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Nextel Communications, Inc.

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JAN 13 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

January 13, 1994

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

EX PARTE

Re: GN Docket No. 93-252

Dear Mr. Caton:

On behalf of Nextel Communications, Inc. ("Nextel") and pursuant to Section 1.1206(a) of the Commission's Rules, this letter constitutes notice that on January 13, 1994, Nextel forwarded the attached letter to Mr. Gerald P. Vaughn, Deputy Chief of the Common Carrier Bureau. Two copies are attached.

Should any questions arise in connection with this notification, please do not hesitate to contact the undersigned.

Respectfully submitted,

NEXTEL COMMUNICATIONS, INC.

Lawrence R. Krevor
Director
Government Affairs

LRK:glS

cc: Karen Brinkmann, Esq.
Greg Vogt, Esq.
Beverly Baker, Esq.
Judy Argentieri, Esq.
David Solomon, Esq.

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Robert S. Foosaner
Senior Vice President - Government Affairs

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January 13, 1994

Mr. Gerald P. Vaughn
Deputy Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 500
Washington, D.C. 20554

Dear Mr. Vaughn:

By telephone conversation yesterday you asked me, on behalf of Nextel Communications, Inc. ("Nextel"), to respond to a request by Judith Argentieri, an attorney in the Tariffs Division, concerning the possible application of Section 225 of the Communications Act of 1934, as amended (the "Act"), to Nextel's mobile communications services. Ms. Argentieri asked Nextel to provide its gross interstate revenue for purposes of calculating its potential contribution to recovering costs caused by telecommunications relay services as part of her research in GN Docket No. 93-252.

Section 225 requires common carriers to provide telephone transmission services that enable an individual with a hearing or speech impairment to engage in communications with a hearing individual in a functionally equivalent manner to regular telephone voice communications. This is accomplished through accessing telecommunications relay services in which the hearing or speech impaired end user employs a text telephone and a communications assistant transliterates conversations from text to voice and vice versa. See 47 C.F.R. Section 64.01 et. seq.

Nextel recognizes the important public interest benefits of making telecommunications relay services available to speech and/or hearing impaired individuals. In considering whether and when these requirements should apply to carriers within the new commercial mobile service, the Federal Communications Commission (the "Commission") must take into account statutory transition requirements and technical considerations, as well as cost and competitive impacts on new entrant carriers.

By its terms, Section 225 applies only to common carriers. Nextel is currently authorized under Part 90 of the Commission's Rules as a Specialized Mobile Radio private carrier. In the Notice of Proposed Rulemaking (the "Notice") to implement the amendments to Sections 3(n) and 332 of the Act contained in the Omnibus Budget



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Act of 1993, the Commission proposed reclassifying Nextel's Enhanced Specialized Mobile Radio ("ESMR") services as a common carrier commercial mobile service. Nextel does not oppose such reclassification.

Nextel stresses, however, that Subsection (c)(2) of Section 6002 of the Budget Act, relating to effective dates, provides a three year period during which current providers of private land mobile service will continue to be treated in the same manner. Telecommunications Subcommittee Chairman Markey, just prior to passage of the Budget Act, stated on the House floor that this provision is intended to allow reclassified private carriers to transition their operations into a changed regulatory framework:

"I want to clarify that subsection (c)(2) of section 6002, relating to effective dates, provides a 3-year period during which current providers of private land mobile service will continue to be treated in the same manner. The intent of this transition period is to provide those whose regulatory status is changed as a result of this legislation a reasonable time to conform with the new regulatory scheme (emphasis added)."

See Congressional Record, H6163, August 5, 1993.

Accordingly, the Communications Act provides that Nextel will continue to be regulated as a private carrier for three years. At the end of this period reclassification, if adopted, could become effective. Section 225 is inapplicable during the three year transition period. Given that it and other Title II provisions will not apply for another two and one-half years, Nextel has not discussed their application with your staff beyond the general positions articulated in its comments and reply comments in response to the Notice.^{1/} Thus, nothing in this reply should be

^{1/} In its comments, Nextel urged that the Commission forbear (at the end of the transition period) from applying virtually all Title II requirements (other than those mandated by the Budget Act amendments) to ESMR providers because they lack market power or monopoly control over bottleneck facilities. In the event the Commission issues a Further Notice in GN Docket No. 93-252 (or otherwise requests it) Nextel will provide detailed comments on the economic, competitive and technical impacts of specific Title II regulations on ESMR and SMR operations.



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construed to mean that Nextel could be regulated as a common carrier prior to August 8, 1996.

Notwithstanding the above, Nextel's ESMR systems are not currently compatible with existing text telephone (TT) equipment for telecommunications relay services. This is because the six times TDMA vocoder in Nextel's ESMR technology does not produce DTMF tones that permit reliable data communications by auditory transmission to a TT. (We have been informed that TT equipment is typically used with analog cellular systems by "sandwiching" the two units together so that the TT handset can hear the cellular handset's DTMF tones.) This will not work on Nextel's all-digital systems.

Nextel's digital ESMR technology requires a direct digital connection between the TT handset and the RS 232 jack of the Nextel handset. Nextel will not offer ESMR data communications capability until at the earliest late in 1994. Thus, it is not technically possible to use TT equipment on Nextel's ESMR system until the system's data capabilities are implemented. This will also require availability of TT equipment with an RS 232 output rather than direct auditory contact with the mobile telephone handset.

Application of the telecommunications relay service requirements will be further complicated by the fact that ESMR includes dispatch services. It is unclear how such dispatch communications will be accounted for in terms of interstate or intrastate revenues. For example, a dispatch communication on Nextel's New York City metropolitan area ESMR system could be intrastate as well as interstate involving three jurisdictions. This poses complications for compliance with the cost recovery requirements of Section 64.604(c)(4) of the Commission's Rules.

Consistent with the above discussion, and because Nextel's operations to date have been primarily private carrier dispatch services not subject to common carrier accounting rules requiring jurisdictional separation of revenues, Nextel does not maintain records for its gross interstate revenues.

Finally, Nextel notes that Section 225 provided common carriers a three year period from its enactment to comply with its requirements. A similar period for Nextel to establish the necessary arrangements to provide relay services directly, or to arrange for their provision, is reasonable and is consistent with the statutory requirement that reclassified private carriers have a reasonable transition period to comply with common carrier regulatory requirements. This three year period for compliance is



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based upon similar reasoning applied by Congress in establishing the instant transition time frame.

I trust that this information is responsive to your request. Please feel free to contact me if you have any questions or require additional information. I will file a copy of this letter with the Secretary as an ex parte communications in GN Docket No. 93-252.

Sincerely,

A handwritten signature in cursive script, appearing to read "Robert S. Foosner", with a horizontal line extending to the right.

Robert S. Foosner