actions will promote competition. We have also found that application of the three-pronged test set forth in Section 332(c) of the Act warrants forbearance from many Title II provisions. In general, we have forborne from enforcing any tariffing requirements, and Commission authority to investigate into existing and newly filed rates and practices, collection of intercarrier contracts, certification concerning interlocking directorates, and Commission approval relating to market entry and exit (respectively, Sections 203, 204, 205, 211, 212, and 214 of the Act). We have not forborne from provisions that are unrelated to Commission authority and regulatory obligations (Section 210), are primarily reservations of Commission authority (Sections 213, 215, 218, 219, and 221), or are consumer protection-related (Sections 223, 225, 226, 227, and 228). In addition, in the case of cellular service, we will shortly issue a Notice of Proposed Rule Making to establish monitoring provisions applicable to the cellular marketplace because of our conclusion that the cellular marketplace is not yet fully competitive. Further, as noted below,[533] we intend to issue a Notice of Proposed Rule Making addressing whether we should adopt further forbearance actions under Title II of the Act in the case of specified classes of CMRS providers.

273. Seventh, we have required LECs to provide reasonable and fair interconnection for all commercial mobile radio services, since we see no distinction between cellular carriers (to whom LECs currently are required to provide such interconnection) and all other CMRS providers, including PCS providers. In addition, we have concluded that if a LEC provides interconnection to CMRS providers while denying the same interconnection to private mobile radio service providers, the carrier would bear the burden of demonstrating why such a practice does not constitute a violation of Title II of the Act.

274. Finally, we have concluded that Congress, in revising Section 332, intended to preempt state and local rate and entry regulation of all CMRS, and we have established a range of procedural and other requirements states must meet if they seek to retain any existing CMRS rate regulation or initiate such rate regulation for the first time.

2. *Impact on Existing Service Providers*

275. The following carriers are not subject to any new regulatory requirements as a result of this Order: (1) public land mobile service; (2) domestic public cellular radio telecommunications service; (3) 800 MHz air-ground radiotelephone service; (4) public coast and aviation stations; (5) public safety radio services; (6) special emergency radio service; (7) industrial radio services (except for business radio services); (8) land transportation radio services; and (9) radiolocation service. Those CMRS services which have traditionally been classified as common carrier services will be subject to fewer regulatory requirements because we are forbearing from applying Sections 203, 204, 205, 211, 212, and 214 of the Act.

276. AVM, most Business Radio Service (BRS) licensees, and some 220-222 MHZ land mobile system licensees will remain PMRS. Private Carrier Paging (PCPs) licensees, BRS licensees, 220-222 MHz land mobile system licensees, and SMRs that are reclassified as CMRS licensees are placed under Title II obligations. Under Sections 201, 202, and 208 of the Act, these licensees must provide interconnection upon reasonable request, must not engage in any unreasonable discriminatory practices, and will be subject to Section 208 complaints regarding any unlawful practices. These licensees will also be subject to new obligations set forth in the following Title II provisions: Sections 206, 207, and 209, which authorize the Commission to provide remedial relief to an aggrieved party pursuant to grant of a Section 208 complaint or finding of a violation of the Communications Act; and consumer protection-related provisions of Sections 223, 225, 226, 227, and 228 of the Act. The other Title II provisions from which we have not forborne do not create any new obligations for these licensees, or have only indirect impact upon them, because they are either unrelated to Commission authority and regulatory

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[533] *See* para. 285, *infra*.

obligations, or are primarily reservations of Commission authority. We believe we are not imposing any unwarranted burdens on private carriers who, by our actions herein, are now classified as CMRS providers. We are, however, initiating a Further Notice of Proposed Rule Making in this proceeding to assess whether Title II regulation should be further streamlined for certain classes of CMRS providers.

277. As existing common carrier service providers, cellular licensees are not subject to any new Title II obligations. As we have indicated, however, we intend to initiate a rule making in which we will propose to collect information regarding the cellular marketplace.

B. Transition Rules

1. *Background and Pleadings*

278. The statute provides effective dates for the "regulatory treatment" amendments to the Communications Act and sets forth deadlines for an orderly transition to the changed regulatory structure.[534] First, the statute provide that before August 10, 1994, the Commission "shall issue such modifications or terminations of the regulations applicable (before the date of enactment of this Act) to private land mobile services as are necessary to implement the amendments made by subsection (b)(2)."[535] Second, Congress has established a three-year transition period during which "any private land mobile service provided by any person before such date of enactment, and any paging service utilizing frequencies allocated as of January 1, 1993, for private land mobile services, shall . . . be treated as a private mobile service."[536]

279. Several commenters raise the issue of whether the three-year transition period should apply to all private land mobile licensees who are subject to reclassification or whether some private licensees, particularly providers of wide-area SMR services, should be subject to immediate regulation as CMRS. PN Cellular and PacTel assert that the three-year transition period should only apply to private licensees whose systems were operational as of August 10, 1993.[537] PacTel argues that SMR services that are significantly different from services provided on August 10, 1994, should be immediately subject to CMRS regulation, without benefit of the three-year transition period.[538] AMTA contends, however, that the transition provision was intended to ensure that all providers of reclassified services would have three years to "adjust their business plans and marketplace strategies to an entirely new regulatory scheme."[539] Finally, in a pleading not filed in this docket, Bell Atlantic petitioned the Commission to subject all wide-area, digitally enhanced SMR services, such as those provided by Nextel, to immediate regulation as CMRS on the grounds that these are "new" services that

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[534] In most respects, Sections 332 and 3(n), as amended, became effective on August 10, 1993. Certain provisions relating to State regulation of terms and conditions regarding commercial mobile radio services, however, will take effect on August 10, 1994. *See* Budget Act, §§ 6002(c)(1), 6002(c)(2); Section 332(c)(3)(A) of the Communications Act, 47 U.S.C. § 332(c)(3)(A).

[535] Budget Act, § 6002(d)(3).

[536] *Id.*, § 6002(c)(2)(B). The provisions of Section 332(c)(6) (foreign ownership) are excepted from the three-year period. The *First Report and Order* addresses those foreign ownership provisions.

[537] PN Cellular Comments at 2-3; PacTel Reply Comments at 18-19.

[538] PacTel Reply at 18-19. PacTel also notes that this approach would not apply to paging services, because paging services are "grandfathered" based on when the frequencies were allocated.

[539] AMTA Reply Comments at 6.

were not provided at the time the Budget Act was enacted.[540] Several parties filed oppositions to Bell Atlantic's petition.[541] They argue that the Commission has previously rejected the argument that wide-area, digitally enhanced SMR service is a "new" service. The parties opposing the Bell Atlantic petition claim that the Commission authorizes digital SMR services within the existing SMR regulatory framework.[542] The parties conclude that the three-year transition period applies to wide-area, digitally enhanced SMR providers.[543]

2. *Discussion*

280. The Budget Act provides that the three-year transition period applies to "any private land mobile service provided by any person before [the] date of enactment [*i.e.*, August 10, 1993], and any paging service using frequencies allocated as of January 1, 1993." Existing private services that are subject to reclassification as CMRS under this Order will therefore continue to be regulated as private until August 10, 1996, when reclassification becomes effective. We believe that Congress established the three-year period to ensure an orderly transition for all reclassified private services. First, the statute allows one year for the Commission to establish rules, regulations, and policies that will govern the reclassified services. After we complete this transitional rule making, licensees will have notice of regulations and policies that will govern their reclassified services. Because these policies may require significant adjustments by licensees, however, *e.g.*, modification of equipment, implementation of new accounting practices, and the like, the statute provides an additional two years for private licensees to bring their services into compliance with our CMRS rules.[544]

281. With respect to private land mobile services other than paging, the statute applies the transition to "service provided by any person" before the date of enactment. We interpret this language to mean that the three-year transition applies to all private land mobile licensees who were licensed, and therefore authorized to provide service, as of August 10, 1993. On the other hand, private mobile licensees who are subject to reclassification as CMRS and were not licensed as of the enactment date, are not subject to the three-year "grandfathering" period, and will therefore be treated as CMRS as soon as our rules go into effect.

282. While we believe that Congress intended to distinguish between pre-enactment and post-enactment licensees for transition purposes, we also conclude that Congress did not intend the transition period to apply in a rigid fashion to pre-enactment licensees and that it did intend some flexibility in the implementation of these transition provisions. Therefore, we will allow grandfathered licensees to modify and expand existing systems and to acquire additional licenses in the same service for which they were licensed prior to August 10, 1993. In addition, with respect to non-grandfathered licensees, we conclude that reclassification should be effective upon the effective date of our transitional rules for reclassified services, which will be considered in

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[540] *See* Petition for Special Relief Concerning Enhanced Specialized Mobile Radio Applications and Authorizations, filed Dec. 22, 1993, by Bell Atlantic Mobile Systems, Inc. (Bell Atlantic Petition). Although the Bell Atlantic Petition and responsive pleadings were not filed in this proceeding, we are incorporating the petition into this docket because the issues that it raises are identical to those raised by other comments.

[541] AMTA Opposition, Dial Page Opposition, and Nextel Opposition. Bell Atlantic filed a reply.

[542] AMTA Opposition at 3-4; Dial Page Opposition at 3-6; Nextel Opposition at 7-10.

[543] AMTA Opposition at 4-5; Dial Page Opposition at 2; Nextel Opposition at 11-17.

[544] *See, e.g.*, 139 Cong. Rec. H6163 (daily ed. Aug. 5, 1993) (statement of Chairman Markey that transition period provides those with changed regulatory status a "reasonable time to conform with the new regulatory scheme").

our transitional rule making to be commenced shortly. The transitional rule making will enable the Commission to modify licensing procedures and harmonize technical and operational rules for services that are reclassified as CMRS. Attempting to make reclassification effective before this process is complete would cause significant disruption and confusion in the ongoing licensing and regulation of affected private mobile services.

283. We also disagree with Bell Atlantic's view that the three-year transition should not apply to wide-area SMR services on the grounds that these are "new" services. We agree with parties opposing Bell Atlantic that we have expressly concluded in past decisions that authorizing wide-area SMR systems did not require creation of a new service because SMR operators could provide wide-area service under their existing authorizations and our existing service rules.[545] We note that although Congress was clearly aware of the advent of wide-area SMR systems, there is no indication that Congress intended to distinguish these systems from more traditional SMR systems for transition purposes.[546] Therefore, so long as SMR licensees who provide wide-area service were licensed in the SMR service prior to August 10, 1993, such service will be regulated as private for the statutory three-year period.

284. With respect to paging services, the transition period applies more broadly. Congress specifically provided that all paging licensees "utilizing" private paging frequencies allocated as of January 1, 1993, are to be treated as private mobile radio service providers for three years. The Conference Report explains that paging was treated separately to prevent states from attempting to restrict entry of paging licensees on private frequencies prior to the effective date of our preemption regulations, which do not go into effect until August 10, 1994.[547] Based on this provision, we conclude that all private paging licensees are to be treated as private mobile service providers, regardless of whether they were licensed before or after the date of enactment.

C. Further Proceedings

285. The further proceedings relating to mobile services regulation that we now anticipate are as follows:

(1) We intend to issue a Notice of Inquiry in order to address the issue whether CMRS licensees should be required to provide interconnection to other carriers. We anticipate that this proceeding will define the nature and scope of such interconnection obligations. In addition, this proceeding will explore the extent to which we will require CMRS providers to allow resale of their services.

(2) We intend to initiate a proceeding on whether to impose equal access obligations on cellular, PCS, and all other CMRS providers.

(3) As soon as possible, we intend to issue a Notice of Proposed Rule Making in order to establish technical rules, as required by the Budget Act, § 6002(d)(3), with respect to the transition of existing PMRS licensees that we have reclassified as CMRS licensees. This Notice will also delineate the licensing requirements for

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[545] *See* Fleet Call, Inc., 6 FCC Rcd 1533 (1991). We have at times provided SMR operators with additional time to change their equipment and put in place more advanced technologies, but such operations take place within the terms of their existing SMR licenses.

[546] To the contrary, Chairman Markey has indicated that the transition was not intended to distinguish traditional SMR systems from so-called " enhanced SMR" systems. Letter from Chairman E. Markey to Chairman R. Hundt, FCC, Jan. 28, 1994.

[547] Conference Report at 498; *see* Budget Act, § 6002(c)(2)(A).

mobile services. One purpose of this proceeding will be to examine the extent to which existing rules can be modified and consolidated to account for the regulatory restructuring we have implemented in this Order pursuant to the Budget Act, as required by the Budget Act, § 6002(d)(3).

(4) We intend to issue a Notice of Proposed Rule Making addressing whether LECs should be required to file tariffs for their interconnection rates applicable to CMRS providers.

(5) We intend to issue a Notice of Proposed Rule Making to establish monitoring provisions applicable to cellular licensees.

(6) We intend shortly after the release of this item to issue a Notice of Proposed Rule Making addressing whether we should adopt further forbearance actions under Title II of the Act in the case of specified classes of CMRS providers.

(7) We intend to issue a Notice of Proposed Rule Making addressing whether we should remove the prohibition of common carriers providing dispatch service.

V. PROCEDURAL MATTERS; ORDERING CLAUSES

286. The analysis pursuant to the Regulatory Flexibility Act of 1980[548] is contained in Appendix C.

287. Accordingly, IT IS ORDERED that the rule changes as specified in Appendix A ARE ADOPTED.

288. IT IS FURTHER ORDERED that the rule changes made herein WILL BECOME EFFECTIVE 90 days after publication in the Federal Register. This action is taken pursuant to Sections 4(i), 4(j), 7(a), 302, 303(c), 303(f), 303(g), 303(r), 332(c), and 332(d) of the Communications Act of 1934, 47 U.S.C. §§ 154(i), 154(j), 157(a), 302, 303(c), 303(f), 303(g), 303(r), 332(c), 332(d).

289. IT IS FURTHER ORDERED, pursuant to Sections 4(i), 4(j), and 332(c)(1)(A) of the Communications Act, 47 U.S.C. §§ 154(i), 154(j), 332(c)(1)(A), that all commercial mobile radio service providers with tariffs on file with the Commission SHALL CANCEL such tariffs. Cancellation shall be by supplement effective upon five days' notice and the supplement shall reference this Order as authority for cancellation. For this purpose, Sections 61.58 and 61.59 of the Commission's Rules, 47 C.F.R. §§ 61.58, 61.59, ARE WAIVED. These cancellations SHALL BE FILED no later than 90 days from publication of this Order in the Federal Register.

290. IT IS FURTHER ORDERED, that the Petition for Special Relief Concerning Enhanced Specialized Mobile Radio Applications and Authorizations filed by Bell Atlantic Mobile Systems, Inc., IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton

William F. Caton
Acting Secretary

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[548] 5 U.S.C. § 608.

APPENDIX A
Final Rules

1. The authority citation for Part 20 is as follows:

Authority: Sections 4, 303, 332, 48 Stat. 1066, 1082, as amended; 47 C.F.R. §§ 154, 303, 332.

2. Part 20 is added to read as follows:

PART 20 COMMERCIAL MOBILE RADIO SERVICES

Section

20.1 Purpose.
20.3 Definitions.
20.5 Citizenship.
20.7 Mobile services.
20.9 Commercial mobile radio service.
20.11 Interconnection to facilities of local exchange carriers.
20.13 State petitions for authority to regulate rates.
20.15 Requirements under Title II of the Communications Act.

Section 20.1 Purpose.

The purpose of these rules is to set forth the requirements and conditions applicable to commercial mobile radio service providers.

Section 20.3 Definitions.

Commercial mobile radio service. A mobile service that is: (1)(A) provided for profit, *i.e.*, with the intent of receiving compensation or monetary gain; (B) an interconnected service; and (C) available to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public; or (2) the functional equivalent of such a mobile service described in paragraph (1).

Interconnection or Interconnected. Direct or indirect connection through automatic or manual means (by wire, microwave, or other technologies such as store and forward) to permit the transmission or reception of messages or signals to or from points in the public switched network.

Interconnected service. A service (1) that is interconnected with the public switched network, or interconnected with the public switched network through an interconnected service provider, that gives subscribers the capability to communicate to or receive communication from all other users on the public switched network; or (2) for which a request for such interconnection is pending pursuant to Section 332(c)(1)(B) of the Communications Act, 47 U.S.C. § 332(c)(1)(B). A mobile service offers interconnected service even if the service allows subscribers to access the public switched network only during specified hours of the day, or if the service provides general access to points on the public switched network but also restricts access in certain limited ways. Interconnected service does not include any interface between a

licensee's facilities and the public switched network exclusively for a licensee's internal control purposes.

Mobile Service. A radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes (1) both one-way and two-way radio communication services; (2) a mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation; and (3) any service for which a license is required in a personal communications service under Part 24 of this chapter.

Private Mobile Radio Service. A mobile service that is neither a commercial mobile radio service nor the functional equivalent of a service that meets the definition of commercial mobile radio service. Private mobile radio service includes the following:

(a) Not-for-profit land mobile radio and paging services that serve the licensee's internal communications needs as defined in Part 90 of this chapter. Shared-use, cost-sharing, or cooperative arrangements, multiple licensed systems that use third party managers or users combining resources to meet compatible needs for specialized internal communications facilities in compliance with the safeguards of Section 90.179 are presumptively private mobile radio services.

(b) Mobile radio service offered to restricted classes of eligible users. This includes the following services: Public Safety Radio Services; Special Emergency Radio Service; Industrial Radio Services (excluding Business Radio Services that offer customers for-profit interconnected services); Land Transportation Radio Services; and Radiolocation Services.

(c) 220-222 MHz land mobile service and Automatic Vehicle Monitoring systems (Part 90) that do not offer interconnected service or that are not-for-profit.

(d) Personal Radio Services under Part 95 of the rules (General Mobile Services, Radio Control Radio Services, and Citizens Band Radio Services); Maritime Service Stations (excluding Public Coast stations) (Part 80); and Aviation Service Stations (Part 87).

Public Switched Network. Any common carrier switched network, whether by wire or radio, including local exchange carriers, interexchange carriers, and mobile service providers, that use the North American Numbering Plan in connection with the provision of switched services.

Section 20.5 Citizenship.

(a) This rule implements Section 310 of the Communications Act, 47 U.S.C. § 310, regarding the citizenship of licensees in the commercial mobile radio services. Commercial mobile radio service authorizations may not be granted to or held by:

(1) Any foreign government or any representative thereof;

(2) Any alien or the representative of any alien;

(3) Any corporation organized under the laws of any foreign government;

(4) Any corporation of which any officer or director is an alien or of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country; or

(5) Any corporation directly or indirectly controlled by any other corporation of which any officer or more than one-fourth of the directors are aliens, or of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.

(b) The limits listed in subsection (a) may be exceeded by eligible individuals who held ownership interests on May 24, 1993, pursuant to the waiver provisions established in Section 332(c)(6) of the Communications Act. Transfers of ownership to any other person in violation of paragraph (a) are prohibited.

Section 20.7 Mobile services.

The following are mobile services within the meaning of Sections 3(n) and 332 of the Communications Act, 47 U.S.C. §§ 153(n), 332.

(a) Public mobile services (Part 22), including fixed operations that support the mobile systems, but excluding Rural Radio Service and Basic Exchange Telecommunications Radio Service (Subpart H);

(b) Private land mobile services (Part 90), including secondary fixed operations, but excluding fixed services such as call box operations and meter reading;

(c) Mobile satellite services (Part 25) including dual-use equipment, terminals capable of transmitting while a platform is moving, but excluding satellite facilities provided through a transportable platform that cannot move when the communications service is offered;

(d) Marine and aviation services (Part 80 and Part 87), including fixed operations that support these marine and aviation mobile systems;

(e) Personal radio services (Part 95), but excluding Interactive Video and Data Service;

(f) Personal communications services (Part 24);

(g) Auxiliary services provided by mobile service licensees, and ancillary fixed communications offered by personal communications service providers;

(h) Unlicensed services meeting the definition of commercial mobile radio service in Section 20.3 of this part, such as the resale of commercial mobile radio services, but excluding unlicensed radio frequency devices under Part 15 of this chapter (including unlicensed personal communications service devices).

Section 20. 9 Commercial mobile radio service.

(a) The following mobile services shall be treated as common carriage services and regulated as commercial mobile radio services (including any such service offered as a hybrid service or offered on an excess capacity basis to the extent it meets the definition of commercial mobile radio service, or offered as an auxiliary or ancillary service), pursuant to Section 332 of the Communications Act, 47 U.S.C. § 332:

(1) Private Paging (Part 90), excluding not-for-profit paging systems that serve only the licensee's own internal communications needs.

(2) Business Radio Services (Section 90.75) that offer customers for-profit interconnected service.

(3) Land Mobile Systems on 220-222 MHz (Part 90), except services that are not-for-profit or do not offer interconnected service.

(4) Specialized Mobile Radio services that provide interconnected service (Part 90).

(5) Public Coast Stations (Part 80, Subpart J).

(6) Public Land Mobile Service (paging, mobile telephone, improved mobile telephone, trunked mobile, and 454 MHz air-ground services) (Part 22, Subpart G).

(7) Domestic Public Cellular Radio Telecommunications Service (Part 22, Subpart K).

(8) 800 MHz Air-Ground Radiotelephone Service (Part 22, Subpart M).

(9) Offshore Radio Service (Part 22, Subpart L).

(10) Any mobile satellite service involving the provision of commercial mobile radio service (by licensees or resellers) directly to end users, except that mobile satellite licensees and other entities that sell or lease space segment capacity, to the extent that it does not provide commercial mobile radio service directly to end users, may provide space segment capacity to commercial mobile radio service providers on a non-common carrier basis, if so authorized by the Commission.

(11) Personal Communications Services (Part 24), except as provided in paragraph (b) of this section.

(12) For-profit subsidiary communications services transmitted on subcarriers within the FM baseband signal, that provide interconnected service (47 C.F.R. § 73.295).

(13) A mobile service that is the functional equivalent of a commercial mobile radio service.

(i) A mobile service that does not meet the definition of commercial mobile radio service is presumed to be a private mobile radio service.

(ii) Any interested party may seek to overcome the presumption that a particular mobile radio service is a private mobile radio service by filing a petition for declaratory ruling challenging a mobile service provider's regulatory treatment as a private mobile radio service.

(A) The petition must show that:

(1) the mobile service in question meets the definition of commercial mobile radio service; or

(2) the mobile service in question is the functional equivalent of a service that meets the definition of a commercial mobile radio service.

(B) A variety of factors will be evaluated to make a determination whether the mobile service in question is the functional equivalent of a commercial mobile radio service, including: consumer demand for the service to determine whether the service is closely substitutable for a commercial mobile radio service; whether changes in price for the service under examination, or for the comparable commercial mobile radio service would prompt customers to change from one service to the other; and market research information identifying the targeted market for the service under review.

(C) The petition must contain specific allegations of fact supported by affidavit(s) of person(s) with personal knowledge. The petition must be served on the mobile service provider against whom it is filed and contain a certificate of service to this effect. The mobile service provider may file an opposition to the petition and the petitioner may file a reply. The general rules of practice and procedure contained in Section 1.1 through Section 1.52 of this chapter shall apply.

(b) Licensees of a Personal Communications Service or applicants for a Personal Communications Service license proposing to use any Personal Communications Service spectrum to offer service on a private mobile radio service basis must overcome the presumption that Personal Communications Service is a commercial mobile radio service.

(1) The applicant or licensee (who must file an application to modify its authorization) seeking authority to dedicate a portion of the spectrum for private mobile radio service, must include a certification that it will offer Personal Communications Service on a private mobile radio service basis. The certification must include a description of the proposed service sufficient to demonstrate that it is not within the definition of commercial mobile radio service in Section 20.3. Any application requesting to use any Personal Communications Service spectrum to offer service on a private mobile radio service basis will be placed on public notice by the Commission.

(2) Any interested party may file a petition to deny the application within 30 days after the date of public notice announcing the acceptance for filing of the application. The petition shall contain specific allegations of fact supported by affidavit(s) of person(s) with personal knowledge to show that the applicant's request does not rebut the commercial mobile radio service presumption. The petition must be served on the applicant and contain a certificate of service to this effect. The applicant may file an opposition with allegations of fact supported by affidavit. The petitioner may file a reply. No additional pleadings will be allowed. The general rules of practice and procedure contained in Section 1.1 through Section 1.52 and Section 22.30 of this chapter shall apply.

(c) Any provider of private land mobile service before August 10, 1993 (including any system expansions, modifications, or acquisitions of additional licenses in the same service, even if authorized after this date), and any private paging service utilizing frequencies allocated as of January 1, 1993, that meet the definition of commercial mobile radio service, shall, except for purposes of Section 20.5 (applicable August 10, 1993 for the providers listed in this paragraph), be treated as private mobile radio service until August 10, 1996. After this date, these entities will be treated as commercial mobile radio service providers regulated under this part.

Section 20.11 Interconnection to facilities of local exchange carriers.

(a) A local exchange carrier must provide the type of interconnection reasonably requested by a mobile service licensee or carrier, within a reasonable time after the request, unless such interconnection is not technically feasible or economically reasonable. Complaints against carriers under Section 208 of the Communications Act, 47 U.S.C. Section 208, alleging a violation of this section shall follow the requirements of Sections 1.711-1.734 of this chapter, 47 C.F.R. §§ 1.711-1.734.

(b) Local exchange carriers and commercial mobile radio service providers shall comply with principles of mutual compensation.

(1) A local exchange carrier shall pay reasonable compensation to a commercial mobile radio service provider in connection with terminating traffic that originates on facilities of the local exchange carrier.

(2) A commercial mobile radio service provider shall pay reasonable compensation to a local exchange carrier in connection with terminating traffic that originates on the facilities of the commercial mobile radio service provider.

Section 20.13 State petitions for authority to regulate rates.

(a) States may petition for authority to regulate the intrastate rates of any commercial mobile radio service. The petition must include the following:

(1) Demonstrative evidence that market conditions in the state for commercial mobile radio services do not adequately protect subscribers to such services from unjust and unreasonable rates or rates that are unjustly or unreasonably discriminatory. Alternatively, a state's petition may include demonstrative evidence showing that market conditions for commercial mobile radio services do not protect subscribers adequately from unjust and unreasonable rates, or rates that are unjustly or unreasonably discriminatory, and that a substantial portion of the commercial mobile radio service subscribers in the state or a specified geographic area have no alternatives means of obtaining basic telephone service This showing may include evidence of the range of basic telephone service alternatives available to consumers in the state.

(2) The following is a non-exhaustive list of examples of the types of evidence, information, and analysis that may be considered pertinent to determine market conditions and consumer protection by the Commission in reviewing any petition filed by a state under this section:

(i) The number of commercial mobile radio service providers in the state, the types of services offered by commercial mobile radio service providers in the state, and the period of time that these providers have offered service in the state.

(ii) The number of customers of each commercial mobile radio service provider in the state; trends in each provider's customer base during the most recent annual period or other data covering another reasonable period if annual data is unavailable; and annual revenues and rates of return for each commercial mobile radio service provider.

(iii) Rate information for each commercial mobile radio service provider, including trends in each provider's rates during the most recent annual period or other data covering another reasonable period if annual data is unavailable.

(iv) An assessment of the extent to which services offered by the commercial mobile radio service providers the state proposes to regulate are substitutable for services offered by other carriers in the state.

(v) Opportunities for new providers to enter into the provision of competing services, and an analysis of any barriers to such entry.

(vi) Specific allegations of fact (supported by affidavit of person with personal knowledge) regarding anti-competitive or discriminatory practices or behavior by commercial mobile radio service providers in the state.

(vii) Evidence, information, and analysis demonstrating with particularity instances of systematic unjust and unreasonable rates, or rates that are unjust or unreasonably discriminatory, imposed upon commercial mobile radio service subscribers. Such evidence should include an examination of the relationship between rates and costs. Additionally, evidence of a pattern of such rates, that demonstrates the inability of the commercial mobile radio service marketplace in the state to produce reasonable rates through competitive forces will be considered especially probative.

(viii) Information regarding customer satisfaction or dissatisfaction with services offered by commercial mobile radio service providers, including statistics and other information about complaints filed with the state regulatory commission.

(3) Petitions must include a certification that the state agency filing the petition is the duly authorized state agency responsible for the regulation of telecommunication services provided in the state.

(4) Petitions must identify and describe in detail the rules the state proposes to establish if the petition is granted.

(5) States have the burden of proof. Interested parties may file comments in support or in opposition to the petition within 30 days after public notice of the filing of a petition by a state under this section. Any interested party may file a reply within 15 days after the expiration of the filing period for comments. No additional pleadings may be filed. Except for Section 1.45, practice and procedure rules contained in Sections 1.42-1.52 of this chapter shall apply. The provisions of sections 1.771-1.773 do not apply.

(6) The Commission shall act upon any petition filed by a state under this paragraph not later than the end of the nine-month period after the filing of the petition.

(7) If the Commission grants the petition, it shall authorize the state to regulate rates for commercial mobile radio services in the state during a reasonable period of time, as specified by the Commission. The period of time specified by the Commission will be that necessary to ensure that rates are just and reasonable, or not unjustly or unreasonably discriminatory.

(b) States that regulated rates for commercial mobile services as of June 1, 1993, may petition the Commission under this section before August 10, 1994, to extend this authority.

(1) The petition will be acted upon by the Commission in accordance with the provisions of paragraphs (a)(1) through (a)(5) of this section.

(2) The Commission shall act upon the petition (including any reconsideration) not later than the end of the 12-month period following the date of the filing of the petition by the state involved. Commercial mobile radio service providers offering such service in the state shall comply with the existing regulations of the state until the petition and any reconsideration of the petition are acted upon by the Commission.

(3) The provisions of paragraph (a)(7) of this section apply to any petition granted by the Commission under this paragraph.

(c) No sooner than 18 months from grant of authority by the Commission under this section for state rate regulations, any interested party may petition the Commission for an order to discontinue state authority for rate regulation.

(1) Petitions to discontinue state authority for rate regulation must be based on recent empirical data or other significant evidence demonstrating that the exercise of rate authority by a state is no longer necessary to ensure that the rates for commercial mobile are just and reasonable or not unjustly or unreasonably discriminatory.

(2) Any interested party may file comments in support of or in opposition to the petition within 30 days after public notice of the filing of the petition. Any interested party may file a reply within 15 days after the time for filing comments has expired. No additional

pleadings may be filed. Except for 1.45, practice and procedure rules contained in Sections 1.42-1.52 apply. The provisions of Sections 1.771-1.773 do not apply.

(3) The Commission shall act upon any petition filed by any interested party under this paragraph within nine months after the filing of the petition.

Section 20.17 Requirements under Title II of the Communications Act.

(a) Commercial mobile radio services providers, to the extent applicable, must comply with Sections 201, 202, 206, 207, 208, 209, 216, 217, 223, 225, 226, 227, and 228 of the Communications Act, 47 U.S.C §§ 201, 202, 206, 207, 208, 209, 216, 217, 223, 225, 226, 227, 228; part 68 of this chapter, 47 C.F.R. Part 68; and sections 1.701-1.748, and 1.815 of this chapter, 47 C.F.R. §§ 1.701-1.748, 1.815.

(b) Commercial mobile radio service providers are not required to:

(1) File tariffs for interstate service to their customers, or for interstate access service, or comply with sections 1.771-1.773 and part 61 of this chapter;

(2) File with the Commission copies of contracts entered into with other carriers or comply with other reporting requirements, or with sections 1.781-1.814 and 43.21 of this chapter;

(3) Seek authority for interlocking directors (section 212 of the Communications Act);

(4) Submit applications for new facilities or discontinuance of existing facilities (Section 214 of the Communications Act).

(c) Nothing in this section shall be construed to modify the Commission's rules and policies on the provision of international service under Part 63 of this chapter.

3. The authority citation for Part 22 continues to read as follows:

Authority: Sections 4, 303, 48 Stat. 1066, 1082, as amended; 47 C.F.R. §§ 154, 303.

Part 22 Public Mobile Service

4. Section 22.1 is amended by adding paragraph (g) to read as follows:

Section 22.1 Other applicable rule parts.

* * * * * * *

(g) Part 20 which governs commercial mobile radio services which include the following services in this part:

(1) Public Land Mobile;

(2) Offshore Radio Service;

(3) Domestic Public Cellular Radio Telecommunications Service;

(4) 800 MHz Air-Ground Radiotelephone Service.

5. Section 22.13 is amended by removing paragraph (f).

6. Section 22.43 is amended by removing paragraph (b)(2).

7. Section 22.304 is removed.

8. The authority citation for Part 80 continues to read as follows:

Authority: Sections 4, 303, 48 Stat. 1066, 1082, as amended; 47 C.F.R. §§ 154, 303.

Part 80 Stations in the Maritime Service

9. Section 80.3 is amended by removing paragraphs (g) through (k), by redesignating paragraphs (f), and (l) through (o) as (g), and (h) through (k), respectively, and by adding new paragraph (f) to read as follows:

Section 80.3 Other applicable rule parts of this chapter.

* * * * * * *

(f) Part 20 which governs commercial mobile radio services which include Subpart J of this part (public coast stations).

* * * * * * *

10. The authority citation for Part 90 continues to read as follows:

Authority: Sections 4, 303, 48 Stat. 1066, 1082, as amended; 47 C.F.R. §§ 154, 303.

Part 90 Private Land Mobile Radio Service

11. Section 90.5 is amended by redesignating paragraphs (h) through (j) as paragraphs (i) through (k), respectively, and by adding paragraph (h) to read as follows:

Section 90.5 Other applicable rule parts.

* * * * * * *

(h) Part 20 which governs commercial mobile radio service applicable to certain providers in the following services in this part:

(1) Business radio service;

(2) Private paging;

(3) Land mobile service on 220-222 MHz;

(4) Specialized Mobile Radio Service.

* * * * * * *

12. The authority citation for Part 99 continues to read as follows:

Authority: Sections 4, 301, 302, 303, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. §§ 154, 301, 302, 303 and 332, unless otherwise noted.

13. In 47 C.F.R. Part 99 is redesignated as Part 24.

Part 24 Personal Communications Services

14. In redesignated Part 24, Section 24.2 is amended by redesignating paragraphs (g) through (i) as paragraphs (h) through (j), respectively, and by adding a new paragraph (g) to read as follows:

Section 24.2 Other applicable rule parts.

* * * * * * *

(g) Part 20. This part governs commercial mobile radio services.

* * * * * * *

APPENDIX B

Index of Rules and Related Provisions

The following table lists the provisions of Part 20 of the Commission's Rules, as adopted in this Order, together with related provisions in the Communications Act and this Order. The table is intended as a guide for the reader, and is not intended to have any decisional or interpretative significance. Paragraphs in the third column refer to the text of the Order; sections refer to the Communications Act.

RULE	TOPIC	RELATED PROVISION
20.1	Purpose of Part 20	None applicable.
20.3	Definition — Commercial mobile radio service	¶¶ 43-49, 54-60, 65-70, 79-80; § 332(d)(1)
20.3	Definition — Interconnection or Interconnected	¶ 56-58; §§ 332(c)(1)(B), 332(d)(2)
20.3	Definition — Interconnected service	¶¶ 54-60; § 332(d)(2)
20.3	Definition — Mobile service	¶¶ 34-38; § 3(n)
20.3	Definition — Private mobile radio service	¶¶ 76-80; § 332(d)(3)
20.3	Definition — Public switched network	¶¶ 59-60; § 332(d)(2)
20.5(a)	Citizenship — General requirements	§ 310
20.5(b)	Citizenship — Exception	§ 332(c)(6)
20.7	Mobile services	¶¶ 34-38
20.7(a)	Public mobile service (Part 22)	¶¶ 34, 38
20.7(b)	Private land mobile service (Part 90)	¶ 35
20.7(c)	Mobile satellite service (Part 25)	¶¶ 35, 38
20.7(d)	Marine, aviation services (Parts 80, 87)	¶ 34
20.7(e)	Personal radio service (Part 95)	¶ 35
20.7(f)	Personal communications service (Part 24)	¶ 35
20.7(g)	Auxiliary services; PCS ancillary fixed services	¶ 36
20.7(h)	Unlicensed services	¶ 37
20.9	Commercial mobile radio service	§§ 332(c)(1)(A), 332(d)(1)
20.9(a)(1)	Private paging (Part 90)	¶¶ 96-97
20.9(a)(2)	Business Radio Services	¶¶ 86-87
20.9(a)(3)	220-222 MHz land mobile service (Part 90)	¶¶ 94-95
20.9(a)(4)	Specialized mobile radio service (Part 90)	¶¶ 88-93
20.9(a)(5)	Public coast stations (Part 80)	¶ 83
20.9(a)(6)	Public land mobile service (Part 22)	¶ 102
20.9(a)(7)	Cellular service (Part 22)	¶ 102

RULE	TOPIC	RELATED PROVISION
20.9(a)(8)	Air-ground service (Part 22)	¶ 102
20.9(a)(9)	Offshore radio service (Part 22)	¶ 102 & note 211
20.9(a)(10)	Satellite service (Part 25)	¶¶ 108-109
20.9(a)(11)	Personal communications services (Part 24)	¶ 118
20.9(a)(12)	FM subcarrier (47 C.F.R. § 73.295)	¶ 260
20.9(a)(13)	Functionally equivalent services	¶¶ 79-80
20.9(b)	Personal communications service	¶ 119
20.9(c)	Transition	¶¶ 280-284
20.11(a)	LEC interconnection requirements	¶¶ 230, 233-234; § 332(c)(1)(B)
20.11(b)	Mutual compensation	¶ 232
20.13(a)(1)	State petitions for rate regulation — General evidence	¶¶ 251, 253; § 332(c)(3)(A)
20.13(a)(2)	Types of evidence	¶ 252
20.13(a)(3)	Filing entitiy	¶ 251
20.13(a)(4)	Proposed state rules	¶ 252
20.13(a)(5)	Evidentiary burdens; filing procedures	¶ 251; § 332(c)(3)(A)
20.13(a)(6)	Commission action	§§ 332(c)(3)(A), 332(c)(3)(B)
20.13(a)(7)	Grant of state petitions	¶ 257; § 332(c)(3)(A)
20.13(b)	Extension of existing state rate authority	§ 332(c)(3)(B)
20.13(c)	Suspension of state rate regulation	¶ 254; § 332(c)(3)(B)
20.15(a)	Title II requirements — applicable sections	¶¶ 186-187, 205-213; § 332(c)(1)(A)
20.15(b)	Forborne sections	¶¶ 173-181, 192-197; § 332(c)(1)(A)
20.15(c)	International service	¶126 & note 261

APPENDIX C

Final Regulatory Flexibility Analysis

Pursuant to Section 603 of Title 5, United States Code, 5 U.S.C. § 603, an initial Regulatory Flexibility Analysis was incorporated in the Notice of Proposed Rulemaking in GN Docket No. 93-252. Written comments on the proposals in the *Notice*, including the Regulatory Flexibility Analysis, were requested.

A. Need for and Purpose of Rules

This rule making proceeding was initiated to implement Sections 3(n) and 332 of the Communications Act. The rules adopted herein will carry out the intent of Congress to establish a uniform regulatory framework for all mobile services. This action will enhance the ability of mobile service providers to make services available to the public.

B. Issues Raised by the Public in Response to the Initial Analysis

While all the parties recognize that this rulemaking will impose new legal obligations on licensees whose regulatory status has changed from private to commercial as a result of the new legislation and the actions we have taken in this Order, a number of parties propose that licensees should be able to offer both commercial and private radio service on the same system and under a single license. As a result of these comments, we have adopted these proposals. As a result of other comments, we have made modifications to other proposals as appropriate.

C. Significant Alternatives Considered

We have reduced the burdens wherever possible. In an effort to reduce the burdens on small entities, we will not impose any tariff filing obligations. In striving to adopt an appropriate level of regulation for commercial mobile radio service (CMRS) providers, we have ensured that unwarranted regulatory burdens are not imposed upon small entities, especially those that are currently private mobile licensees and are reclassified as CMRS providers. First, in keeping with this objective, we have forborne from establishing market entry or exit requirements under Section 214 of the Act. Second, although we have decided not to forbear with respect to Sections 210, 213, 215, 218, 219, 220, and 221, we have decided not to invoke our authority under these provisions. The imposition of requirements under these provisions could cause unwarranted burdens for CMRS providers that are small entities.

Third, while we have chosen not to forbear from specific provisions of Title II that are designed to protect customers, we do not believe that small entities will incur significant burdens as a result of becoming subject to these provisions. Thus, the regulatory burdens that we have retained are necessary to ensure that commercial mobile radio service is made available to the public at reasonable rates and on reasonable terms in a competitive marketplace. We will continue to examine alternatives in the future with the objectives of eliminating unnecessary regulations and minimizing any significant impact on small entities. Accordingly, we intend to issue a Notice of Proposed Rule Making addressing whether we should adopt further forbearance action under Title II of the Act in the case of specific classes of providers. Finally, we emphasize that the three-year transition rules adopted in this Order will allow existing licensees that are subject to reclassification as CMRS providers to continue to be regulated as private until August 10, 1996. This three-year period will ensure an orderly transition for all reclassified private licensees that are small entities.

APPENDIX D
List of Parties Filing Comments

Party (and Short Title)

Advanced MobileComm Technologies, Inc. and Digital Spread Spectrum Technologies, Inc. (AMT/DSST)
Aeronautical Radio, Inc. (ARINC)
AllCity Paging, Inc. (AllCity)
American Mobile Telecommunications Association, Inc. (AMTA)
American Petroleum Institute (American Petroleum)
Ameritech
AMSC Subsidiary Corporation (AMSC)
Arch Communications Group, Inc. (Arch)
Association of American Railroads (AAR)
Association of Public-Safety Communications Officials-International, Inc. (APCO)
Bell Atlantic Companies (Bell Atlantic)
BellSouth Corporation, BellSouth Telecommunications, Inc., BellSouth Cellular Corp., and Mobile Communications Corporation of America (BellSouth)
Cellular Telecommunications Industry Association (CTIA)
Celpage, Inc., Network USA, Denton Enterprises, Copeland Communications & Electronics, Inc. and Nationwide Paging (Celpage)
CenCall Communications Corporation (CenCall)
Century Cellunet Inc. (Century)
Comcast Corporation (Comcast)
Corporate Technology Partners (CTP)
Cox Enterprises, Inc. (Cox)
E.F. Johnson Company (E.F. Johnson)
General Communication, Inc. (GCI)
Geotek Industries, Inc. (Geotek)
Grand Broadcasting Corporation (Grand)
GTE Service Corporation (GTE)
Hardy & Carey (Hardy)
Illinois Valley Cellular RSA 2 Partnerships (IVC Partnerships)
In-Flight Phone Corporation (In-Flight)
Industrial Telecommunications Association, Inc. (ITA)
Liberty Cellular, Inc. (Liberty)
Lower Colorado River Authority (LCRA)
McCaw Cellular Communications, Inc. (McCaw)
MCI Telecommunications Corporation (MCI)
Metricom, Inc. (Metricom)
Mobile Telecommunication Technologies Corp. (Mtel)
Motorola, Inc. (Motorola)
MPX Systems (MPX)
National Association of Business and Educational Radio, Inc. (NABER)

National Association of Regulatory Utility Commissioners (NARUC)
National Cellular Resellers Association (NCRA)
National Telephone Cooperative Association (NTCA)
New Par
New York State Department of Public Service (New York)
Nextel Communications, Inc. (Nextel)
North Pittsburg Telephone Company (NPTC)
NYNEX Corporation (NYNEX)
Pacific Bell and Nevada Bell (Pacific)
Pacific Telecom Cellular, Inc. (PTC)
Pactel Corporation (Pactel)
Pactel Paging (Pactel Paging)
Pagemart, Inc. (Pagemart)
Paging Network, Inc. (PageNet)
People of the State of California and the Public Utilities Commission of the State of California (California)
Personal Radio Steering Group Inc. (PRSG)
Pioneer Telephone Cooperative, Inc., Pioneer Telecommunications, Inc., and O.T.&T. Communications, Inc. (Pioneer)
PN Cellular, Inc. and Affiliates (PNC)
PTC Cellular (PTC-C)
Public Service Commission of the District of Columbia (DC PSC)
Ram Mobile Data USA Limited Partnership (RMD)
Reed Smith Shaw & McClay (Reed Smith)
Rig Telephones, Inc. (Rig)
Roamer One, Inc. (Roamer)
Rochester Telephone Corporation (Rochester)
Rockwell International Corporation (Rockwell)
Rural Cellular Association (Rural Cellular)
Southwestern Bell Corporation (Southwestern)
Sprint Corporation (Sprint)
Starsys Global Positioning, Inc. (Starsys)
Telephone and Data Systems, Inc. (TDS)
Telocator, The Personal Communications Industry Association (Telocator)
Time Warner Telecommunications (Time Warner)
TRW Inc. (TRW)
United States Telephone Association (USTA)
US West
Utilities Telecommunications Council (UTC)
Vanguard Cellular Systems, Inc. (Vanguard)
Waterway Communications System, Inc. (Waterway)

List of Parties Filing Reply Comments

Aeronautical Radio, Inc. (ARINC)
American Mobile Telecommunications Association, Inc. (AMTA)
American Paging, Inc. (AmP)
American Petroleum Institute (American Petroleum)
American Telephone and Telegraph Company (AT&T)
AMSC Subsidiary Corporation (AMSC)
ARCH Communication Group (Arch)
Association of American Railroads (AAR)
Bell Atlantic Companies (Bell Atlantic)
BellSouth Corporation, BellSouth Telecommunications, Inc., BellSouth Cellular Corp. and Mobile Communications Corp. of America (BellSouth)
Cellular Telecommunications Industry Association (CTIA)
CenCall Communications Corporation (CenCall)
Century Cellunet Inc. (Century)
E.F. Johnson Company (E.F. Johnson)
General Communication, Inc. (GCI)
GTE Service Corporation (GTE)
In-Flight Phone Corporation (In-Flight)
Industrial Telecommunications Association, Inc. (ITA)
McCaw Cellular Communications, Inc. (McCaw)
MCI Telecommunications Corporation (MCI)
Metricom, Inc. (Metricom)
Mobile Marine Radio, Inc. (MMR)
National Association of Business and Educational Radio, Inc. (NABER)
Nextel Communications, Inc. (Nextel)
NYNEX Corporation (NYNEX)
Organization for the Protection and Advancement of Small Telephone Companies (OPASTCO)
Pacific Bell and Nevada Bell (Pacific)
PacTel Paging (Pactel Paging)
Pactel Corporation (PacTel)
Pagemart, Inc. (Pagemart)
Paging Network, Inc. (PageNet)
Pennsylvania Public Utility Commission (PA PUC)
PSC of Nevada (Nevada)
Puerto Rico Telephone Company (PRTC)
Radiofone Inc. (Radiofone)
Ram Mobile Data USA Limited Partnership (RMD)
Roamer One, Inc. (Roamer)
Rochester Telephone Corporation (Rochester)
Rural Cellular Association (Rural Cellular)
RVC Services, Inc., d/b/a Coastel Communications Co. (Coastel)
SACO River Cellular Telephone company (Saco River)
Securicor PMR Systems Ltd. (Securicor)
Southwestern Bell Corporation (Southwestern)

Sprint Corporation (Sprint)
Telephone and Data System Inc. (TDS)
Telocator, The Personal Communications Industry Association (Telocator)
TRW Inc. (TRW)
Two Way Radio of Carolina, Inc. (2-Way)
United States Telephone Association (USTA)
US West
Utilities Telecommunications Council (UTC)
Waterway Communications Systems, Inc. (Waterway)

Separate Statement

of

Commissioner Andrew C. Barrett

Re: Communications Act Section 332 Regulatory Treatment of Mobile Services

This comprehensive Report and Order revises our rules to implement Sections 3(n) and 332 of the Communications Act, as amended in the Omnibus Budget Reconciliation Act of 1993[Act]. I believe this Act is intended to regulate commercial mobile service providers [CMRS] in a "like" manner, where such services can be considered in compliance with the three-prong definition of a commercial mobile service, or the services are a functional equivalent of the service categories clearly defined as CMRS. In this regard, I believe the Act provides the Commission with sufficient flexibility to simplify its regulatory structure for all services classified as CMRS. Further, with respect to forbearance from Title II regulation under the CMRS designation, I believe the Act provides plenty of flexibility for the Commission to avoid any perverse, or unintended consequences of imposing Title II regulation on various classes of CMRS providers. In addition, the Act clearly contemplates a three-year transition period for those services who are presently classified as Private Mobile Service licensees [PMRS] to adapt to any reclassification as a CMRS licensee under Title II regulation.

After examining the comprehensive nature of this attempt to implement the Act and adopt a CMRS classification, I support the overall framework of this Order as a general matter, but remain seriously concerned about a variety of issues which must still be resolved or refined from my perspective---- either with respect to potential unintended consequences due to a broad application of the CMRS definition, or with respect to the need for greater flexibility in deciding which classes of CMRS services should be subject to less Title II regulation than others. Fortunately, the Order accommodates a further notice addressing the potential need for a more streamlined subclass of CMRS regulation under Title II. This is an important issue due to my desire to avoid regulatory classifications which could create undue economic hardship or regulatory burdens on certain classes of services which are not offered across wide areas, in cellular-like configurations, or traditionally are not provided indiscriminately to broad classes of users. Hopefully, the further notice will allow the Commission to develop a more complete record in this regard, and allow us to justify further forbearance from Title II for certain subclasses of CMRS providers.

In addition to the further notice on potential CMRS subclasses of streamlined regulation, I also am encouraged by our effort to develop a record on interconnection and equal access issues in the CMRS context. I believe these are important issues to address as we develop a network-of-network concept within the CMRS classification. I look forward to addressing these issues in a subsequent Order.

This Order also accommodates my concerns regarding flexible PCS methodologies which allow future PCS licensees to apply under the CMRS definition, or make a showing that they will not provide CMRS services, and thus should be regulated as private carriers. I believe this approach in the Order will allow flexibility for future PCS services to provide PMRS or CMRS services.

With respect to other provisions which will be enforced under this Order, I have two additional implementation concerns. First, the Order defines the public switched network with respect to CMRS classifications as any entity that utilizes the North American Numbering Plan [NANP]. My concern is that this definition should not result in the unintended result of subjecting any CMRS networks to ONA unbundling requirements, network outage reporting requirements, universal service obligations, or other requirements typically associated with the regulation of Bell Operating Companies. The Order clarifies that this will not be the result of this expansive definition of public switched network under the CMRS classification.

Second, the Order establishes a regulatory precedent for hybrid CMRS/PMRS regulation of any network that offers both CMRS service and PMRS service. From an enforcement perspective, I am unclear as to the implications of this type of regulatory structure in the market. If there is potential confusion created by this classification, I hope interested parties will provide further guidance as to the regulatory consequences or economic implications of regulating one part of a network with an array of Title II provisions, including TDD and TOCSIA, and regulating the other side of the same network as a PMRS provider.

Overall, this Order addresses complex, interrelated issues in a comprehensive manner. The remaining issues which can be refined should strengthen this Order in the future, and provide more clarity in the marketplace. Thus, I support the item.