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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

In the Matter of	)	
	)	
Implementation of Sections 3(n) and 332 of the Communications Act	)	GEN. Docket 93-252
	)	
Regulatory Treatment of Mobile Services	)	

Comments of General Communication, Inc.

General Communication, Inc. (GCI) hereby comments on the Notice of Proposed Rulemaking[1] to implement Sections 3(n) and 332 of the Communications Act. Specifically, the Notice requests comment on the regulatory treatment of mobile services.

GCI supports the broad definition of commercial mobile services as outlined in the Notice. A mobile service is classified as commercial if the service is provided for profit and makes interconnected service available to the public or to such classes of eligible users as to be effectively available to a substantial portion of the public. This definition is intended to encompass a large class of providers and should be so construed. If compensation is received by the provider, it seems that it is the provider's intent to be a commercial provider. Service to a substantial portion of the public should also be construed broadly. No provider would operate without trying to reach the greatest number of

[1]Notice of Proposed Rulemaking, Gen. Docket 93-252, FCC 93-454 (released October 8, 1993).

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subscribers as possible, except in an attempt to circumvent the Commission's rules.

GCI supports the limited definition of private mobile services as outlined in the Notice. GCI does not believe that a company should be allowed to allocate a portion of its spectrum as commercial and a portion of its spectrum as private. This would enable providers to bend the Commission's rules for their own benefit. Many providers would have the incentive to designate allocations as private because the rules and filing fees are less burdensome. Furthermore, providers should not be allowed to negotiate individualized prices and call their services private. If the Commission allows providers to self certify that they are providing private mobile services and the Commission later determines that the provider should have certified that it was providing commercial mobile services, the provider should forfeit its license. This seems to be the only way that the Commission can be assured that the carrier does not abuse the Commission's rules.

GCI supports equal access for all commercial mobile service providers. Equal access will ensure that all carriers operate equally with all other carriers. Furthermore, mobile service providers should be required to give their customers a choice of long distance service providers. This will ensure that interexchange competition is not harmed. Otherwise, the provider could make a "sweetheart" deal with one long distance carrier, thus profiting by taking away the choice of carrier from the end user. The Commission well understands that the market performs best when the customer is able to choose its long distance carrier.

Commercial mobile service providers are classified as common carriers, which can be exempt from provisions of Title II of the Communications Act other than Sections 201, 202 and 208. Dominant carriers and their affiliates should not be exempt from any of the Title II requirements because of the market power they posses[2]. Also, rate base regulated LECs should not be allowed to include the costs of mobile services in their regulated costs. However, nondominant carriers do not have market power and should be exempt from Title II regulations including Sections 203 (Schedule of Charges), 204 (Lawfulness of Charges, Suspension), 205 (Authority to Prescribe Just and Reasonable Charges), 211 (Filing of Contracts), 214 (Extension of Lines), 210 (Franks and Passes), 212 (Interlocking Directorates), 213 (Valuation of Carrier Property), 215 (Transactions Relating to Services, Equipment, etc.), 218 (Inquiries into Management), 219 (Annual and Other Reports) and 221 (Special Provisions Relating to Telephone Cos.).

All providers, whether dominant or nondominant, should be required to comply with all provisions relating to the complaint process. Those sections include 206 (Liability of Carriers for Damages), 207 (Recovery of Damages) and 209 (Orders for Payment of Money). It is clear that Congress intended for all

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[2]See, Competitive Carrier Proceeding, Notice of Inquiry and Proposed Rulemaking, 77 FCC 2d 308 (1979); First Report and Order, 85 FCC 2d 1 (1980); Further Notice of Proposed Rulemaking, 84 FCC 2d 445 (1981); Second Report and Order, 91 FCC 2d 59 (1982); Second Further Notice of Proposed Rulemaking, FCC 82-187, released April 21, 1982; Third Further Notice of Proposed Rulemaking, Mimeo No. 3347, released June 14, 1983; Third Report and Order, Mimeo No. 012, released October 6, 1983; Fourth Report and Order, 95 FCC 2d 554 (1983); Fourth Further Notice of Proposed Rulemaking, 96 FCC 2d 922 (1984); Fifth Report and Order, 98 FCC 2d 1191 (1984); Sixth Report and Order, 99 FCC 2d 1020 (1985), rev'd, MCI v. FCC, 765 F.2d 1186 (D.C. Dir. 1985).

providers to comply with these Sections since they relate to the complaint process.

Furthermore, all providers should comply with Sections 223 (Obscene or Harassing Telephone Calls in the District of Columbia or in Interstate or Foreign Communications), 225 (Telecommunications Services for Hearing Impaired and Speech Impaired Individuals), 226 (TOCSIA), 227 (Restrictions on the use of Telephone Equipment) and 228 (Regulation of Carrier Offering of Pay-Per-Call Services). These sections of the Communications Act have recently been enacted by Congress and all mobile service providers should comply.

All commercial mobile service providers should be required to interconnect with each other on the same terms and conditions as all other commercial service providers. This will prevent discriminatory practices.

It is also important for the Commission to classify Personal Communications Service (PCS) providers as co-carrier's so that they receive all the benefits and obligations of such classification. The Commission has stated that PCS should be competitive with the local exchange carriers (LECs) landline systems.[3] For that vision to become true, PCS providers must be co-carrier's. In this instance, the Commission must further define a co-carrier so as to include exchange access reciprocity. Mobile service providers are entitled to be compensated for terminating traffic from the LECs. Currently, the cellular operators are not compensated for termination of calls from the LECs. This is

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[3]Amendment of the Commission's Rules to Establish New Personal Communications Services, Gen. Docket 90-314, FCC 93-451 (released October 22, 1993).

highly discriminatory. The LEC receives compensation for calls that originate on the cellular system and terminate over their landline networks, but cellular carriers are not compensated for calls that originate on the LEC system and terminate on the cellular system. The Commission should change this discriminatory system and define a co-carrier to include exchange access reciprocity.

Furthermore, PCS providers must be able to interconnect no less favorably than other carriers or customers. If interconnection is less favorable, the PCS provider is disadvantaged. The Commission has a long standing policy that interconnection should be no less favorable for all sorts of providers. This policy should simply be extended to PCS providers.

The actual physical interconnection policies should be under the jurisdiction of the Commission. The actual interconnection policy cannot be segregated. A single state should not be allowed to diverge from the federal interconnection policy. However, the state should be allowed to request authority to regulate interconnection rates. The Commission would determine if the state could regulate rates after a notice and comment period at the federal level. If the Commission determined that rate regulation by state commissions would not harm the federal policy, such regulation should be allowed.

Conclusion

The Commission should broadly define commercial mobile services and narrowly define private mobile services to prevent abuse of its rules. Nondominant mobile service providers should be exempt from various Title II regulations since they do not posses market power. However, dominant

providers and their affiliates should continue to be subject to these Title II regulations since they posses market power. PCS providers should be deemed co-carriers with all the benefits and obligations thereto. Interconnection for PCS providers should be on no less favorable terms than for other carriers or customers. The Commission should determine actual interconnection with the states able to petition to regulate interconnection rates to mobile service providers.

Respectfully submitted,

GENERAL COMMUNICATION, INC.

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November 8, 1993

STATEMENT OF VERIFICATION

I heave read the foregoing, and to the best of my knowledge, information and belief there is good ground to support it, and that it is not interposed for delay. I verify under penal;ty of perjury that the foregoing is true and correct. Executed November 8, 1993.

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CERTIFICATE OF SERVICE

I, Kathy L. Shobert, do hereby certify that on this 8th day of November, 1993, a copy of the foregoing Comments of General Communication, Inc. was mailed by first class mail, postage prepaid to the parties listed below.

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