechanism will recognize how that service or customer class makes use of the PSTN and will tailor the support obligation accordingly.

The distribution of USF funding, on the other hand, currently does not have a major impact on most of Leap's operations, but that is likely to change as the Commission broadens its views on the services that are eligible for USF support. Although Leap has been designated as an ETC in only one state to date and is providing service there, the company is exploring obtaining ETC designation in additional states. Leap, however, offers not just wireless voice service but wireless broadband Internet access as well. As the Commission focuses on providing USF support for advanced services, the availability of such funding on a technologically neutral basis would provide an additional incentive for Leap to expand and enhance the wireless services it offers to the ultimate benefit of consumers.

III. DISCUSSION

A. The Commission Should Assess USF Contributions for Prepaid Wireless Service Plans Consistent with the Plans' Retail Pricing Structure.

With certain limited modifications and exceptions, the Commission proposes to assess USF contributions on a per telephone number or PSTN connection basis. One such modification is for prepaid wireless calling plans. The Commission proposes to adopt the recommendation of TracFone and assess USF contributions on such plans on a per minute of use ("MOU") basis up to the amount of the monthly per telephone number surcharge the Commission adopts.[1] The Commission, however, should be aware that not all wireless prepaid plans are charged to consumers on a per MOU basis.

Last month, Leap's subsidiary Cricket announced the introductory launch of Cricket PAYGo, an unlimited daily prepaid wireless service. Cricket PAYGo customers choose one of three rate level plans – $1.00, $2.00, or $3.00 per day – and at each level, customers will receive unlimited service 24 hours per day, up to 7 days per week, for the features offered at that level. On the $2.00 per day plan, for example, the customer has access to unlimited local calling, unlimited text and picture messaging, and voice mail, caller ID, and three-way calling. For all three levels of service, customers are charged only for the days they use, and customers can transition between plans at any time throughout the week or month.[2]

Cricket PAYGo presents the same considerable difficulty the Commission recognized for other "wireless prepaid providers to pass-through their contribution assessments in light of their 'pay-as-you-go' service offerings."[3] Customers of this service may use it as little as a few days – or even one day – in a given month. Obviously a monthly USF contribution assessment of $1.00 is not reasonable on a Cricket PAYGo subscriber who pays $1.00 in service fees to use the service for only a single day during that month.

The Commission's proposed alternative of a per MOU assessment on prepaid wireless plans is equally problematic under these circumstances. Cricket PAYGo

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[1] FNPRM Appendix A ¶ 137.

[2] *See* Press Release, *Leap's Cricket(R) Service Introduces Cricket PAYGo(TM) in Select Markets* (Oct 2, 2008), located at http://phx.corporate-ir.net/phoenix.zhtml?c=191722&p=irol-newsArticle&ID=1204795&highlight=.

[3] FNPRM Appendix A ¶ 136.

subscribers have unlimited usage for each day they use their plan, so unlike the prepaid plans described by AT&T, Verizon, and TracFone, the price for such service is not tied to the number of minutes used. Assessing USF contributions based on MOUs thus would unfairly impose regulatory usage based charges on customers who are paying a flat retail service rate per day. Such a contribution mechanism would also require Cricket to track a customer's usage of these unlimited prepaid plans solely for purposes of calculating the USF contributions, which Cricket does not need to do as part of the service offering. The Commission should not adopt a USF contribution scheme that is contrary to consumer expectations and requires carriers to substantially alter how they operate their networks and correspondingly increase their costs solely to comply with a regulatory mandate. A contribution mechanism that is inconsistent with how a prepaid wireless plan is provisioned, moreover, is fundamentally at odds with the reason the Commission modified the per telephone number contribution for such plans.

Nor should the Commission adopt a USF contribution mechanism that stifles development of wireless service alternatives. Cricket introduced its PAYGo service last month, but next month another provider may launch prepaid wireless service with different customer payment options. The Commission's objective in crafting the alternative USF contribution mechanism for per MOU wireless prepaid plans is to accommodate a variation in how wireless service is priced to certain customers. Such accommodations are entirely appropriate but should be made in a manner that does not limit market alternatives or carriers' creativity in meeting consumer demands by narrowly addressing only the latest pricing plan.

Leap, therefore, proposes that the Commission adopt the principle that USF contributions by subscribers to prepaid wireless plans should be calculated in the same manner as the retail pricing structure of that particular plan. Prepaid wireless plans priced on an MOU basis would be subject to the per MOU USF contribution assessment the Commission describes in the FNPRM. USF contributions by subscribers to the Cricket PAYGo service would be assessed on a daily basis to match the daily pricing of the plans. The daily contribution amount would be calculated as the residential monthly surcharge the Commission adopts divided by 30.[4] The same principle of matching USF contribution to retail rate structure would apply to any new prepaid service offering with a different pricing mechanism.

Leap's proposed adjustment to the Commission's proposal for USF contribution assessments for wireless prepaid plans preserves the Commission's intent while helping to ensure that plan subscribers pay their fair share of USF costs without creating distortions in the market through regulation. The Commission, therefore, should modify its proposal as Leap recommends.

B. The Commission Should Not Eliminate USF Funding for Wireless ETCs.

The Commission proposes substantial revisions to how USF funds should be distributed. One such potential change is a provision only included in the alternative draft order in Appendix C which would phase out funding for competitive ETCs over a five year period while seeking

[4] Alternatively because the Commission calculates the USF contribution for MOU-based prepaid plans based on the average number of minutes a wireless subscriber uses, the daily USF assessment could be calculated as the residential monthly surcharge divided by the average number of days that customers use their wireless service in a month, and capped, as the Commission proposes for the per MOU prepaid plans, at the assessment level the Commission establishes per residential telephone number. Leap, however, is not aware of any industry data on daily wireless usage, and the Cricket PAYGo service itself is still relatively new. Leap nevertheless will attempt to provide some average daily wireless usage figures in its reply comments or in a subsequent filing.

additional "comment on an appropriate universal service mechanism (or mechanisms) focused on the deployment and maintenance of advanced mobile wireless services in high-cost and rural areas."[5] This proposal is fundamentally inconsistent with the other reforms the Commission proposes and should not be part of the Commission's final order.

Perhaps the most progressive aspect of the Commission's USF reform proposal is the extension of funding to broadband services and the corresponding requirement that ETCs deploy broadband infrastructure throughout their service territory within five years to remain eligible for USF funds. Leap and other wireless service providers are best positioned to meet the Commission's goals of universal broadband availability within the timeframes the Commission envisions. Indeed, Leap currently offers wireless broadband service in the areas that Leap serves at rates that are competitive with, and often substantially lower than, comparable wireless – and in many cases wireline – broadband offerings from other carriers.[6] Leap's ability to expand beyond its current footprint, however, will depend on its ability to invest in the necessary infrastructure to provide the high quality service consumers demand, and USF funding could be a critical component of such expansion.

The alternate proposal's request for comment on new USF funding mechanisms for advanced wireless services does not substitute for the availability of the same funding options currently available to incumbent LEC ETCs. Regulatory certainty is a prerequisite to substantial investment in network infrastructure – now more than ever in today's difficult economic climate. The phasing out of funding for competitive ETCs while the Commission thinks about a replacement funding mechanism for wireless broadband deployment creates regulatory

[5] FNPRM Appendix C ¶ 52.

[6] Leap offers wireless broadband for $40.00 per month on a stand alone basis and provides a $5.00 discount for customers who also subscribe to a voice plan. *See* http://www.mycricket.com/cricketplans/.

uncertainty and sends precisely the wrong signals to the market. Adoption of this option threatens to delay or forestall wireless broadband infrastructure investment as long as that regulatory uncertainty continues to exist, undermining the very goals of expeditious universal broadband access the Commission seeks to achieve.

Telecommunications markets are not static, and the Commission should continue to study and evaluate ways in which USF distributions can best serve consumers in rural and high cost areas. The Commission, however, should not eliminate funding for one class of carriers as it ponders other options when the continued participation of all carriers who serve in such areas will be needed to accomplish the Commission's ultimate objectives. The Commission, therefore, should not adopt the alternative proposal to phase out USF funding for competitive ETCs.

C. The Commission Should Adopt Bill and Keep to Eliminate Both Incentives and Opportunities for Carriers to Create Traffic Imbalances.

The Commission proposes a welcome and long overdue revision to intercarrier compensation that would unify and reduce the charges carriers must pay each other to exchange all types of traffic. Leap supports the Commission in this effort and agrees with CTIA that the transition period to the levels the Commission proposes should be five years, rather than the ten years reflected in the proposed orders. Leap, however, continues to maintain as it has in its previous comments in these dockets that the Commission's ultimate goal should be to entirely eliminate intercarrier compensation for the exchange of traffic.

As long as LECs are authorized to recover their costs from other carriers rather than from the LECs' own end user customers, imaginative companies will find a way to skew the compensation system to their financial advantage. The Commission previously recognized "that any compensation regime based on carrier-to-carrier payments may create . . . market distortions" in which a carrier could serve a customer "free of charge and recover all of its costs from originating carriers. This result distorts competition by subsidizing one type of service at the expense of others."[7] The Commission has also previously proposed a solution to this systemic problem: adoption of bill and keep for the exchange of all types of traffic as "a more economically efficient compensation scheme than the existing carrier-to-carrier payment mechanisms."[8]

The reform the Commission has proposed in the FNPRM stops short of this goal, but it need and should not. The Commission finds under the new "additional costs" costing methodology it proposes for reciprocal compensation that "[a]vailable evidence suggests that the incremental costs of terminating traffic, as determined using this methodology, are likely to be extremely close to zero."[9] While not requiring state commissions to consider the incremental cost of terminating voice telecommunications on next generation networks, the Commission also observes that "as carriers move to an all IP broadband world, the cost of voice traffic on a broadband network is vanishingly small."[10] Such a world is entirely conceivable – and very likely – within the ten year transition period the Commission proposes, or even the five year transition that Leap and CTIA recommend.

With termination rates at such *de minimus* levels, bill and keep is far more rational and economically efficient than payment of explicit compensation. Leap and other carriers devote substantial resources to measuring, accounting, and billing for terminating traffic, including resolving disputes over such measuring, accounting, and billing. These costs easily could – and in many cases would – outweigh the compensation carriers would receive under the

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[7] In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 16 F.C.C. Rcd. 9151, 2001 WL 455869 (Apr. 27, 2001) ¶¶ 5-6 ("ISP Remand Order").

[8] *Id*. ¶ 6.

[9] FNPRM Appendix A ¶ 273.

[10] *Id*. ¶ 261.

Commission's current proposal. Indeed, to the extent that measuring and billing costs are included in the "additional costs" used to calculate termination rates,[11] carriers could find themselves in the paradoxical situation of measuring and billing for traffic primarily so that they can pay each other to measure and bill for traffic. The Commission should not adopt a proposal that would lead to such Alice-in-Wonderland results.

The benefits of bill and keep for traffic termination, moreover, also apply to the sharing of the costs of the interconnection facilities used to transport the exchanged traffic. As wireless and wireline traffic increasingly comes into balance, each party is making roughly equal use of those transport facilities and should be financially responsible for half the entire transport costs incurred to exchange traffic. Adoption of a 50% sharing of transport costs is far more economically efficient than continuing to measure traffic solely to generate transport bills.

Leap, therefore, once again urges the Commission to adopt bill and keep for the transport and termination of all telecommunications traffic. Such action would eliminate all incentive to stimulate or disguise the origins of traffic or to otherwise shift a carrier's costs onto another carrier. Bill and keep is a just and reasonable form of compensation, requiring carriers to recover their costs from their end user customers, rather than from other carriers, and is fully consistent with the Commission's stated objectives.

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[11] The Commission's implementation proposals include the requirement that "consistent with the traditional economic definition of the incremental cost of a service, the cost studies [used to calculate termination rates] must exclude all common costs, including overhead costs," *id*. ¶ 273 (footnote omitted), but to the extent that carriers incur costs solely attributable to measuring, accounting, and billing for terminating traffic, those costs would logically be among the "additional costs" that comprise the rates under the methodology the Commission proposes.

D. The Commission Should Require All Carriers to Deliver Originating Traffic to the Edge of the Terminating Carrier's Network and Should Affirm Large Incumbent LEC Obligations to Provide Transit Service at Cost-Based Rates.

Interconnection must provide for both transport and termination of traffic exchanged between telecommunications carriers. The Commission's proposed intercarrier compensation reform focuses on traffic termination, but it also clarifies carriers' transport obligations. Specifically, the Commission properly proposes to continue to require each carrier to be responsible for the costs of delivering traffic originated by the carrier's customers to the terminating carrier.[12] The alternate proposed order, however, would limit rural incumbent LECs' financial responsibility to paying the costs of transport only to the terminating carrier point of presence ("POP") or meet point physically located within the rural incumbent LEC's service territory.[13] The Commission should not adopt this proposal.

The alternative proposal identifies no legal or other reasoned basis for relieving only rural incumbent LECs of the obligation to deliver originating traffic to the edge of the terminating carrier's network. Nor does any such basis exist. To the contrary, the Act prohibits a finding that an incumbent LEC is in compliance with its obligations under Section 251(b)(5) unless the reciprocal compensation "terms and conditions provide for the ***mutual and reciprocal*** recovery by ***each carrier*** of costs associated with the ***transport*** and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier."[14] Requiring terminating carriers to pay for a portion of the transport costs a rural incumbent LEC incurs to originate traffic while also obligating the terminating carriers to pay the entirety of the costs to

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[12] FNPRM Appendix A ¶ 275.

[13] FNPRM Appendix C ¶ 270.

[14] 47 U.S.C. § 252(d)(2)(A)(i) (emphasis added).

transport traffic they originate to a rural incumbent LEC is not a mutual and reciprocal recovery of the costs of transporting originating traffic as required by Congress.[15]

The practical application of this alternative proposal further demonstrates its fatal flaws. Leap and other wireless providers almost uniformly interconnect indirectly with rural incumbent LECs. The wireless carriers and the rural incumbent LECs each establish facilities between their respective switches and a larger incumbent LEC – usually a regional Bell Operating Company ("RBOC") – tandem switch and exchange traffic between their networks using transit services provided by the RBOC. The wireless carrier is responsible for the costs to transport calls that originate on its network and are routed through the RBOC tandem to the rural incumbent LEC's end office switch, while the rural incumbent LEC is financially responsible for transporting calls from its end users through the RBOC tandem to the wireless carriers' mobile switching centers ("MSCs"). The transport costs for which each carrier is responsible include the RBOC transit service charges, as well as the costs each carrier incurs to maintain its interconnection facilities with the RBOC.

The wireless carriers' MSCs and the RBOC tandem rarely are physically located in a rural incumbent LEC's service territory, and wireless carriers and rural incumbent LECs almost never have a "meet point" where their networks physically interconnect. By requiring rural incumbent LECs to pay for transport only to a carrier POP or meet point physically located within that LEC's service territory, the alternative proposal would effectively absolve rural incumbent LECs of all responsibility to pay for the costs of transporting their originating traffic to wireless carriers for termination. At most, the rural incumbent LEC would pay for the

[15] *See Mountain Communications v. FCC*, 355 F.3d 644 (D.C. Cir. 2004); *MCImetro v. BellSouth*, 352 F.3d 872 (4th Cir. 2003); *Southwestern Bell v. Texas Public Utilities Comm'n*, 348 F.3d 482 (5th Cir. 2003); *Atlas Telephone v. Oklahoma Corporation Comm'n*, 400 F.3d 1256 (10th Cir. 2005).

minimal cost of transport between its end office switch and its service territory boundary, while the wireless carriers would be responsible for paying for the transport from that boundary to the RBOC tandem plus the tandem switching, which represents virtually the entirety of the costs of RBOC transit service. The Commission simply cannot adopt this aspect of the alternative proposal consistent with principles of nondiscrimination and the reciprocal compensation requirements of the Act.

Both of the alternative proposals on intercarrier compensation reform, on the other hand, recognize the importance of transit service as indirect interconnection for the exchange of traffic between carriers and seek comment on whether the intercarrier compensation reforms it proposes "necessitate the adoption of any rules or guidelines governing transit service."[16] The reforms the Commission proposes do not necessitate new rules or guidelines governing transit service, but they do highlight the importance of ensuring the availability of cost-based transit service. Direct interconnection is not technically or economically efficient when traffic volumes do not justify dedicated facilities between two carriers. Wireless carriers thus cannot effectively operate in rural areas where traffic volumes generally are low without transit service from the RBOC or other incumbent LEC tandem operator.

Some RBOCs, however, have claimed that their interconnection obligations under the Act do not include providing transit service, and they propose to offer such service only at "market" prices that are often several times higher than the rates based on total element long-run incremental cost ("TELRIC") established by the state commissions. State commissions that have been presented with this issue have rejected the RBOCs' view and required that transit service

[16] FNPRM Appendix A ¶ 347 & Appendix C ¶ 344.

continue to be provided at TELRIC-based rates.[17] Carriers who rely on RBOC transit services should not be compelled to continue to fight this battle on a state-by-state basis. Nor should RBOCs be permitted to undermine the Commission's proposed reductions to traffic termination rates by inflating the charges other carriers must pay to deliver traffic to third parties for termination. Accordingly, the Commission should affirm that incumbent LECs subject to the requirements of Section 251(c)(2) of the Act must provide transit service to other LECs and to wireless carriers at TELRIC-based rates established by the state commission.

The Commission, therefore, should not adopt the provision in the alternative order relieving rural incumbent LECs of their obligation to pay for the costs of transporting traffic their end users originate to other carriers for termination and should affirm that RBOCs and other large incumbent LECs have an obligation to provide transit service at cost-based rates when necessary to enable other carriers to indirectly interconnect their networks to exchange traffic.

IV. CONCLUSION

For the reasons stated above, the Commission should modify its proposals to ensure appropriate USF contribution assessments for all wireless prepaid plans, retain USF funding for competitive ETCs, adopt bill and keep compensation for the transport and termination of traffic, and reaffirm the efficient and equitable responsibility of all carriers to deliver traffic for termination. Leap appreciates the opportunity to comment on the Commission's USF and intercarrier compensation reform proposals and looks forward to continuing to work with the Commission on these issues.

[17] *E.g.*, *In re Application of Cox Nebraska Telcom, LLC Seeking Arbitration with Qwest Corporation*, Application No. C-3796, Order Approving Agreement at 2 (Neb. PSC Jan. 29, 2008); *In re Establishment of Carrier-to-Carrier Rules*, Case No. 06-1344-TP-ORD, Entry on Rehearing at 12-14 (Ohio PUC Oct. 17, 2007).

Respectfully submitted,

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