

providing communications interconnected with public switched message networks.¹⁰⁹ In clarifying which services were barred,¹¹⁰ the Commission specifically prohibited competing satellite systems from interconnecting through a data circuit "terminat[ing] in a computer that can store and process the data and subsequently retransmit it over that network."¹¹¹

58. We disagree with those commenters who argue that the *Data Com* and *Millicom* cases should guide us to a different result. In *Data Com*, the Commission found that no interconnection was involved in a communications system where callers wishing to page subscribers placed a call through the PSN to an answering service which then relayed the message to the intended recipient by activating the *Data Com* transmitter through a private radio link. We held that the *Data Com* system was not providing interconnected service because there was no direct connection between the *Data Com* transmitter and the PSN.¹¹² While the *Millicom* case involved a system that used store and forward technology, this fact was not pertinent to our decision there because that decision turned on whether the licensee was operating a shared-use system that would subject it to the interconnection prohibition contained in the prior version of Section 332.¹¹³

59. The statute also requires the Commission to define the term "public switched network." The Commission has frequently used the term "public switched telephone network" (PSTN) to refer to the local exchange and interexchange common carrier switched network, whether by wire or radio.¹¹⁴ Many parties urge the Commission to continue this approach to defining the public switched network. We agree with commenters who argue that the network should not be defined in a static way. We believe that this interpretation is also more consistent with the use of the term "public switched network," rather than the more technologically based term "public switched telephone network." The network is continuously growing and changing because of new technology and increasing demand. The purpose of the public switched network is to allow the public to send or receive messages to or from anywhere in the nation. Therefore, any switched common carrier service that is interconnected with the traditional local exchange

¹⁰⁹ *International Satellite Systems*, 101 FCC 2d at 1054. An exception was made for emergency restoration service.

¹¹⁰ *Id.* at 1100.

¹¹¹ *Id.* at 1101.

¹¹² *Data Com, Inc., Declaratory Ruling*, 104 FCC 2d 1311, 1315 & n.7 (1986). In the *Data Com* case, we found that no aspect of the service provided by *Data Com* was dependent upon any direct or indirect physical connection to the public switched network. In contrast, there can be services in which some transmitters used in providing the service are not physically connected to the network but the service is treated as interconnected because its overall configuration includes physical links with the PSN.

¹¹³ *Applications of Millicom Corporate Digital Communications, Memorandum Opinion and Order*, 65 Rad. Reg (P&F) 235, 237-39 (1983), *aff'd sub nom. Telocator Network of America v. FCC*, 761 F.2d 763 (D.C. Cir. 1985).

¹¹⁴ For example, in establishing the Basic Exchange Telecommunications Radio Service (BETRS) we held that it was "intended to be an extension of intrastate basic exchange service." *BETRS Order*, 3 FCC Rcd at 217. In particular, we explained that "BETRS is provided so that radio loops can take the place of (expensive) wire or cable to remote areas." *Id.*

or interexchange switched network will be defined as part of that network for purposes of our definition of "commercial mobile radio services."¹¹⁵

60. A mobile service that offers service indirectly interconnected to the PSN through an interconnected commercial mobile radio service, such as a cellular carrier, will be deemed to offer interconnected service because messages could be sent to or received from the public switched network via the cellular carrier. We agree with Nextel and Pacific that use of the North American Numbering Plan¹¹⁶ by carriers providing or obtaining access to the public switched network is a key element in defining the network because participation in the North American Numbering Plan provides the participant with ubiquitous access to all other participants in the Plan. We find that another important element is switching capability, which the term "public switched network" implies. This includes any common carrier switching capability, not only a local exchange carrier's switching capability. Thus, we believe that this approach to the public switched network is consistent with creating a system of universal service where all people in the United States can use the network to communicate with each other.

c. Service Available to the Public

(1) Background and Pleadings

61. The last element of the commercial mobile radio service definition is that the service must be made available to the public. Specifically, the statute provides that, if a licensee offers a for-profit service and makes interconnected service "available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public," then it is a commercial mobile radio service.¹¹⁷ In the *Notice*, we interpreted the language "to the public" as contemplating "any interconnected service that is offered to the public without restriction, as existing common carrier services are offered."¹¹⁸ The *Notice* also sought comment regarding (1) what types of services are "offered to such classes of eligible users as to be effectively available to a substantial portion of the public"; (2) whether such services that are "effectively available" include those offerings that are "available to a substantial portion

¹¹⁵ It is important to note, however, that defining a carrier as part of the public switched network does not impose any interconnection obligations upon that carrier. Interconnection obligations flow from a common carrier's Section 201 obligations if the Commission finds that such connections are in the public interest. The question of whether we will require CMRS providers to offer interconnection to their facilities to other CMRS providers or other parties requesting interconnection will be examined in a separate proceeding. See para. 285, *infra*. Moreover, our defining a carrier as part of the PSN for purposes of our definition of "commercial mobile radio service" is not intended to alter or modify the extent to which any such carrier may be subject to any obligations or requirements (e.g., network reliability reporting, open network architecture) other than those contained in Section 332 of the Act or in regulations promulgated by the Commission pursuant to Section 332.

¹¹⁶ The Plan provides a method of identifying telephone lines in the public network of North America. The Plan has three ways of identifying phone numbers: a three digit area code, a three digit exchange or central office code, and a four digit subscriber code. Currently, Bell Communications Research (Bellcore) administers this plan. The Commission has initiated a proceeding related to the North American Numbering Plan, and, in particular, the impending shortage of telephone numbers. See Administration of the North American Numbering Plan, CC Docket No. 92-237, Notice of Inquiry, 7 FCC Rcd 6837 (1992).

¹¹⁷ Communications Act, § 332(d)(1), 47 U.S.C. § 332(d)(1).

¹¹⁸ The statute directs the Commission to "specify by regulation" such classes of eligible users as to be "effectively available to a substantial portion of the public." *Id.*

of the public" despite limitations on end user eligibility; (3) whether system capacity should be a factor in determining whether a service is "effectively available" to the public; and (4) whether service area size or "location-specificity" in service offerings ought to be a consideration in finding that a service is not "effectively available" to the public.

62. The majority of commenters discuss two basic issues in relation to the "to the public" prong of the commercial mobile radio service definition, namely: (1) how should the phrase "to the public" be interpreted; and (2) what should be the appropriate test for determining which services are "effectively available to a substantial portion of the public." Many commenters agree that a particular mobile service should be considered available "to the public" only if it is available to the public either without restriction or without distinction.¹¹⁹ BellSouth, however, asserts a service could be considered publicly available even if the Commission's Rules place some minimal restrictions on end user eligibility.¹²⁰ Similarly, Sprint states that the "public" need not encompass the entire universe of potential users.¹²¹ US West urges the Commission to limit the number and type of factors that the Commission considers in determining public availability in order to avoid case-by-case analysis.¹²² Lastly, MPX maintains that services that limit their customer base by means of elected negotiations, such as SMRs, should not be deemed to be available to the public.¹²³

63. The second "public availability" element requires inquiry into whether the interconnected mobile service is made available "to such classes of eligible users as to be effectively available to a substantial portion of the public." Many commenters and reply commenters assert that this element should be interpreted to exclude services that are available only to classes of eligibles comprised of only specific industries, businesses, or other narrow eligibility classes.¹²⁴ Several other commenters and reply commenters, however, favor applying a test for the "effectively available" element requiring that, if service is available or intended to be available, to a large sector of the public, irrespective of any eligibility restrictions, it should be deemed to be effectively available to a substantial portion of the public.¹²⁵

64. Commenters also address the issues whether limited capacity on a system restricts whether it is effectively available to a substantial portion of the public, and whether a location-

¹¹⁹ See, e.g., E.F. Johnson Comments at 7; GTE Comments at 6; McCaw Comments at 18; Motorola Comments at 8; NABER Comments at 10; New York Comments at 7; Nextel Comments at 11; PageNet Comments at 11-12.

¹²⁰ BellSouth Comments at 11.

¹²¹ Sprint Comments at 7.

¹²² US West Comments at 19.

¹²³ MPX Comments at 4.

¹²⁴ See, e.g., AAR Comments at 4; Arch Comments at 5 n.13; ARINC Comments at 5-6; GTE Comments at 7; Motorola Comments at 8; NABER Comments at 10; Reed Smith Comments at 3; Roamer Comments at 9; TDS Comments at 8; UTC Comments at 11; AAR Reply Comments at 4; Securicor Reply Comments at 6; Telocator Reply Comments at 4.

¹²⁵ See, e.g., Bell Atlantic Comments at 11; CTIA Comments at 10; Mtel Comments at 8; New York Comments at 7; NARUC Comments at 17; Pacific Comments at 7-8; PacTel Comments at 12-13; Rochester Comments at 5; Southwestern Comments at 9; Sprint Comments at 8; Telocator Comments at 11; USTA Comments at 6; US West Comments at 19-21; Vanguard Comments at 6-7; McCaw Reply Comments at 23-24; PA PUC Reply Comments at 8; USTA Reply Comments at 3-4; US West Reply Comments at 5-6.

specific service or one offered only in a limited geographic area would not be effectively available to the public. As to the first issue, many commenters and reply commenters agree that low capacity has no effect on the public availability of a service.¹²⁶ E.F. Johnson, however, maintains that low capacity is a valid factor in restricting the public availability of a service.¹²⁷ Several commenters further agree that location-specificity and limited geographic area are irrelevant to a determination of public availability.¹²⁸ GTE and Roamer, however, maintain that location-specificity and limited geographic area do significantly restrict the public availability of a service.¹²⁹

(2) Discussion

65. We agree with commenters who contend that a service is available "to the public" if it is offered to the public without restriction on who may receive it. For example, PageNet asserts that private carrier paging (PCP) is available to the public without restriction because the "last significant eligibility" limitation was removed when PCPs were authorized to serve individuals, in addition to Part 90 eligibles. We agree. Nor do we find compelling MPX's assertion that services that limit their customer base by means of elected negotiations should be deemed to be unavailable to the public. In addition, we believe that similarly situated customers should have the opportunity to obtain service on the same terms as negotiated by other customers, unless, of course, the carrier is able to demonstrate that any distinctions in terms do not constitute unreasonable discrimination under Section 202(a) of the Act.¹³⁰

66. In parsing the language "to such classes of eligible users as to be effectively available to a substantial portion of the public" in Section 332(d)(1)(B) of the Act, we believe that the key words are "effectively available." In drafting this language, Congress eschewed the House definition's use of the word "broad" to modify the phrase "classes of eligible users" and

¹²⁶ See, e.g., Arch Comments at 5-6; Bell Atlantic Comments at 12; BellSouth Comments at 13; CTIA Comments at 10; DC PSC Comments at 6; GTE Comments at 7; Mtel Comments at 8; Motorola Comments at 8-9; NYNEX Comments at 11; Pacific Comments at 8-9; PageNet Comments at 11; Rochester Comments at 5 n.9; Southwestern Comments at 10-11; Sprint Comments at 8; TDS Comments at 9; Telocator Comments at 12; US West Comments at 20; UTC Comments at 11-12; Vanguard Comments at 7; McCaw Reply Comments at 24; Telocator Reply Comments at 4; Arch Reply Comments at 5; but see GTE Reply Comments at 4; Securicor Reply Comments at 6.

¹²⁷ E.F. Johnson Comments at 7.

¹²⁸ See, e.g., Bell Atlantic Comments at 12; CTIA Comments at 10; DC PSC Comments at 6; McCaw Comments at 18; Motorola Comments at 8-9; Mtel Comments at 8; Pacific Comments at 9; PageNet Comments at 11; Rochester Comments at 5; Southwestern Comments at 10-11; Sprint Comments at 8 n.11; TDS Comments at 10; US West Comments at 20; UTC Comments at 11-12; Vanguard Comments at 7.

¹²⁹ GTE Comments at 7; Roamer Comments at 10.

¹³⁰ The terms and conditions for different classes of customers may, of course, vary. Whether such differences are lawful would be a question of whether there is unreasonable discrimination under Section 202(a) of the Act. In the case of individualized or customized service offerings made by CMRS providers to individual customers, it is our intent to classify and regulate such offerings as CMRS, regardless of whether such offerings would be treated as common carriage under existing case law, if the service falls within the definition of CMRS.

adopted instead the Senate's version which deleted the word "broad," indicating legislative intent to:¹³¹

ensure that the definition of "commercial mobile services" encompasses all providers who offer their services to broad or narrow classes of users so as to be effectively available to a substantial portion of the public.

Thus, Congress intended both broad and narrow classes of eligible users that meet the statutory definition to be included within this element. The statute directs the Commission to specify those classes in its regulations.

67. In applying the statutory language, we look to several relevant factors, such as the type, nature, and scope of users for whom the service is intended.¹³² Thus, in the case of existing eligibility classifications under our Rules,¹³³ service is *not* "effectively available to a substantial portion of the public" if it is provided exclusively for internal use or is offered only to a significantly restricted class of eligible users, as in the following services: (1) Public Safety Radio Services;¹³⁴ (2) Special Emergency Radio Service;¹³⁵ (3) Industrial Radio Services (except for Section 90.75, Business Radio Service);¹³⁶ (4) Land Transportation Radio Services;¹³⁷ (5) Radiolocation Services;¹³⁸ (6) Maritime Service Stations;¹³⁹ and (7) Aviation Service Stations.¹⁴⁰ Service among these Part 90 eligibility groups, or to internal users, is made available on only a limited basis to insubstantial portions of the public. We conclude that it was Congress's intent that making service available to, or among, the eligible users in the above-stated private mobile radio services does not constitute service that is "effectively available to a substantial portion of the public." Finally, 220-222 MHz band and private paging systems that serve only the licensee's internal needs will not be deemed "effectively available

¹³¹ Conference Report at 496.

¹³² The statutory language warrants looking at several factors where the word "substantial" modifying "portion of the public" could mean either "considerable; ample; large" or "of considerable worth or value; important." Webster's New World Dictionary, Third College Edition, 1336 (1988).

¹³³ Our description here applies the test to existing classes of eligible users. We recognize, of course, that other classes could be established under our Rules in the future that would not be "effectively available to a substantial portion of the public" depending on the type, nature, and scope of users for whom the service is intended.

¹³⁴ 47 C.F.R. §§ 90.15-90.25.

¹³⁵ 47 C.F.R. §§ 90.33-90.55.

¹³⁶ 47 C.F.R. §§ 90.59-90.73, 90.79, 90.81.

¹³⁷ 47 C.F.R. §§ 90.85-90.95.

¹³⁸ 47 C.F.R. §§ 90.101, 90.103.

¹³⁹ 47 C.F.R. § 80.15.

¹⁴⁰ 47 C.F.R. § 87.19.

to a substantial portion of the public," because our rules restrict use of those services to internal applications.¹⁴¹

68. In contrast, if a licensee operates a system not dedicated exclusively to internal use, or provides service to users other than eligible user groups under our rules like those in the services listed in the preceding paragraph, it is offering service that is "effectively available to a substantial portion of the public." Thus, the eligibility provisions for the Business Radio Service (BRS), PCPs (other than internal use), commercial 220-222 MHz land mobile systems, and SMRs would permit service offerings effectively to a "substantial portion" of the public. The Part 90 eligibility rules for all types of SMRs, commercial 220-222 MHz land mobile systems, and PCPs, for example, include individuals as a category of eligible customers. Furthermore, eligible users in the BRS generally include any persons engaged in the operation of commercial activities, educational, philanthropic, or ecclesiastical institutions, clergy activities, and hospitals, clinics, or medical associations.¹⁴² We believe that end user eligibility is virtually unrestricted in the Business Radio Service and offerings in that Service are therefore made effectively available to a substantial portion of the public. Our classification of BRS illustrates the fact that a service may be classified as "effectively available to a substantial portion of the public" regardless of whether individuals are eligible to receive the service. In addition, Automatic Vehicle Monitoring services that are offered to third party users will be deemed "effectively available to a substantial portion of the public," because our interim rules authorize service to persons eligible in the radio services of Part 90.¹⁴³

69. Under the "system capacity" exception proposed in the *Notice*, any licensee whose system has limited capacity, such as an SMR with the capacity of no more than 70 to 100 users per channel, would be deemed to be offering a service that was not effectively available to a substantial portion of the public. We agree with those commenters who argue that adopting the "system capacity" approach would undermine the plain meaning of the statute, and Congress's intent in passing it. Although a service has low system capacity, it may nonetheless be available

¹⁴¹ See generally Sections 90.703(b), 90.717, 90.721, 90.723(a), 90.733(a)(2), 90.733(a)(3), and 90.733(b) of the Commission's Rules, 47 C.F.R. §§ 90.703(b), 90.717, 90.721, 90.723(a), 90.733(a)(2), 90.733(a)(3), 90.733(b); Amendment of Part 90 of the Commission's Rules To Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service, PR Docket No. 89-552, Memorandum Opinion and Order, 7 FCC Rcd 4484, 4490-91 (1992)(220 MHz local channels in commercial or non-commercial status; non-commercial nationwide licenses are for primary purpose of satisfying internal communications requirements, but licensee may elect to provide commercial service on limited basis at end of five-year period following grant of license). See also, e.g., Section 90.494(a) of the Commission's Rules, 47 C.F.R. § 90.494(a) (900 MHz paging frequencies available to all Part 90 eligibles for commercial or non-commercial use). Licensees in these services that have elected to operate not-for-profit internal systems are barred by the terms of their licenses from offering a for-profit commercial service. Such internal systems also are treated as not-for-profit for purposes of the CMRS definition. See para. 44, *supra*.

¹⁴² Section 90.75 of the Commission's Rules, 47 C.F.R. § 90.75; see also Amendment of Part 90 of the Commission's Rules To Expand Eligibility and Shared-Use Criteria for Private Land Mobile Frequencies, PR Docket No. 89-45, Report and Order, 6 FCC Rcd 542 (1991).

¹⁴³ Section 90.239 of the Commission's Rules, 47 C.F.R. § 90.239. In addition, we have granted a waiver to Teletrac to allow it to offer service to individuals. See Amendment of Part 90 of the Commission's Rules To Adopt Regulations for Automatic Vehicle Monitoring Systems, PR Docket No. 93-61, Notice of Proposed Rule Making, 8 FCC Rcd 2502, 2502-03 (1993). This Notice also proposes expanding the eligibility of this service to include individuals and the Federal Government. *Id.* at 2503.

“to the public.”¹⁴⁴ Even if system capacity were relevant to a determination of a given mobile service’s public nature, setting a standard for what constitutes a low capacity system would involve guesswork in a rapidly changing area where system-efficient technologies are constantly squeezing more capacity from smaller volumes of spectrum, and might provide incentives for inefficient spectrum use. In addition, therefore, we conclude that low system capacity should not be a factor in determining whether a class of eligible users makes the service “effectively available to a substantial portion of the public.”

70. Lastly, we address the issue raised in the *Notice* whether a limitation in the geographic size of a service area ought to be a factor in deciding that a service is not “available to the public” or “effectively available to a substantial portion of the public.” We agree with commenters who contend that geographic area or location specificity should not be a factor in our determination. We conclude that irrespective of the service area in which a given licensee is operating, if that licensee is serving such classes of eligible users as to be in effect making its service usable by a substantial portion of the public in that area, it is a service available to the public. This conclusion is consistent with the statute and congressional intent. Classifying the mobile service as a commercial mobile radio service, even though its offering is restricted to a limited geographic area will best serve the congressional objective of ensuring that telecommunications providers that compete with one another in any geographic area are subject to the same regulatory requirements and standards. Furthermore, we believe that finding a location-specific service not to be publicly available would be spectrally inefficient because it may produce disincentives to licensees to build out their systems into wide-area networks. At the same time, as wireless technologies move toward microcell and picocell environments, we believe that it would not serve the public interest to allow such state-of-the-art technology, albeit reserved to small areas, to be restricted from the general public.

3. Private Mobile Radio Service

a. Background and Pleadings

71. The statute defines private mobile service as “any mobile service (as defined in section 3(n)) that is not a commercial mobile service or the functional equivalent of a

¹⁴⁴ Apart from situations involving carriers of last resort, *see, e.g., United Fuel Gas. Co. v. Railroad Comm’n*, 278 U.S. 300, 309 (1929) (“The primary duty of a public utility is to serve on reasonable terms all those who desire the services it renders. This duty does not permit it to pick and choose and to serve only those portions of the territory which it finds most profitable, leaving the remainder to get along without the service which it alone is in a position to give.”); *see also American Tel. & Tel., Memorandum Opinion and Order*, 73 FCC 2d 248, 263 (1979), the common carriage obligation extends only to the provision of “adequate or reasonable” facilities in response to demand:

The term “adequate or reasonable” is not in its nature capable of exact definition. It is a relative expression, and has to be considered as calling for such facilities as might be fairly demanded, regard being had, among other things, to the size of the place, the extent of the demand for [service], the cost of furnishing the additional accommodations asked for, and to all other facts which would have a bearing upon the question of convenience and cost.

Atlantic Coast Line R.R. v. Wharton, 207 U.S. 328, 335 (1907); *see New York ex rel. Woodhaven Gas Light Co. v. Pub.Serv.Comm’n*, 269 U.S. 244, 248 (1925). Thus, under longstanding principles of common carriage regulation, the carrier’s costs in “furnishing the additional accommodations” are a relevant factor in determining the nature and extent of the carrier’s obligation to provide service.

commercial mobile service, as specified by regulation by the Commission."¹⁴⁵ The *Notice* described two alternative interpretations of this definition. Under one approach, a mobile service would be classified as private if (1) it fails to meet the statutory definition of a commercial mobile radio service or (2) it is not the functional equivalent of a commercial mobile radio service, even if it meets the literal definition of a commercial mobile radio service. Under another reading of the legislation, a mobile service would be classified as private if (1) it fails to meet the statutory definition of a commercial mobile radio service; and (2) it is not the functional equivalent of a commercial mobile radio service. In addition, we requested comment on what specific standards the Commission should use to determine whether a given service is the functional equivalent of a commercial mobile radio service.

72. Commenters disagree about the correct interpretation of the definition of private mobile radio service. Some commenters urge the Commission to adopt a broad definition of PMRS, so that the term would include any service that is not a commercial mobile radio service as well as a mobile service which may meet the literal definition of a CMRS, but is not the functional equivalent of a service that is deemed to be CMRS.¹⁴⁶ These parties generally refer to the example in the Conference Report, of a service that the Commission might classify as private, to support their position.¹⁴⁷ Commenters advocating a broad definition of private mobile radio service contend that their interpretation is consistent with the congressional intent to create regulatory symmetry for similar services.¹⁴⁸ In general, these commenters argue that Congress was concerned about regulatory symmetry between wide-area SMRs and cellular carriers and, therefore, Congress did not intend to apply Title II regulation to mobile services that are not the functional equivalent of commercial mobile radio services even if the services fall within the technical definition of CMRS.¹⁴⁹ Reed Smith also argues that the language of the statute is not ambiguous and compels a broad interpretation of private mobile radio service.¹⁵⁰ In addition, UTC asserts that, in adding the functional equivalence test, Congress did not change the definition of commercial mobile radio service. Rather, Congress added an

¹⁴⁵ Communications Act, § 332(d)(3), 47 U.S.C. § 332(d)(3).

¹⁴⁶ AMT/DSST Comments at 7-8; AMTA Comments at 12-13; E.F. Johnson Comments at 7-8; Geotek Comments at 5; ITA Comments at 2-4; LCRA Comments at 8-9; Motorola Comments at 9; NABER Comments at 11; Pagemart Comments at 8; Reed Smith Comments at 6; Roamer Comments at 11-12; RMD Comments at 5-6; Securicor Reply Comments at 7; Time Warner Comments at 5-6; TRW Comments at 16 n.33; UTC Comments at 12-13.

¹⁴⁷ AMT/DSST Comments at 7-8; AMTA Comments at 13; E.F. Johnson Comments at 7-8; Geotek Comments at 6-7; Motorola Comments at 9-10; NABER Comments at 11; Pagemart Comments at 9; Reed Smith Comments 7-9; Roamer Comments at 12; RMD Comments at 5-6; Securicor Reply Comments at 7-8; TRW Reply Comments at 19; UTC Comments at 14. *See* Conference Report at 496.

¹⁴⁸ AMT/DSST Comments at 7-8; E.F. Johnson Comments at 8; ITA Comments at 3-5; Motorola Comments at 10; Pagemart Comments at 9; Roamer Comments at 11-12; RMD Comments at 5-6; Securicor Reply Comments at 8; Time Warner Comments at 6; UTC Comments at 13.

¹⁴⁹ AMT/DSST Comments at 7; ITA Comments at 3-5; Motorola Comments at 10; RMD Comments at 5-6; UTC Comments at 13. *See also* AMTA Comments at 12 (claiming that Congress was also concerned that PCS services that provided a cellular or local loop-type service would be classified as common carriage); Roamer Comments at 11-12 (including wide-area private carrier paging systems as services that prompted the legislation).

¹⁵⁰ Reed Smith Comments at 6; *accord* UTC Reply Comments at 13.

escape valve for classifying services as private even if they meet the literal definition of CMRS.¹⁵¹

73. Many other parties argue that the Commission should adopt a narrow interpretation of private mobile radio service, which would include any mobile service that is not a commercial mobile radio service and is not the functional equivalent of a CMRS.¹⁵² In support of this interpretation, these commenters generally refer to the language in the Conference Report that the term private mobile service includes "neither a commercial mobile service nor the functional equivalent of a commercial mobile service."¹⁵³ Commenters advocating a narrow interpretation of the definition of private mobile radio service agree with parties advocating a broad interpretation that Congress intended to create regulatory symmetry for similar services.¹⁵⁴ They conclude, however, that Congress would not have created a technological distinction, like the example in the Conference Report, to allow similar services to be subject to differing regulatory schemes. After all, argue many of these commenters, Congress was attempting to remove regulatory disparities based on technical distinctions.¹⁵⁵

74. Some commenters also suggest that the clear language of the statute goes against the broad definition of private mobile radio service. BellSouth notes that it is difficult to imagine how a service could meet the statutory definition of commercial mobile radio service and not be the functional equivalent of CMRS. Any service meeting the statutory criteria and Commission definitions for CMRS is, by definition, the functional equivalent of itself. It is therefore not only a commercial mobile radio service, but also the functional equivalent of a commercial mobile radio service.¹⁵⁶ According to US West, the sole support for the broad interpretation of private mobile radio service is the language from the Conference Report which does not support the proposition for which it is cited. The example could not refer to a service falling within the literal definition of CMRS, argues US West, because it does not describe a for-profit service.

¹⁵¹ UTC Comments at 14.

¹⁵² Arch Comments at 6; Bell Atlantic Comments at 13; BellSouth Comments at 20; CTIA Comments at 11-13; DC PSC Comments at 7; GCI Comments at 2; GTE Comments at 8; McCaw Comments at 19-20; MCI Comments at 6; Mtel Comments at 9; NARUC Comments at 18-19; NTCA Comments at 2-3; New Par Comments at 7-8; New York Comments at 8; NYNEX Comments at 12; PA PUC Reply Comments at 9; Pacific Comments at 7; Pactel Comments at 7-8; Rochester Reply Comments at 3; Southwestern Comments at 11-12; Sprint Comments at 9; TDS Comments at 10; USTA Comments at 6; US West Comments at 7-8; Vanguard Comments at 8-9.

¹⁵³ Conference Report at 496 (emphasis added). Bell Atlantic Comments at 13; DC PSC Comments at 7; Mtel Comments at 9; NARUC Comments at 19; PA PUC Reply Comments at 9 & n.21; Pacific Comments at 7 n.15; Southwestern Comments at 12; US West Comments at 8-9; USTA Reply Comments at 4-5; Vanguard Comments at 8.

¹⁵⁴ Bell Atlantic Comments at 13; CTIA Comments at 11; GTE Comments at 8; McCaw Comments at 19-20; NARUC Comments at 19; New Par Comments at 7; NYNEX Comments at 12; TDS Comments at 10-11; Vanguard Comments at 8.

¹⁵⁵ See Bell Atlantic Comments at 13-14; CTIA Comments at 13-14; GTE Comments at 8; McCaw Comments at 20 & n.55.

¹⁵⁶ BellSouth Comments at 22 n.67. See also Southwestern Comments at 13 (arguing that a broad definition of "private" assumes that a commercial service is not defined by its own definition); US West Comments at 8-9 (claiming that a broad interpretation of private mobile radio service implausibly presupposes that there are commercial mobile radio services which would not be the functional equivalent of commercial mobile radio service).

Importantly, according to some commenters, this statement in the Conference Report follows the "neither/nor" language¹⁵⁷ that makes indisputable that the functional equivalence analysis applies only to those services which do not meet the commercial mobile radio service definition.¹⁵⁸ Nextel, on the other hand, submits that both interpretations of private mobile radio service are correct and effectuate Congress's directive that functionally equivalent or substitutable services must be subject to similar regulation.¹⁵⁹

75. Some commenters and reply commenters support the proposal in the *Notice* to adopt the functional equivalence test used to determine whether a common carrier unreasonably discriminates in its charges for like communications services.¹⁶⁰ CTIA urges the Commission to also apply precedent from the relevant market analysis used in antitrust law.¹⁶¹ Commenters criticize adopting a technological test like that described in the Conference Report, because different technologies are capable of providing comparable services.¹⁶² NYNEX urges the Commission to adopt general rules regarding the functional equivalence test.¹⁶³ McCaw, on the other hand, believes that the Commission should determine functional equivalence on a case-by-case basis when a service is authorized.¹⁶⁴ A few commenters and reply commenters disagree with the proposal in the *Notice* to adopt the functional equivalence test used by the Commission in discrimination cases.¹⁶⁵ For example, Geotek argues that the functional equivalence test should focus on whether the interconnected portion of the service is the primary service offered or only secondary or incidental to the primary service.¹⁶⁶

b. Discussion

(1) Scope of Definition

76. We agree with commenters who argue that Congress intended to narrow the scope of the definition for private mobile radio service by adding language stating that a mobile service would be considered to be private if it is not the functional equivalent of a commercial mobile radio service. Given this congressional intent, we conclude that a mobile service may be

¹⁵⁷ See para. 73, *supra*.

¹⁵⁸ US West Comments at 8; accord CTIA Reply Comments at 13.

¹⁵⁹ Nextel Comments at 13-14.

¹⁶⁰ CTIA Comments at 11-13; DC PSC Comments at 7-8; GTE Comments at 8; Mtel Comments at 10; NABER Comments at 11; NARUC Comments at 19-20; Nextel Reply Comments at 5-7; NYNEX Comments at 13; PA PUC Reply Comments at 9-10; Pacific Comments at 8; TDS Comments at 11; Telocator Reply Comments at 6; USTA Comments at 6; Vanguard Comments at 9.

¹⁶¹ CTIA Comments at 11-13.

¹⁶² McCaw Comments at 20 n.55; NYNEX Comments at 12-13; PRSG Comments at 2; Southwestern Comments at 14; Telocator Comments at 13 n.18; US West Reply Comments at 8; Vanguard Comments at 9.

¹⁶³ NYNEX Comments at 13-14; see also Time Warner Comments at 6-7.

¹⁶⁴ McCaw Comments at 21-22; see also PA PUC Reply Comments at 10; TRW Comments at 26 n.51; UTC Comments at 14-15.

¹⁶⁵ See, e.g., E.F. Johnson Comments at 8; Motorola Comments at 10-11; Southwestern Comments at 13-14; TRW Reply Comments at 20 n.42.

¹⁶⁶ Geotek Comments at 7-8.

classified as private only if it is neither a CMRS nor the functional equivalent of a CMRS. The factors that have led us to this conclusion are: the plain language of the statute, statements in the legislative history, and the overall purpose of the statute. First, we believe that our conclusion draws its strongest support from the plain words of the statute. As we have noted, Section 332(d)(3) of the Act provides that a mobile service may be classified as a PMRS only if it is *not* a commercial mobile radio service or the functional equivalent of a CMRS. We believe that the most logical method of applying this statutory test is as follows: If we conclude that a mobile service is offered to the public (or a substantial portion of the public), is offered for profit, and is an interconnected service, then we must conclude that the mobile service is a commercial mobile radio service because the nature of the service brings it within the statutory definition of commercial mobile radio services. Once we have concluded that a mobile service falls within the literal statutory definition of a CMRS, it is logically impossible, under the statute, to conclude that the service could be classified as a private mobile radio service. The statute unequivocally states that a private mobile radio service is not a commercial mobile radio service. It would be inconsistent with the statute to say that the term "commercial mobile radio service" is not defined by the elements stated in Section 332(d)(1), but by some benchmark CMRS that Congress did not specify (such as one that employs frequency reuse or covers a particular geographic area, as suggested by some commenters). As BellSouth notes, if a service meets the definition of CMRS it is difficult to conceive how it could not be the functional equivalent of CMRS, *i.e.*, of itself. On the other hand, if we conclude that a mobile service does *not* meet the literal definition of a commercial mobile radio service, we will presume that the service is private and it will be regulated as PMRS unless there is a showing in a specific case that it is the functional equivalent of a service that is classified as CMRS. Thus, the language of the statute clearly provides that if a mobile service meets the literal definition of a CMRS or it is found to be the functional equivalent of a service that does meet the literal definition of CMRS, it cannot be classified as a PMRS.

77. Second, the Conference Report supports this interpretation. The Report states that the Conference Committee amended the definition of private mobile radio service to "make clear that the term includes *neither* a commercial mobile service *nor* the functional equivalent of a commercial mobile service, as specified by regulation by the Commission."¹⁶⁷ Thus, the Conference Report specifies that any mobile service that falls within the literal definition of a CMRS *cannot* be classified as a private service. We recognize, as some commenters have pointed out, that the Conference Report provides a specific example where the Commission *may* determine that a service is not the functional equivalent of a CMRS because it does not employ frequency or channel reuse or make service available to a wide geographical area.¹⁶⁸ This example, however, does not necessarily represent a mobile service that fits the literal definition of a commercial mobile radio service because the example does not indicate whether the service is for profit. Also, the Conference Report cannot be read to *require* the Commission to find that such a service is not the functional equivalent of a CMRS. Congress intended to leave this issue to the Commission's expertise. Further, the language of a statute "is not to be regarded as modified by examples set forth in the legislative history."¹⁶⁹ Thus, the specific example in the Conference Report cannot drive us away from the conclusion compelled by the plain words of Section 332(d)(3). We believe that our interpretations of the individual elements of CMRS ensure that services that do not compete with commercial mobile radio services will be classified as private. For example, a for-profit service will be presumptively private only if it is not an interconnected service or it is not offered to the public or a substantial portion of the public.

¹⁶⁷ Conference Report at 496 (emphasis added).

¹⁶⁸ *Id.*; see also CTIA Reply Comments at 13.

¹⁶⁹ Pension Benefit Guaranty Corp. v. LTV Corp., 496 U.S. 633, 649 (1990).

78. The third factor supporting our interpretation of the term "private mobile radio service" is the fact that the interpretation comports with the statute's overriding purpose to ensure that similar services are subject to the same regulatory classification and requirements.¹⁷⁰ Although the language referring to the functional equivalent of a CMRS was added by the conferees, the House Report expresses concern about the functional equivalent of a common carriage offering being regulated as a private service. The House Report states:¹⁷¹

Under current law, private carriers are permitted to offer what are essentially common carrier services, interconnected with the public switched telephone network, while retaining private carrier status. Functionally, these "private" carriers have become indistinguishable from common carriers

The House illustrated its concern over the disparate regulatory treatment that has emerged under current law by specifically referring to the expanded definition of eligible user for specialized mobile radio service and private carrier paging licensees, to include individuals on an indiscriminate basis and Federal Government entities. The discussion also refers to enhanced specialized mobile radio services. Thus, under the approach taken in the House Report, even if a mobile service does not fit within the strict definition of a commercial mobile radio service, if the service amounts to the "functional equivalent" of a service that is classified as CMRS, it should be regulated as a CMRS. We do not find any clear intent that in adopting the final language Congress intended to depart from this purpose of the statute.

(2) *Functional Equivalence Test*

79. As explained in the preceding section, the definition of private mobile radio service includes any service that does not meet the definition of CMRS. The statute further provides, as explained above, that PMRS also does not include a service that is the functional equivalent of a CMRS. The statute grants the Commission authority to specify the functional equivalent of CMRS. We have broadly interpreted the definitional elements of CMRS because Congress intended this definition to ensure that the Commission regulate similar mobile services in a similar manner. Thus, we anticipate that very few mobile services that do not meet the definition of CMRS will be a close substitute for a commercial mobile radio service. Therefore, we will presume that a mobile service that does not meet the definition of CMRS is a private mobile radio service. This presumption may be overcome only upon a showing by a petitioner challenging the PMRS classification that the mobile service in question is the functional equivalent of a commercial mobile radio service.¹⁷²

80. Based on such a showing and any other relevant evidence or matters that the Commission may officially notice, the Commission will evaluate a variety of factors in deciding whether the service under review is the functional equivalent of a commercial mobile radio service. Our principal inquiry will involve evaluating consumer demand for the service in order

¹⁷⁰ See Part II.A, paras. 3-10; Part III.A.1, paras. 13-17, *supra*.

¹⁷¹ House Report at 259-60 (footnotes omitted).

¹⁷² We note that the presumption that we adopt here is not to be confused with the presumption we establish for PCS. See Part III.D, paras. 116-123, *infra*. In relation to PCS we decide that all PCS is presumptively CMRS. The significance of the presumption in the PCS context is that licensees receiving PCS spectrum *must* use the spectrum to provide CMRS, unless they make a sufficient showing that they should be permitted to use some or all of their allocated PCS spectrum on a private basis. Here we have established generic definitions of CMRS and PMRS. Our presumption in the PCS context, in applying these generic definitions, is based on our expectation that CMRS classification will fit these new services and will most adequately meet the goals we have established for PCS.

to determine whether the service is a close substitute for CMRS. For example, we will evaluate whether changes in price for the service under examination, or for the comparable commercial service, would prompt customers to change from one service to the other. Market research information identifying the targeted market for the service under review also will be relevant. Of course, we will refine this examination in the context of the individual cases that may arise based on a showing by any interested party.¹⁷³

C. REGULATORY CLASSIFICATION OF EXISTING SERVICES

81. In the *Notice* we explained that the Budget Act requires us to examine the regulatory status of all existing mobile services under the statutory definitions discussed in the preceding sections. We therefore sought comment on whether existing mobile services should be classified as CMRS or PMRS. The following sections explain our classification, based on the definitions of CMRS and PMRS, of existing services as they are currently provided. We recognize, however, that the manner in which these services are provided may change over time, and that these changes may require reclassification.

1. Existing Private Services

a. Government, Public Safety, and Special Emergency Radio Services

82. We proposed in the *Notice* to classify all existing government and public safety mobile services as private mobile services under Section 332(d)(3) of the Act. The commenters uniformly support this tentative conclusion.¹⁷⁴ Because our rules restrict use of these services to local governments and public safety organizations, they are not available "to the public" or a "substantial portion of the public" within the meaning of Section 332(d). In addition, with the exception of the Special Emergency Radio Service, these service categories are limited to not-for-profit use. We therefore conclude that, as proposed, all government, public safety, and Special Emergency services regulated under Part 90, Subparts B and C, will be classified as PMRS and will continue to be regulated as they have been.

b. Aviation, Marine, and Personal Radio Services

83. The *Notice* proposed to classify all mobile service licensees in the Part 80 marine services and Part 87 aviation services (with the exception of Public Coast Station licensees, who are currently regulated as common carriers) as PMRS on the grounds that these are not-for-profit systems. We also proposed to classify personal mobile radio services under Part 95 as PMRS on the same basis. The comments generally support this approach.¹⁷⁵ Therefore, we conclude that all mobile services under Parts 80, 87, and 95 will be classified as PMRS, except for Public Coast Station service (Part 80, Subpart J), which will be classified as CMRS. We also note that this action does not apply to *fixed* services under these rule parts, which are beyond the purview of Sections 3(n) and 332 of the Act. Thus, Operational Fixed Station licensees under Part 80, Subpart L, and Part 87, Subpart P, and Interactive Video and Data Service, which we have also determined to be a fixed service, are not affected by this Order.

¹⁷³ The procedures for overcoming the presumption that a mobile service provider should be regulated as PMRS are specified in Section 20.9(a) of the Commission's Rules, as adopted in this Order. See Appendix A.

¹⁷⁴ See, e.g., AAR Comments at 4-5; AAR Reply Comments at 2-3; American Petroleum Comments at 6; DC PSC Comments at 8; PRSG Comments at 2.

¹⁷⁵ See, e.g., ARINC Comments at 4-6; PRSG Comments at 2; Grand Comments at 2.

c. Industrial and Land Transportation Services

84. In lieu of a specific proposal for classification of the Industrial and Land Transportation Services (regulated under Part 90, Subparts D and E of our Rules),¹⁷⁶ we sought general comment on how the statutory definitions should apply to licensees in these service categories. The Notice tentatively concluded that licensees operating systems for internal use should be deemed not-for-profit within the meaning of the statute and therefore classified as PMRS. In addition, we noted that because many of these private land mobile services are specifically targeted to specific businesses, industries, or user groups, they are arguably not intended for the public or even a substantial portion of the public. We therefore sought comment on whether for-profit service in these categories should be classified as PMRS as well.

85. Virtually all commenters agree that PMRS classification is appropriate for licensees in any of the Industrial or Land Transportation Services who operate systems solely for their own internal use.¹⁷⁷ As discussed in Part III.B.2.a, paras. 39-49, *supra*, however, commenters are divided on the issue of whether a private non-commercial licensee should be classified differently if it leases excess capacity or enters into a shared-use arrangement with other users.¹⁷⁸ Commenters also express differing views on whether private carriers in the Industrial and Land Transportation Services make service available to a "substantial portion of the public" within the meaning of Section 332(d). Many commenters argue that the eligibility restrictions for these services limit their use to such specialized user groups that they should be uniformly classified as private services.¹⁷⁹ Other commenters contend that even existing private services designated for specific user groups should be deemed "available to a substantial portion of the public" on the grounds that they compete with common carrier services.¹⁸⁰

86. We conclude that, with the exception of the Business Radio Service, all Industrial and Land Transportation Services should be classified as private mobile radio services under Section 332(d)(3) of the Act. We agree with the view expressed by many commenters that because these services are limited under our rules to highly specialized uses for restricted classes of eligible users, they should be treated as not available to a substantial portion of the public for purposes of Section 332(d)(1). In addition, many of the licensees in these services operate systems solely for internal use and therefore do not meet the "for-profit" element of the CMRS definition.¹⁸¹

87. In the case of the Business Radio Service (BRS), we have determined that our eligibility rules are sufficiently broad to render this service effectively available to a substantial

¹⁷⁶ The Industrial Radio Services consist of the Power, Petroleum, Forest Products, Video Production, Relay Press, Special Industrial, Business, Manufacturers, and Telephone Maintenance radio services. The Land Transportation Services are the Motor Carrier, Railroad, Taxicab, and Automobile Emergency radio services.

¹⁷⁷ See, e.g., AAR Comments at 4-5; American Petroleum Comments at 4.

¹⁷⁸ See, e.g., CTIA Comments at 7-8; McCaw Comments at 16; TDS Comments at 3-4.

¹⁷⁹ See ARINC Reply Comments at 2; American Petroleum Comments at 3-6; AAR Reply Comments at 4.

¹⁸⁰ USTA Comments at 5-6.

¹⁸¹ Consistent with our decision concerning sale of excess capacity activities, however, we emphasize that Industrial and Land Transportation Services licensees will be treated as for-profit to the extent of any for-profit activity. Paras. 45-46, *supra*.

portion of the public.¹⁸² Therefore, classification of BRS licensees will depend on whether they meet the other elements of the CMRS definition discussed in this Order. BRS licensees who offer for-profit interconnected service, as we have defined these terms, will be classified as CMRS providers. On the other hand, BRS licensees who operate internal use systems or do not offer interconnected service to system users will be classified as PMRS unless it is demonstrated that they are providing service that is functionally equivalent to CMRS.

d. Specialized Mobile Radio

88. In the Notice, we requested comment on how the elements of the CMRS definition should be applied to Specialized Mobile Radio (SMR) service. We stated our tentative belief that wide-area SMR service should be considered available to a "substantial portion of the public" and therefore classified as CMRS if the other elements of the definition are met. We pointed out that if we treat wide-area SMRs as available to a substantial portion of the public, under this approach, both existing wide-area SMR service and pending proposals for wide-area SMR service could be affected. We requested comment, however, on whether we should classify as private SMRs that do not offer wide-area service or do not employ frequency reuse on the grounds that such services are either not available to a "substantial portion of the public" or that they are not the "functional equivalent" of commercial mobile radio service. In addition, we sought comment on how we should classify wide-area licensees who provide non-interconnected service, do not serve a substantial portion of the public, or devote the majority of their system capacity to traditional dispatch service.

89. Many of the commenters believe that any wide-area SMR systems that provide interconnected service should be classified as CMRS.¹⁸³ Some commenters, such as E.F. Johnson, believe that only those wide-area systems employing frequency reuse should be classified as CMRS.¹⁸⁴ Commenters are also divided as to how we should classify small or traditional SMR systems. For example, CTIA and others contend that all SMR providers should be classified as CMRS in light of Congress's directives and economic analysis concerning their substitutability.¹⁸⁵ Other commenters, such as ITA, believe that the Commission should continue to classify as private smaller SMR systems that are licensed for a limited number of frequencies and offer service to a specialized class of customers.¹⁸⁶

90. Under our interpretation of the statute, most SMR licensees automatically meet two of the elements of the CMRS definition. First, because all our rules define SMR licensees as "commercial" service providers,¹⁸⁷ they are by definition providing for-profit service under our interpretation of the CMRS definition. Second, we have concluded that the SMR end user eligibility criteria set forth in our rules¹⁸⁸ allow licensees to make service available to the public. With respect to the "interconnection" element of the definition, however, our rules allow but do not require SMRs to provide interconnected service to subscribers. We therefore

¹⁸² See para. 68, *supra*.

¹⁸³ See, e.g., AMTA Comments at 14-15; DC PSC Comments at 8; NYNEX Comments at 14-15 & n.18.

¹⁸⁴ E.F. Johnson Comments at 9.

¹⁸⁵ E.g., CTIA Comments at 15; Pacific Comments at 10; Mtel Comments at 10-11; Arch Comments at 8.

¹⁸⁶ ITA Comments at 5.

¹⁸⁷ Section 90.7 of the Commission's Rules, 47 C.F.R. § 90.7.

¹⁸⁸ Section 90.603(c) of the Commission's Rules, 47 C.F.R. § 90.603(c).

conclude that classification of all SMR systems turns on whether they do, in fact, provide interconnected service as defined by the statute. Licensees who provide interconnected service will be classified as CMRS providers, while those who do not will be classified as PMRS providers.¹⁸⁹

91. This approach will result in CMRS classification for any wide-area SMR that intends to offer for-profit interconnected service, as we expect most such systems will do. This is consistent with Congress's goal and the views of most commenters that SMRs providing interconnected service on a competitive basis with cellular carriers should be regulated similarly to cellular carriers. At the same time, this approach will allow traditional SMR dispatch services to be classified as private to the extent that these systems are not offering interconnected service or do not have an interconnection request pending with the Commission. In this respect, we agree with those parties who argue that an individual dispatch-only SMR system does not fit within the definition of CMRS.

92. We emphasize, however, that any offering of interconnected service by a traditional SMR licensee will result in CMRS classification. Thus, our decision whether to classify SMRs as PMRS or CMRS will not turn on system capacity, frequency reuse, or other technology-dependent aspects of system operations. We agree with Telocator that "the agency has never relied on system capacity to ascertain regulatory status" and "to do so now could create disincentives to employ new capacity-enhancing technologies"¹⁹⁰ In addition, as concluded in an earlier section, our decision how to classify a service will not turn on the size of the geographic area served.¹⁹¹

93. Finally, we note that under our interpretation of "functional equivalence" discussed in paras. 79-80, *supra*, the possibility exists that an SMR system that does not fall within the CMRS definition could nevertheless be classified as CMRS based on a finding that it is functionally equivalent to CMRS. Because we are presuming all such SMR systems to be private, however, we conclude that there is no reason to reach this issue at this juncture. Should there be instances where parties contend that a presumptively private SMR licensee is providing the functional equivalent of CMRS, we believe that development of a record is required to overcome this presumption, and that such instances should be addressed on a case-by-case basis.

e. 220-222 MHz Private Land Mobile

94. In the 220-222 MHz band, we license systems with local or nationwide channels that can be used for commercial or non-commercial operations.¹⁹² In the *Notice*, we requested comment addressing whether for-profit interconnected private land mobile services at 220 MHz should be classified as CMRS and non-commercial 220 MHz services classified as PMRS. Roamer asserts that technical limitations make the 220 MHz services unattractive for interconnected two-way voice communications, so they are not competitive with wide-area SMR offerings, cellular, or PCS. Roamer contends that 220 MHz services should therefore remain private except to the extent that we determine, on a case-by-case basis, that they compete with

¹⁸⁹ As discussed in para. 55, *supra*, SMR licensees who do not offer interconnected service to their customers may use interconnected facilities for internal control purposes without affecting their regulatory status.

¹⁹⁰ Telocator Comments at 12.

¹⁹¹ Para. 70, *supra*.

¹⁹² See Part 90 of the Commission's Rules, Subpart T, 47 C.F.R. §§ 90.701-90.741.

wide-area SMR services.¹⁹³ Other commenters address 220 MHz systems indirectly; for example, AMTA argues that we should classify as private all two-way private carriers and all purely internal systems (this would include the non-commercial 220 MHz systems).¹⁹⁴

95. Despite the arguments presented by Roamer, the key issue at 220 MHz is not whether the technology is attractive for voice messaging, but rather whether interconnected, for-profit service is in fact made available to the public. Eligibility for this service is extremely broad,¹⁹⁵ so we find that 220 MHz services are effectively made available to a substantial portion of the public. The technology permits licensees to offer interconnected services. Regulatory status therefore depends upon whether the licensee in fact makes available for-profit, interconnected service. Local 220 MHz channels may be used for commercial or non-commercial operations. If a local system licensee offers interconnected service that is for-profit, as we have interpreted that element of the statutory CMRS definition, then the service will be classified as CMRS. Services that are not interconnected or that are used for only non-commercial purposes, however, will be presumptively classified as PMRS, unless affirmative showings demonstrate that they are in fact the functional equivalent of CMRS. Nationwide 220 MHz channels are expressly designated for commercial or non-commercial use. The Rules provide for-profit use of the commercial channels, so the question in each case is whether interconnected service is offered. Offerings of interconnected service will be classified as CMRS, therefore, and non-interconnected services will be presumptively classified as PMRS unless contrary showings are made. The non-commercial nationwide channels are assigned for internal use of the licensee, which we have determined is not a for-profit use. Services on such channels therefore will be presumptively classified as PMRS unless a contrary showing is made. To the extent that these channels are used for any for-profit operations, however, and to the extent that interconnected service is offered, these channels will be reclassified as CMRS.

f. Private Paging

96. We requested comment on the regulatory treatment of private paging services under the statute. In so doing, we explained that private carrier paging (PCP) services are provided for profit and without any significant restriction regarding classes of customers; therefore, whether PCPs are classified as commercial mobile radio services would depend on whether they are providing interconnected service. In contrast, we conclude that paging services operated exclusively for the licensee's internal communications are not-for-profit.¹⁹⁶

97. Commenters' views on the classification of PCPs are divided primarily based on whether they believe that "store-and-forward" service is a form of interconnected service within the meaning of the statute.¹⁹⁷ As discussed above, we have concluded that end user transmission or receipt of messages to or from the public switched network on a store-and-forward basis does constitute interconnected service.¹⁹⁸ Therefore, we conclude that PCPs should be classified as commercial mobile radio services. PCP services are generally provided for profit

¹⁹³ Roamer Comments at 3-5.

¹⁹⁴ AMTA Comments at 14-16. See Section 90.771 of the Commission's Rules, 47 C.F.R. § 90.771 (non-commercial 220 MHz systems are designated for licensee's internal use).

¹⁹⁵ See Section 90.703 of the Commission's Rules, 47 C.F.R. § 90.703.

¹⁹⁶ See para. 44, *supra*.

¹⁹⁷ See, e.g., Bell Atlantic Comments at 15; CTIA Comments at 15; McCaw Comments at 29-30; Motorola Comments at App. A; Nextel Comments at 16-17; NYNEX Comments at 15; Pagemart Comments at 8-10.

¹⁹⁸ See paras. 57-58, *supra*.

and without significant restrictions on eligibility. Also, given our determination regarding the types of arrangements that constitute interconnected service for purposes of Section 332(d)(1) of the Act, PCPs satisfy the criteria for classification as commercial mobile radio services. We believe that this classification is justified in part by the fact that there are no longer any real differences between private carrier and common carrier paging systems. As Nextel points out, "[b]oth offer interconnected service to enable subscribers to be reached by any user of the public switched network."¹⁹⁹ We do not extend CMRS classification, however, to private internal paging systems. Because these systems are not-for-profit and serve the internal communications needs of licensees rather than being publicly available, they will be presumptively classified as PMRS.

g. Automatic Vehicle Monitoring

98. Currently, Automatic Vehicle Monitoring (AVM) systems operate under interim rule provisions.²⁰⁰ We sought comment in the *Notice* regarding the Commission's pending proposal to permit licensees of Automatic Vehicle Monitoring (AVM) systems, which operate by means of radio transmission to and from central control points, to provide location and monitoring service to Part 90 eligibles, individuals, and the Federal Government.²⁰¹ Metricom argues that Location and Monitoring Service (LMS) systems should be classified as CMRS because if the system operators make their service available to individuals then the services will be available to a substantial portion of the public.²⁰² Southwestern, an active AVM participant, states that AVM services should be classified as CMRS because they are likely to evolve into interconnected service over time.²⁰³

99. Under our interim rules, AVM service is licensed on a not-for-profit basis.²⁰⁴ If this service is offered to third party users, the service is effectively available to a substantial portion of the public.²⁰⁵ Under our proposal in the *LMS Notice*, AVM may be licensed on a for-profit basis and we propose to expand the eligibility to include individuals and the Federal Government.²⁰⁶ At present, however, these systems do not offer interconnected service, nor are they likely to do so in the foreseeable future. Therefore, we will presumptively classify AVM systems as PMRS. Of course, should AVM systems develop interconnected service capability in the future, as Southwestern predicts, they will be subject to reclassification. Other AVM services, *i.e.*, those that are not wide-band offerings, include a broad range of services such as tag readers that may track trains and highway vehicles, automatically debit tolls from drivers' accounts, and perform numerous other intelligent location and monitoring services. Although these advanced services are provided for the benefit of the public, we anticipate that

¹⁹⁹ Nextel Comments at 16.

²⁰⁰ Section 90.239 of the Commission's Rules, 47 C.F.R. § 90.239.

²⁰¹ See Amendment of Part 90 of the Commission's Rules To Adopt Regulations for Automatic Vehicle Monitoring Systems, PR Docket No. 93-61, Notice of Proposed Rule Making, 8 FCC Rcd 2502 (1993) (*LMS Notice*).

²⁰² Metricom Comments at 5-6.

²⁰³ Southwestern Comments at 8, 17.

²⁰⁴ *LMS Notice*, 8 FCC Rcd at 2503. In 1992, however, the Private Radio Bureau granted Teletrac a waiver of the Commission's Rules to allow it to provide service on a private carrier basis, to serve individuals, and to locate objects other than vehicles. *Id.* at 2502-03.

²⁰⁵ See para. 68, *supra*.

²⁰⁶ *LMS Notice*, 8 FCC Rcd at 2503.

they generally will be offered through state and local government and other non-profit entities on a non-commercial basis, or used by licensees such as railroads for internal use, and therefore are not for-profit offerings. Accordingly, these services will be classified presumptively as PMRS.

2. Existing Common Carrier Services

a. Cellular and Other Services

(1) Background and Pleadings

100. The *Notice* requested comment on how existing common carrier services should be classified under revised Section 332 of the Act. We stated our view that existing common carrier services that provide interconnected radiotelephone service to the public will be classified as commercial mobile radio services. We emphasized that, depending on our decision as to whether store-and-forward paging constitutes interconnected service, however, common carrier systems that use store-and-forward could be subject to reclassification. In addition, we requested comment on whether some of the smaller common carrier systems in the Public Mobile Service could be reclassified as private if we conclude that low capacity systems do not serve the public, or a substantial portion of the public, for purposes of the CMRS definition in Section 332(d)(1).

101. The commenters generally agree that existing common carrier services, including cellular and paging, should be classified as commercial mobile radio services.²⁰⁷ These parties agree that those common carrier services are for-profit, are interconnected services, and are made available to the public without restrictions. Some of the commenters believe, however, that there may be certain common carriers that may be more appropriately reclassified as private because they are not functionally equivalent in terms of market power and presence.²⁰⁸

(2) Discussion

102. We agree with the commenters who argue that most of the existing common carrier services satisfy the statutory requirement for classification as a commercial mobile radio service because they meet the three prongs of the statutory test. We agree with these parties that cellular service (Part 22, Subpart K) and the 800 MHz air-ground service (Part 22, Subpart M) are services that fit within the three-pronged definition because they are provided for profit, are interconnected to the public switched network, and make interconnected service available to the public. The Public Land Mobile Service (Part 22, Subpart G) comprises several types of mobile and fixed operations, of which paging services, mobile telephone service (MTS), improved mobile telephone service (IMTS), trunked mobile service, and 454 MHz air-ground service meet the definition of commercial mobile radio service.²⁰⁹ With respect to paging services that may use store-and-forward technology, we have determined that such technology should not prevent a service from being considered an interconnected service.²¹⁰ We also find that Offshore Radio

²⁰⁷ See, e.g., CTIA Comments at 15; GTE Comments at 9; Motorola Comments at App. A; NYNEX Comments at 16.

²⁰⁸ See AMTA Comments at 15; E.F. Johnson Comments at 9-10.

²⁰⁹ The Public Land Mobile Service also contains provisions for authorization of 72-76 MHz fixed and point to multipoint stations which are fixed operations that operate in conjunction with mobile services.

²¹⁰ See paras. 57-58, *supra*.

Service (Part 22, Subpart L) satisfies the criteria for classification as CMRS.²¹¹ This service is provided for profit, offers interconnected service, and contains no restriction on who may use the service. Moreover, Part 22 offshore radio service is not purely a fixed service as defined by our Rules. Accordingly, we classify these existing common carrier mobile services as commercial mobile radio services. Finally, we find that the Rural Radio Service, including BETRS, is a fixed service and is not affected by this proceeding.

b. Dispatch

(1) Background and Pleadings

103. We requested comment on whether we should amend our rules to allow existing common carriers who are classified as commercial mobile radio services to provide dispatch service. Under Section 332(c)(2) of the Act, Congress has given the Commission discretion to terminate the current dispatch prohibition in whole or in part. Thus, we sought comments on (1) whether there are any technical justifications for continuing the prohibition; (2) whether eliminating the dispatch prohibition would provide carriers with greater flexibility to meet their customer needs; and (3) whether eliminating the prohibition would promote increased competition in the dispatch marketplace and lower costs to subscribers.

104. While most commenters favor eliminating the current prohibition on dispatch,²¹² a number of commenters raise competitive concerns with such a proposal.²¹³ Those who favor elimination of the dispatch prohibition argue that there are no technical justifications for the prohibition and that allowing CMRS providers to offer dispatch service will provide consumers with expanded choices.²¹⁴ Parties on the other side of this issue argue that while eventual repeal of the dispatch ban may be justified, immediate repeal could enable CMRS providers to exert market power against traditional SMR systems that now offer dispatch.²¹⁵ In addition, AMSC requests that the Commission clarify that mobile satellite service (MSS) systems are permitted to provide dispatch service.²¹⁶

(2) Discussion

105. We have concluded that the record established in this proceeding has not provided us with sufficient data to sustain an informed judgment regarding the effects that removal of the dispatch service ban may have in the dispatch marketplace. Therefore, we have decided to seek further comment on this matter in the context of an upcoming proceeding in which we plan to examine our prohibition against the licensing of wireline telephone carriers in the SMR service. This will enable us to establish a more definitive record so we can better evaluate this issue. We note, however, the following points. First, in examining the dispatch service issue, we will continue to be guided by our objective to promote and protect competition, not specific competitors. Second, AMSC MSS has been authorized to provide "a two-way voice dispatch

²¹¹ Offshore Radio Service Stations are authorized to offer and provide common carrier radio telecommunications services for hire to subscribers on structures (also, airborne stations not exceeding 1000 feet above ground and boats) in the offshore coastal waters of the Gulf of Mexico. See Sections 22.1000-22.1008 of the Commission's Rules, 47 C.F.R. §§ 22.1000-22.1008.

²¹² See, e.g., MCI Comments at 6-7; NYNEX Comments at 16; Telocator Comments at 16-17.

²¹³ See, e.g., E.F. Johnson Comments at 10.

²¹⁴ See, e.g., Bell Atlantic Comments at 17-19; Telocator Comments at 16-17.

²¹⁵ See, e.g., AMTA Comments at 21-22.

²¹⁶ AMSC Comments at 6-7; AMSC Reply Comments at 1-2.

service between a user terminal and a base station.²¹⁷ This Order does not alter AMSC's current authorization to provide service.

c. Satellite Services

(1) Background and Pleadings

106. We explained in the *Notice* that mobile services using the system capacity of a satellite licensee fall within Section 3(n) of the Communications Act. Citing *Martin Marietta*,²¹⁸ we indicated that the Commission may authorize a domestic satellite licensee to offer system capacity for the provision of mobile service on a non-common carriage basis absent a showing that it would not be in the public interest. Because Section 332(c)(5) did not prohibit the Commission from continuing to determine whether the provision of space segment capacity by satellite systems to CMRS providers shall be treated as common carriage, we tentatively concluded that we should continue our existing procedures for making this determination.²¹⁹ Furthermore, we stated that if the satellite system licensee opts to provide commercial mobile radio service directly to end users, it shall be treated as a common carrier. Similarly, provision of commercial mobile radio service to end users by earth station licensees or providers who resell space segment capacity would be treated as common carrier service. We sought comments on this analysis.

107. Starsys, Motorola, and NYNEX agree with our proposal to continue to authorize domestic mobile satellite service licensees to provide service on a non-common carrier basis if the public interest is served.²²⁰ In addition, AMSC agrees with our proposal to require this service to be classified as CMRS to the extent that the services are provided to end users.²²¹ AMSC requests, however, that if the Commission decides to regulate some mobile satellite licensees as non-common carriers in the provision of space segment, all licensees of similar services, such as AMSC, should be regulated the same.²²² TRW and Reed Smith argue that resellers of satellite capacity should not be regulated as CMRS unless they provide service directly to end users, regardless of the regulatory status of the licensee of the underlying satellite

²¹⁷ Amendment of Parts 2, 22 and 25 of the Commission's Rules To Allocate Spectrum for and To Establish Other Rules and Policies Pertaining to the Use of Radio Frequencies in a Land Mobile Satellite Service for the Provision of Various Common Carrier Services, GEN Docket No. 84-1234, Memorandum Opinion, Order and Authorization, 4 FCC Rcd 6041, 6046-48 (1989)(*AMSC Authorization Order*).

²¹⁸ *Martin Marietta Communications Systems*, Memorandum Opinion and Order, 60 Rad.Reg. (P&F) 2d 779 (1986)(*Martin Marietta*).

²¹⁹ The Commission must make this determination by looking at an array of public interest considerations (e.g., the types of services being offered and the number of licensees being authorized). See, e.g., Amendment of Parts 2, 22 and 25 of the Commission's Rules To Allocate Spectrum for, and To Establish Other Rules and Policies Pertaining to the Use of Radio Frequencies in a Land Mobile Satellite Service for the Provision of Various Common Carrier Services, GEN Docket No. 84-1234, Second Report and Order, 2 FCC Rcd 485, 490 (1987); Amendment to the Commission's Rules To Allocate Spectrum for, and To Establish Other Rules and Policies Pertaining to, a Radiodetermination Satellite Service, GEN Docket No. 84-689, Second Report and Order, 104 FCC 2d 650, 665-66 (1986)(*RDSS Order*).

²²⁰ Motorola Comments at 13-15; NYNEX Comments at 17; Starsys Comments at 2.

²²¹ AMSC Comments at 5.

²²² AMSC Reply Comments at 3-4.

system.²²³ TRW also argues that some mobile satellite services — e.g., radiolocation services for truck fleets or data service networks for a company's employees — may not be CMRS because they may be offered on a non-interconnected basis to a limited population.²²⁴

(2) Discussion

108. The Commission will continue to use its existing procedures to determine whether “the provision of space segment capacity by satellite systems to providers of commercial mobile service shall be treated as common carriage.”²²⁵ We will extend this treatment to any entity that sells or leases space segment capacity, to the extent that they are not providing CMRS directly to end users. Consistent with Section 332(c)(1)(A) of the statute, however, the provision of both space and earth segment capacity either by mobile satellite system licensees providing service through, for example, their own licensed earth stations, or by earth station licensee resellers, directly to users of CMRS shall be treated as common carriage.²²⁶ Thus, each mobile satellite service must be evaluated, consistent with the approach outlined in this decision, to determine whether the service offering is CMRS or PMRS.

109. At present, there are three mobile satellite services authorized by this Commission: geostationary mobile satellite service (MSS),²²⁷ non-voice, non-geostationary mobile satellite service (NVNG MSS),²²⁸ and radiodetermination satellite service (RDSS).²²⁹ MSS is regulated as a common carrier service, RDSS is regulated as a private service, and NVNG MSS space station licensees are not required to be common carriers in providing system access to CMRS providers. Thus, under our existing procedures, we have already provided a regulatory framework under which RDSS and NVNG system licensees and other entities may provide system access to CMRS providers on a non-common carrier basis. We believe that each of these services may be offered to end users as CMRS. For example, these services probably will be offered for-profit and to the public; however, they may not be interconnected to the public switched network in all cases (e.g., the back-haul to the customer may be through a private fixed-satellite network). Thus, to the extent a space station licensee or other entity provides to end users a service that meets the elements of the CMRS definition discussed in this Order or is the functional equivalent of CMRS, we will regulate the provision of that service by the licensee or other entity as common carriage. We decline on this record, however, to change the regulatory classification of AMSC, the sole domestic MSS space station licensee. AMSC is authorized as a provider of space segment capacity directly to end users through its own earth

²²³ Reed Smith Comments at 5; TRW Reply Comments at 13.

²²⁴ TRW Comments at 16-21.

²²⁵ Comsat has been authorized to offer system capacity on Inmarsat satellites for the provision of mobile satellite service. It has also been authorized to offer Inmarsat-based mobile satellite service directly to end users. Comsat has been treated as a common carrier in both instances. 47 U.S.C. § 741. The new Section 332(c)(4) of the Communications Act provides that Section 332(c) does not alter or affect this treatment.

²²⁶ See Conference Report at 494.

²²⁷ AMSC Authorization Order.

²²⁸ Amendment of the Commission's Rules To Establish Rules and Policies Pertaining to a Non-Voice, Non-Geostationary Mobile Satellite Service, CC Docket No. 92-76, Report and Order, 8 FCC Rcd 8450 (1993).

²²⁹ See RDSS Order.

stations.²³⁰ AMSC has not demonstrated why, under our existing procedures, it should not continue to be regulated as a common carrier.²³¹ In another rule making proceeding, the Commission has proposed that low-Earth orbiting satellites be used to provide MSS in the 1.6 and 2.4 GHz bands.²³² We will determine in that proceeding the regulatory status of the provision of space segment capacity in the 1.6 and 2.4 GHz bands to CMRS providers.²³³ In addition, based on the Section 332 criteria outlined in this decision, we will determine whether a satellite licensee's provision of space segment capacity to end users shall be treated as CMRS or PMRS. Regardless of the nature of this determination, however, it is important to note that we have sought comment in the *MSS Above 1 GHz Notice* regarding whether there are "public interest reasons to impose a legal compulsion upon MSS Above 1 GHz space station operators to serve the public indifferently, even if an MSS Above 1 GHz offering does not fall within the definition of CMRS."²³⁴

3. Commercial and Private Service on Common Frequencies

a. Background and Pleadings

110. Based on the assumption that some existing private land mobile services are reclassified as commercial mobile radio services, we stated in the *Notice* that it would be necessary to address how commercial and private mobile radio services would co-exist on common frequencies. We stated our belief that any attempt to separate our existing private land mobile bands into separate allocations for commercial and private services would be impractical and unnecessary. Instead, we indicated that we prefer to allow licensees on existing land mobile frequencies the flexibility to provide either commercial or private service as defined by our rules.

111. One approach we proposed would allow licensees the option to provide both commercial and private service under a single license. Under this alternative, we would impose the appropriate classification and regulations on each type of service provided. Another approach we proposed would be to classify licensees as commercial or private mobile radio service providers based on their primary use of the spectrum. We sought comments on the implications of each of these proposals as well as other alternatives to resolve this issue.

112. AMTA warns that any bifurcated regulatory approach we adopt may have to be revisited if it impedes industry growth or uniquely disadvantages certain classes of users.²³⁵

²³⁰ American Mobile Satellite Corp., File No. 420-DSE-P/L-90, Order and Authorization, 7 FCC Rcd 942 (1992).

²³¹ The Commission has also authorized IDB to provide Inmarsat-based mobile satellite service directly to end users. IDB requested, and was granted, common carrier status. We find no basis on this record to modify IDB's common carrier status.

²³² Amendment of the Commission's Rules To Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5 / 2483.5-2500 MHz Frequency Bands, CC Docket No. 92-166, Notice of Proposed Rule Making, FCC 94-11 (adopted Jan. 19, 1994) (*MSS Above 1 GHz Notice*).

²³³ Using our existing procedures, the Commission will make its determination based on the criteria of the *NARUC I* test discussed in the *MSS Above 1 GHz Notice*. *Id.* at para. 80.

²³⁴ *Id.* at para. 81.

²³⁵ AMTA Comments at 16.

E.F. Johnson asserts that the Commission need only establish compatible co-channel protection criteria between the services to ensure co-existence.²³⁶

b. Discussion

113. As a result of our other decisions in this Order, some, but not all, licensees operating on frequency bands currently allocated to Part 90 services will be reclassified as CMRS providers. We will not be able to determine the regulatory status of licensees by the assigned frequency bands as in the past. Rather, it appears inevitable that both commercial and private mobile radio services will coexist on the same frequency bands. Thus, we agree with E.F. Johnson that it is not practical to establish a regulatory structure that is frequency specific.

114. Based on our objective of ensuring that like mobile services are regulated similarly as a means of ensuring regulatory symmetry, we will be amending our rules in a future rule making in this proceeding to reconcile significantly disparate technical, operational and procedural regulations. Our decision to bring similar offerings under the same regulatory classification and rules should allow all mobile service providers the flexibility to offer competitive service.

115. Finally, we favor issuing a single license to mobile service providers offering both commercial and private services on the same frequency. In particular, we will adopt the same licensing scheme for existing mobile services as we are establishing for PCS.²³⁷ As we discuss in Part III.D, paras. 116-123, *infra*, PCS licensees that offer both commercial and private services will be issued a single CMRS license, but may seek authority to dedicate a portion of their assigned spectrum to PMRS.

D. REGULATORY CLASSIFICATION OF PERSONAL COMMUNICATIONS SERVICES

1. Background and Pleadings

116. In the *Notice* we sought comment on what regulatory approach ought to be taken with respect to personal communications services (PCS). In particular, we asked commenters to address whether all PCS should be deemed to be commercial mobile radio service, or whether some PCS offerings might be identified as private mobile radio services. We also proposed that, if PCS is defined to include both commercial and private applications, then PCS licensees should be allowed to choose the type of service they would provide. In relation to this "self-designation" option, the *Notice* also sought comment on whether the option should require that licensees offer one type of service on a primary basis, limiting their offering of the other type on a secondary basis, or in the alternative, whether we ought to allow licensees to offer both commercial and private mobile radio services on a "co-primary" basis. Finally, we asked commenters to evaluate the practical licensing consequences that would flow from adoption of the "self-designation" option.

²³⁶ E.F. Johnson Comments at 9.

²³⁷ We plan to issue a Notice of Proposed Rule Making in the near future to address a range of licensing issues related to the actions we take in this Order. Procedural and technical rules relating to the provision of commercial and private services by carriers on the same frequency will be considered in that proceeding. See Part IV.C, para. 285, *infra*.

117. Many commenters and reply commenters favor treatment of all PCS services as exclusively, or at least "presumptively," commercial mobile radio service offerings.²³⁸ Several other commenters maintain, however, that all PCS licensees should be allowed to "self-designate," by means of licensee choice, whether they are to provide commercial or private mobile radio service offerings.²³⁹ A few commenters and reply commenters contend that some portion of PCS spectrum should be reserved for private mobile radio service use.²⁴⁰ Mtel argues, however, that "it is the nature of the services provided, and not any regulatory compulsion or self-designation, that should dictate PCS classification."²⁴¹ Lastly, Time Warner maintains that all PCS should be regulated as private mobile radio service.²⁴²

2. Discussion

118. In deciding what regulatory approach to adopt for PCS we believe that it is imperative first to emphasize the goals for this service that were established in our PCS proceeding and by Congress in adopting the Budget Act. In the *PCS Notice* we proposed to achieve four basic goals in establishing PCS, namely: (1) universality; (2) speed of deployment; (3) diversity of services; and (4) competitive delivery.²⁴³ Consequently, in our final decisions in both the broadband and narrowband contexts, we decided to define PCS broadly, as:²⁴⁴

[r]adio communications that encompass mobile and ancillary fixed communication services that provide services to individuals and businesses and can be integrated with a variety of competing networks.

In adopting this definition for broadband and narrowband PCS, our goal was to ensure that PCS would include the widest possible variety of services for individuals and businesses, and that PCS providers would be able to employ the "maximum degree of flexibility" in meeting the communications requirements of various users.²⁴⁵ We also believe that Congress's intent in adopting the Budget Act was to maximize the competitiveness and public availability of PCS

²³⁸ See, e.g., AMTA Comments at 18; Bell Atlantic Comments at 16; CTIA Comments at 17; DC PSC Comments at 10; NARUC Comments at 9-10; Nextel Comments at 17; Pacific Comments at 13-14; Southwestern Comments at 17-18; USTA Comments at 9-10; Vanguard Comments at 13-14; Pacific Reply Comments at 4-5; PA PUC Reply Comments at 10-11.

²³⁹ See, e.g., AMT/DSST Comments at 5; Ameritech Comments at 2-4; California Comments at 2-4; CTIA Comments at 17-18; CTP Comments at 3; GTE Comments at 12-13; Motorola Comments at 11-12; NABER Comments at 13-14; NTCA Comments at 4; Pagemart Comments at 17-18; Rochester Comments at 6 n.11; TDS Comments at 17-18; Telocator Comments at 17-18; TRW Comments at 26-27; but see MCI Reply Comments at 6; Rural Cellular Reply Comments at 5-8.

²⁴⁰ See, e.g., New York Comments at 9; Southwestern Comments at 18; UTC Comments at 17-18; UTC Reply Comments at 19-20.

²⁴¹ Mtel Comments at 11.

²⁴² Time Warner Comments at 4.

²⁴³ *PCS Notice*, 7 FCC Rcd at 5679 (para. 6).

²⁴⁴ *Broadband PCS Order*, 8 FCC Rcd 7700, 7710-13 (paras. 19-24). See *Narrowband PCS Order*, 8 FCC Rcd 7162, 7163-64 (paras. 9-14).

²⁴⁵ *Broadband PCS Order*, 8 FCC Rcd at 7712 (para. 23); *Narrowband PCS Order*, 8 FCC Rcd at 7164 (para. 13).