

EX PARTE OR LATE FILED

DOCKET FILE COPY ORIGINAL

Nextel Communications, Inc.
601 13th Street, N.W., Suite 1110-S, Washington, DC 20005
202 628-8111 FAX 202 628-8125



RECEIVED

JAN 26 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

January 26, 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 of the Commission's Rules, this letter constitutes notice that the undersigned met today with Mr. Peter Tenhula, Esq., of the Office of General Counsel, to discuss the attached document, entitled "Section 332 Transition Facts," and related matters concerning the transition for reclassified private land mobile services to become regulated as commercial mobile services.

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

cc: Peter Tenhula, Esq.

No. of Copies rec'd
List ABCDE

244

RECEIVED

JAN 26 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

SECTION 332 TRANSITION FACTS

ISSUE: What is the scope of the transition for private land mobile services reclassified as commercial mobile radio services ("CMRS")?

BRIEF ANSWER: In the words of Congressman Markey:

"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."

TRANSITION MANDATE

- Congress included in the Omnibus Budget Reconciliation Act of 1993 (the "Budget Act") a three year transition period during which private radio **services** that will be reclassified as CMRS continue to be regulated as private mobile **services**. Congress also required the Federal Communications Commission (the "Commission") during the transition to equalize the treatment of competing private and common carriers within one year by eliminating private radio regulatory burdens not applicable to common carriers.

- Enhanced Specialized Mobile Radio ("ESMR") is not a new service, but rather the implementation of improved technology on existing Specialized Mobile Radio ("SMR") systems. Therefore, the transition applies to ESMR. Most other private radio services do not satisfy the statutory prerequisites of CMRS (e.g., they are not provided on a for-profit basis). Thus, there would be no reason for a transition if it is not applicable to ESMR.

- For 20 years, private radio service rules encouraged business plans and operations relying on individualized contracts and customized services. This approach is fundamentally inconsistent with Title II common carrier requirements that services must be indiscriminately offered to the public at large. A three year transition for reclassified private mobile services is necessary to modify existing contracts, operations and marketing plans to conform with Title II regulatory requirements.

- For these reasons, the Conference Report states that any private land mobile **service** provided prior to enactment shall be treated as a private mobile service for three years. The Commission expressly determined that ESMR is part of the SMR service provided prior to enactment. The House Report states that while the Budget Act changes to their regulatory status are effective for common carriers in one year, reclassified private carriers have three years to comply with new CMRS regulations. It

also states that Commission rules **cannot** accelerate the three-year transition. Thus, Congress intended that the reclassification be implemented on a service-wide basis at the end of transition.

SCOPE OF THE TRANSITION

Any assertion that the transition only applies to systems or stations licensed before August 10, 1993 does not comport with statutory intent, as discussed below.

- ESMRs are networks of individually licensed SMR base stations. It would create an unworkable regulatory morass to apply different regulations to SMR stations licensed before and after August 10, 1993 within a single ESMR system -- in direct contradiction of the Congressional purpose of transition and intent to promote a robustly competitive CMRS.

- Congress did not intend flash-cut reclassification -- statute provides full year for Commission to rationalize inconsistent private carrier (Part 90) and common carrier (Part 22) rules; *e.g.*, loading requirements, co-channel spacing. Until this is accomplished, Part 90 carriers cannot begin to prepare for common carrier regulation.

- *ESMR will be the first nationwide, all-digital voice and data mobile communications information superhighway.* Regulating ESMR systems licensed before August 10, 1993 as private, with stations or systems licensed post-Budget Act enactment as CMRS, would frustrate roaming and impede expeditious build out of nationwide digital ESMR network. Balkanized regulation of some ESMR systems as private and others as CMRS would create numerous regulatory, technical and marketing obstacles to implementing seamless efficient roaming and impose unwarranted higher costs. Congress intended the transition to enable Commission and ESMR industry to plan for a *unified transition to CMRS regulation on a service-wide basis* at the end of the three year period.

- As discussed above, the transition applies to services regulated as private as of August 10, 1993. There is no statutory authorization to reclassify individual service providers upon a change in ownership.