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## SUMMARY

This proceeding implements the amendments to Sections 3(b) and 332 of the Communications Act of 1934 contained in Section 6002(b) of the Omnibus Budget Act of 1993 (the "Budget Act") establishing a new regulatory regime for mobile communications services.

In its initial comments, Nextel Communications, Inc. ("Nextel" formerly Fleet Call, Inc.) emphasized that Congress' overriding purpose in the Budget Act amendments was to require that all "functionally equivalent" or "like" mobile service be regulated similarly. Nextel urges the Commission to promulgate rules consistent with the principles articulated in its initial comments and as discussed further herein.

The Budget Act amendments have been in effect for only a few months, yet a number of parties are attempting to skew or reinterpret the statutory provisions to advantage particular services or to restrict competition. The Commission should resist such attempts. Congress made clear that its primary objective in revising Section 332 was to assure that functionally equivalent services, i.e., "like" or substitutable services, are regulated similarly, i.e., within the same regulatory classification.

In determining whether services are functionally equivalent, the Commission must look to the nature of the service as a whole and, most importantly, to how the service is perceived from the customer's point of view. The Commission is authorized to make both general and case-by-case classification determinations to

carry out Congress' regulatory parity objectives.

The Budget Act specifically authorizes the Commission to establish groups of carriers within the commercial mobile service classification and to fashion differing regulatory requirements for them. The arguments of some entrenched, established carriers that there are insufficient differences between incumbent commercial mobile carriers and new entrants to warrant differential regulatory treatment are nonsense and should be ignored. Regulatory parity does not mean identical treatment; the Commission must consider not merely the potential, but the reality of actual competition in exercising its authority to forbear from the full panoply of Title II regulation for commercial mobile service carriers. Because reclassified new entrant ESMR providers lack market power, the Commission should forbear from applying all discretionary Title II provisions to them.

Nextel agrees that the Commission should preempt state regulation of the right to intrastate interconnection with local exchange carrier ("LEC") networks and the types of interconnection available. Every commercial mobile service provider is entitled to obtain interconnection from the LECs that is reasonable for that particular mobile system and is no less favorable than that offered by the LEC to any other customer or carrier. In addition, commercial mobile providers should be compensated by the LECs for terminating mobile traffic originating on LEC landline networks. This principle has previously been confirmed by the Commission but not implemented.

There is no justification for requiring commercial mobile carriers to interconnect with other mobile communications providers or requiring them to provide equal access to interexchange carriers. Unlike the LECs, commercial mobile carriers do not have monopoly control over essential bottleneck facilities warranting the imposition of Commission-mandated interconnection and equal access obligations.

Finally, the Commission should not undertake a rule making to permit existing common carriers to offer dispatch service until after the three-year transition period for reclassification of existing private carriers.

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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) ) GN Docket No. 93-252  
and 332 of the Communications )  
Act )  
 )  
Regulatory Treatment of Mobile )  
Services )

To: The Commission

REPLY COMMENTS ON THE NOTICE OF PROPOSED RULE MAKING

I. INTRODUCTION

Nextel Communications, Inc. ("Nextel" formerly Fleet Call, Inc.), pursuant to Section 1.415 of the Rules and Regulations of the Federal Communications Commission (the "Commission"), hereby respectfully submits its reply comments in the above-captioned proceeding.<sup>1/</sup> This Notice of Proposed Rulemaking (the "Notice") implements Section 6002(b) of the Omnibus Budget Act Amendments of 1993 (the "Budget Act") which amended Sections 3(n) and 332 of the Communications Act of 1934 (the "Act") to establish a new regulatory structure for mobile communications services.

II. BACKGROUND

In its original comments in this proceeding, Nextel supported classifying all "for-profit," interconnected services offered to the general public -- including cellular, Enhanced Specialized

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<sup>1/</sup> 58 F.R. 53169, October 14, 1993.

Mobile Radio ("ESMR") systems, paging systems and Personal Communications Services ("PCS") -- as "commercial mobile service." Services that are not commercial mobile services or the "functional equivalent" thereof -- essentially not-for-profit services used by government, internal business communications and for-profit services of limited capacity and geographic coverage -- may be classified as "private mobile services."

Nextel agreed with the Commission's conclusion that the Budget Act authorizes it to create classes or categories of commercial mobile services and to promulgate different regulations for such classes and for individual services providers within a class. Consistent with the legislation, and because there will be substantial competition among commercial mobile service providers, the Commission should forbear from applying Sections 203, 204, 205, 211 and 214 to commercial mobile service providers. Further, because reclassified ESMR providers lack market power, the Commission should forbear from applying all Title II provisions other than Sections 201, 202 and 208 to ESMR providers.

Nextel also strongly supported preempting state regulation of the right to interconnection and the types of interconnection with the local exchange available to commercial mobile service carriers. The Commission should adopt safeguards to assure that dominant common carriers do not discriminate in favor of their affiliated mobile carrier operations.<sup>2/</sup>

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<sup>2/</sup> The Notice failed to address rule revisions necessary to assure that the technical requirements for reclassified private  
(continued...)

Nextel has reviewed the comments filed herein. As the first SMR licensee to offer advanced, digital ESMR service, Nextel has a substantial interest in the outcome of this proceeding. Nextel offers reply comments on four issues: (1) the regulatory classification of mobile services; (2) differential treatment of commercial mobile service providers; (3) interconnection, including mobile carriers receiving reciprocal compensation for terminating land-originating calls; and (4) maintaining the dispatch prohibition during the statutory transition period.

### III. DISCUSSION

#### A. Regulatory Parity Requires that Functionally Equivalent Services be Within the Same Regulatory Classification

The Budget Act created two service classifications for all mobile communications services: "commercial mobile service" and "private mobile service." The comments offer wide-ranging interpretations of the elements of these classifications and how particular services should be classified. Some commenters advocate including any for-profit, interconnected service in the commercial mobile classification -- even if the service has inherently limited capacity or geographic coverage or is useful only to a narrow segment of the public.<sup>3/</sup> These commenters would classify the for-

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<sup>2/</sup>(...continued)  
services are comparable to those pertaining to similar common carriers services. These include, inter alia, loading standards, the "40 Mile Rule," co-channel interference standards, and individual site licensing. These must be addressed within one year of the Budget Act amendments.

<sup>3/</sup> See e.g., Comments of Pacific Bell and Nevada Bell ("Pacific Bell") at pp. 4 and 8-9; Comments of McCaw Cellular Communications, Inc. ("McCaw") at pp. 18-19.

profit sale of excess capacity by an otherwise internal-use business system, or employing a for-profit manager for a multiple-licensed shared Part 90 land mobile system as commercial mobile service regulation. Under this view, classification as a commercial mobile service should be the rule, subject to very limited exceptions.

At the other extreme, some commenters would make the private mobile service classification as expansive as possible.<sup>4/</sup> They propose including only cellular, ESMR and paging systems in the commercial mobile category while classifying all "traditional" interconnected SMRs (including wide-area systems) and systems selling excess capacity as private mobile services and permitting PCS licensees to self-select their regulatory status. For example, Geotek Industries, Inc. ("Geotek") asserts that its planned 800 MHz and 900 MHz advanced technology SMR dispatch systems will offer "customized" services "not available" to the public and is therefore a private mobile service.<sup>5/</sup> Such commenters would define private mobile service broadly, thereby undercutting the intent of Title II regulation.<sup>6/</sup>

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<sup>4/</sup> See Comments of Motorola, Inc. ("Motorola") at pp. 9-11.

<sup>5/</sup> Comments of Geotek at pp. 3-9. Nextel disagrees with this classification. Geotek will use advanced, digital "frequency hopping" spread spectrum technology for high capacity, wide area dispatch services throughout major regions of the country. These are indicia of a commercial mobile service.

<sup>6/</sup> Geotek has a particularly expansive view of the scope of private mobile classification. It asserts that private systems should be permitted to offer incidental or ancillary interconnection to end users as a private mobile service until such  
(continued...)

The Budget Act revisions to Section 332 of the Communications Act have been law for only three months, yet carriers are already attempting to skew the regulatory definitions and classifications. Nextel agrees with McCaw that "constructing hypertechnical definitions of the relevant statutory terms will only produce the result Congress specifically sought to remedy -- the disparate regulatory treatment of comparable mobile services."<sup>7/</sup> Congress made clear in the legislative history that its primary objective was to assure that functionally equivalent services, i.e., "like" or substitutable services, are regulated similarly, i.e., within the same regulatory classification.<sup>8/</sup> In determining whether services are functionally equivalent, the Commission must look to the nature of the service as a whole and, most importantly, to how

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<sup>6/</sup>(...continued)

calls exceed 20 percent of system traffic. It also asserts that the proposed wide-area 900 MHz SMR licenses under consideration in PR Docket No. 89-553 should not be regulated as commercial mobile service, but instead be available for either private or commercial service at the licensee's selection. See 8 FCC Rcd 1469 (1993).

<sup>7/</sup> Comments of McCaw at p. 15. Nextel does not agree, however, with McCaw's proposed classification of traditional dispatch SMRs as commercial mobile service as well as limited offerings available only to specified occupational groups.

<sup>8/</sup> See H.R. Rep. No. 102-103, 103rd Cong., 1st Sess. (1993) (the "Conference Report"). See also Statement of Congressman Fields in support of the Communications Licensing and Spectrum Allocation Improvement Provisions of the Budget Reconciliation Act, Congressional Record, H6164, August 5, 1993. Congressman Fields stated that ". . . this title outlines the regulatory treatment for new commercial mobile services, such as PCS, in order to ensure that like services will be regulated similarly. See also Report of the Committee on the Budget House of Representatives to accompany H.R. 2264, Report No. 103-111, May 25, 1993 at p. 259.

the service is perceived from the customer's point of view.<sup>9/</sup>

The Budget Act amendments effectuate Congress' purpose that functionally equivalent services be similarly regulated. The Conference Report expressly authorizes the Commission to classify as private a for-profit, interconnected service that is not functionally equivalent to a commercial mobile service -- perhaps because of limited geographic coverage, technical capabilities or capacity, or otherwise not being competitive with a commercial mobile service from the customer's perspective.<sup>10/</sup> Of equal importance, the statutory definition of private mobile service specifically excludes services that in usage are functionally equivalent to a commercial mobile service. The statute mandates that such services be regulated under the Title II commercial mobile service umbrella even if not incorporating each of the commercial mobile statutory indicia. In short, the Commission is authorized to make both general and case-by-case classification determinations that carry out Congress' regulatory parity objectives.

Any wide-area SMR or ESMR-type system, whether operating at

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<sup>9/</sup> A number of commenters recognize that this determination must largely turn on the customer's perception of the functionalities of the service in question. See Comments of MCI at p. 4; Comments of the National Association of Regulatory Utility Commissioners ("NARUC") at p. 10. It cannot turn, as Motorola suggests, on factors such as the number of hours each day and length of time that a dispatch SMR subscriber is "permitted" to interconnect with the public switched network. If the service is competitive with or a reasonable substitute for a commercial mobile service from the customer's viewpoint, it must be so classified.

<sup>10/</sup> See Conference Report at p. 496.

220 MHz, 800 MHz or 900 MHz, as well as any for-profit private carrier services that are functionally equivalent to these systems or to cellular-type services, must be regulated as commercial mobile services. This includes the proposed single-license wide-area SMR systems proposed in the pending Enhanced Mobile Service Provider and 900 MHz Further Notice rule makings.<sup>11/</sup> All paging services must also be regulated as commercial mobile. An individual dispatch-only SMR system that is not part of a wide-area advanced technology network may be classified as a private mobile service.<sup>12/</sup>

Although some commenters endorse the Commission's PCS self-selection regulatory proposal, Congress unambiguously intended to regulate PCS as a commercial mobile service.<sup>13/</sup> Allowing self-selection of private mobile or commercial mobile status could be misused to evade the requirements of Sections 201 (just and reasonable rates) and 202 (no unreasonably discriminatory rates,

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<sup>11/</sup> Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, First Report and Order and Further Notice of Proposed Rule Making, 8 FCC Rcd 1469 (1993); Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, Notice of Proposed Rule Making, FCC Rcd 3950 (1993).

<sup>12/</sup> Traditional non-commercial Part 90 services are private mobile services. See Comments of Nextel at p. 15.

<sup>13/</sup> See Congressional H3287, May 27, 1993, in which Congressman Markey stated that the Budget Act amendments ensure that PCS will be treated as a common carrier service.

terms or conditions for similarly situated customers) of the Act.<sup>14/</sup>

In this regard, some commenters are already urging that commercial mobile service providers be permitted to offer private services on a self-selection basis (presumably on both cellular and 2 GHz spectrum). This is merely a facade to allow common carriers to engage in discriminatory pricing and service practices for specific customers.<sup>15/</sup> The proper approach under Section 332 of the Act is to seek maximum Commission forbearance from Title II regulation for competitive services and to design customer-responsive service offerings under existing Title II mechanisms.<sup>16/</sup>

The mobile services industry is undergoing dramatic evolution. Traditional service attributes, capabilities and classifications are changing in response to new technology, customer demands and

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<sup>14/</sup> Comments of Nextel at pp. 18-19. See also Comments of Pacific Bell at p. 14 urging that all PCS be classified as commercial mobile service.

<sup>15/</sup> McCaw has gotten its "cake" in the regulatory parity provisions of the Budget Act; now it wants to "eat it too" by self-selecting when to evade its Title II obligations through a "private" mobile service offering. In this regard, the Budget Act amendments make the relief proposed in RM - 7823 unwarranted. See Telocator's Petition for Amendment of the Commission's Rules to Authorize Cellular Carriers to Offer Auxiliary and Non-Common Carrier Services, filed September 4, 1991.

<sup>16/</sup> Nextel continues to support regulatory classification on a service-specific basis; a single carrier may provide a commercial mobile service and also provide services that are regulated as private mobile. As discussed above, however, Nextel opposes granting carriers the ability to decide on a customer-by-customer basis that a service that is on the whole functionally equivalent to commercial mobile service is a private service for a specific customer or customers.

competitive requirements. The Commission has the responsibility for assuring that like services are regulated similarly and to promote a competitive mobile communications marketplace. Classifying functionally equivalent services within the same regulatory classification, as described above, best assures that Congress' objectives will be attained in a dynamic mobile communications industry.

B. Differential Treatment of Commercial Mobile Service Providers is Necessary to Promote Competition

In the Notice, the Commission concluded that it may fashion differing regulatory requirements for services within the same mobile services classification, consistent with the obligation to protect consumers and the public interest. Pacific Bell asserts, however, that there should be no differential treatment of carriers within the commercial mobile service because the market is in a developmental stage in which all providers are on an equal footing.<sup>17/</sup> Similarly, McCaw asserts that there are insufficient differences among commercial mobile service providers in the "nascent" wireless communications market to justify dissimilar regulatory treatment.<sup>18/</sup>

This is nonsense. Established cellular carriers have been in the marketplace for up to ten years and have a substantial "headstart" over competing commercial mobile providers, such as ESMR and PCS entrants. This disparity warrants adjusting the

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<sup>17/</sup> Comments of Pacific Bell at p. 15.

<sup>18/</sup> Comments of McCaw at pp. 5-7.

regulatory treatment of new entrants vis-a-vis established commercial mobile carriers to promote effective long-term competition.

McCaw's attempt to obscure its competitive advantages as an entrenched duopoly cellular carrier is at odds with its stated opposition to Ameritech's proposal to open its monopoly local exchange facilities to competition in return for removal of the prohibition on the Bell Operating Companies ("BOCs") offering interLATA services.<sup>19/</sup> McCaw opposes removing such limitations until there is true local exchange competition, not merely the lowering of entry barriers, as well as safeguards against discrimination by Ameritech in favor of its wireless affiliates.<sup>20/</sup> In this regard, McCaw commented that:

"Unleashing Ameritech's power by eliminating regulatory restrictions before real competition emerges and without adequate safeguards in place would invite Ameritech to . . . impede the development of the most likely challengers to the local exchange monopoly, including wireless networks."<sup>21/</sup>

McCaw opposes relaxation of the BOC line of business restrictions until real local exchange competition develops. Yet, in this proceeding, it seeks cellular deregulation -- forbearance

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<sup>19/</sup> Petition for Declaratory Ruling and Related Waivers to Establish a New Regulatory Model for the Ameritech Region, filed March 1, 1993 (the "Ameritech Petition").

<sup>20/</sup> For example, McCaw stated that ". . . there is an immense difference between the opening of a market to competition -- so loudly heralded by Ameritech -- and its actual arrival and continued growth." Comments of McCaw on the Ameritech Petition, filed June 11, 1993 at p. 2.

<sup>21/</sup> Id. at pp. 10-11.

from Title II regulation and identical treatment of all commercial mobile service providers -- before new ESMR and PCS entrants have a chance to create real competition to the cellular duopoly. McCaw's opposition to differential regulation of new entrant commercial mobile service providers is disingenuous and without merit.

Thus, Section 332, as revised, permits the Commission to regulate mobile service providers on a service-specific basis with differential levels of regulation for individual providers or provider groups within the commercial mobile category. Regulatory parity does not mean identical treatment; the Commission must account for real world distinctions between services and service providers, including relative size, historic licensing methods, contiguous or scattered markets, and access to unencumbered spectrum. These factors cannot be ignored or dismissed "in order to satisfy the interests of larger and better financed incumbents."22/

Notwithstanding the above, most commenters supported Commission forbearance from the discretionary regulatory requirements of Title II of the Act for commercial mobile service licensees. In sharp contrast, the National Association of Business and Educational Radio, Inc. ("NABER") submitted a "White Paper"

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22/ Comments of Comcast Corporation at p. 4. Similarly, in its comments, PacTel Corporation ("PacTel") supports the Commission identifying classes or categories of commercial mobile services and promulgating differential regulation among them consistent with the principle of like regulation for like services. Comments of PacTel at p. 16.

with its comments proposing two classifications of commercial mobile services: the first including dispatch SMRs, paging, shared Part 90 systems and Part 90 internal business systems; the second including cellular, ESMR, and PCS providers. Although it is far from clear, NABER appears to suggest that because the second group are "generally voice-based services that use broadband spectrum," they are somehow not competitive and forbearance is not warranted, while the first group occupy limited spectrum and are therefore competition and should be virtually free of Title II regulation.<sup>23/</sup>

NABER's proposed classifications are illogical and its purpose obscure. First, its classifications do not make sense since two-way Part 90 voice systems and traditional SMRs are not only broadband services, but are far less spectrum efficient than advanced technology digital ESMR systems and prospective PCS systems. Second, the market structure of the second category, including a minimum of two cellular carriers, ESMR carriers and up to seven PCS licensees, portends that consumers will reap the benefits of a competitive marketplace for voice-based mobile services.

Third, NABER offers no empirical data, economic studies or support of any kind for its conclusion that a competitive market does not exist for services in the second group, It cannot

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<sup>23/</sup> NABER states that "competition exists in those markets in which numerous providers have access to spectrum and in which users have numerous choices of providers." See the NABER White Paper attached to its comments.

seriously believe that new entrant ESMR and PCS services have any market power requiring Title II regulation or that there is insufficient spectrum for competition when the Commission is about to auction 120 MHz for new personal communications services. NABER's "White Paper" appears to undercut the intent of Congress and the interests of its membership.

C. Interconnection

1. Commercial Mobile Service Providers Should Be Treated as Co-Carriers for Interconnection with LEC Facilities

The Commission's proposal to preempt state regulation of the right to intrastate interconnection and the types of interconnection available to commercial mobile service carriers is essential and in the public interest. Every commercial mobile service provider is entitled to obtain interconnection from the LECs that is reasonable for the particular mobile system and is no less favorable than that offered by the LEC to any other customer or carrier. Multiple inconsistent state regulatory policies concerning the right to non-discriminatory interconnection would undercut the federal objective of assuring interconnection of wireless services with the interstate public switched network.

Moreover, Nextel supports MCI's suggestion that commercial mobile carriers be assured of access to more advanced interconnection capabilities than those typically available to cellular carriers today, such as Signaling System 7 capabilities and other advanced functionalities, and that commercial mobile service providers be given full co-carrier status with local

exchange carriers.<sup>24/</sup> Lack of access, or delayed or potentially discriminatory access to the LEC's advanced networks and architecture will hamper the growth of wireless services and wireless competition to the local loop.

Unfortunately, the experience of wireless carriers in obtaining interconnection with LEC facilities has been disappointing.<sup>25/</sup> Nextel strongly supports the five principles articulated by Comcast for a commercial mobile-LEC interconnection policy.<sup>26/</sup> The Commission should adopt interconnection policies incorporating these principles and requiring that commercial mobile providers receive cost-based non-discriminatory interconnection to all advanced LEC services and that safeguards be put in place to prevent discrimination by the LECs in favor of their wireless affiliates.

2. Commercial Mobile Carriers Must Receive Mutual Compensation for Terminating Land-Originating Traffic

Nextel also endorses comments supporting the right of commercial mobile service providers to be compensated for terminating mobile traffic originating on LEC networks.<sup>27/</sup>

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<sup>24/</sup> See e.g., Comments of MCI at pp. 10-11.

<sup>25/</sup> The LECs have repeatedly manipulated the split of federal and state jurisdiction over communications to deny or delay providing the full, fair and reasonable interconnection they are obligated to provide. See The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, 2 FCC Rcd 2910 (1987), aff'd on recon., 4 FCC Rcd 2369 (1989); Comments of Comcast at pp. 6-9.

<sup>26/</sup> Comments of Comcast at p. 9.

<sup>27/</sup> Comments of MCI at p. 3.

Without "mutual compensation," commercial mobile providers must pay LECs to terminate mobile-originating traffic, but are not themselves compensated by the LECs for the costs of terminating LEC-to-mobile calls. The fairness and propriety of mutual compensation was articulated by the Commission in its cellular interconnection policies, but has not been successfully enforced.<sup>28/</sup> According, the Commission should adopt rules assuring enforcement of mutual compensation as a primary component of the its commercial mobile service/local exchange interconnection requirements.

3. Mandated Interconnection and Equal Access Obligations Should Not be Imposed on Commercial Mobile Service Carriers

The Notice asked whether commercial mobile service providers should be required to interconnect with other mobile providers.<sup>29/</sup> Unlike the LECs, commercial mobile service providers do not have monopoly control over essential bottleneck facilities requiring Commission-mandated interconnection. There is no justification, therefore, for extending the Commission's traditional, dominant wireline carrier obligations to mobile service providers. These arrangements can be made through negotiations with the many wireless service providers in the competitive commercial mobile communications environment. Nextel agrees that the Commission should not impose interconnection requirements on commercial mobile providers and should preempt the

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<sup>28/</sup> Comments of Comcast at n. 12.

<sup>29/</sup> Notice at para. 71.

states from imposing such requirements.<sup>30/</sup> Multiple and inconsistent interconnection policies applicable to commercial mobile carriers, just as in the case of inconsistent commercial mobile service/LEC interconnection policies, would substantially undermine the creation of competitive interconnected communications networks.

The Notice also seeks comment on whether commercial mobile carriers should be required to provide equal access to all interexchange carriers for interconnected services.<sup>31/</sup> Nextel concurs with commenters arguing that no equal access obligations for interexchange service should be imposed on non-BOC affiliated commercial mobile service providers.<sup>32/</sup> The equal access obligations of BOC cellular affiliates are justified by their monopoly control over local exchange access. An equal access obligation for independent commercial mobile service providers is unwarranted, would impose costs greater than the potential benefits, and would halt the current price and service competition

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<sup>30/</sup> McCaw and Pactel, among others, strongly oppose imposing interconnection obligations on commercial mobile carriers.

<sup>31/</sup> Cellular carriers affiliated with dominant LECs are required to offer equal access to all interexchange carriers under the terms of the Modified Final Judgment. United States v. Western Electric Co., 797 F.2d 1082 (D.C. Cir. 1986). Pending before the Commission is a petition filed by MCI to require all wireless carriers to offer equal access to all interexchange carriers. See Policies and Rules Pertaining to the Equal Access Obligations of Cellular Licensees, RM - 8012, Petition for Rulemaking of MCI, filed June 2, 1992.

<sup>32/</sup> See e.g., Comments of Comcast at p. 15; Comments of Pacific Bell at p. 21-22. See also Reply Comments of Fleet Call, Inc. in RM - 8012, filed October 15, 1992.

for interexchange traffic among them.<sup>33/</sup>

D. The Dispatch Prohibition Should not be Modified Until After the Three Year Transition for Existing Private Carriers to Convert to Commercial Mobile Regulation

The Commission should not undertake a rule making to permit existing common carriers to offer dispatch service until after the three-year transition period for reclassification of existing private carriers.<sup>34/</sup> Section 332 provides a three-year transition period for private carriers to reorder their operations consistent with common carrier regulatory obligations. Eliminating the dispatch prohibition during the transition would subject private carriers to competition in the traditionally private land mobile dispatch market before they have adjusted to the regulatory and competitive challenges of commercial mobile service. Accordingly, the Commission should defer this matter to a rule making after the end of the three-year transition period.

#### IV. CONCLUSION

Nextel submits that the Congress' intent in revising Section 332 of the Act will be met by regulating functionally equivalent mobile services under the same regulatory classification. At the same time, the Commission can create different groups within the commercial mobile classification with differential regulation to promote a competitive mobile services industry for customers.

In adopting these regulatory parity rules, the Commission must assure that all commercial mobile carriers have access to non-

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<sup>33/</sup> Accord, Comments of Comcast at pp. 15-17.

<sup>34/</sup> Comments of Nextel at p. 19.

discriminatory interconnection with the public switched network and should preempt state regulation of the availability of interconnection and the types of interconnection provided. The Commission should also mandate reciprocal compensation for mobile carriers terminating land-originating traffic. Finally, the Commission should not impose on mobile carriers equal access and other regulatory requirements appropriate for providers of bottleneck, monopoly facilities.

Respectfully submitted,  
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November 23, 1993

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Reply Comments of Nextel Communications, Inc. has been mailed by United States first class mail, postage prepaid, this 23rd day of November 1993, to the following:

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