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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	Gen. Docket No-
Amendment of the Commission's	)	RM-7140, RM-7175 , RX-7618
Rules to Establish New Personal)	
Communications Services	)	PP-6 through PP-10, PP-12,
	)	PP-13, PP-15 through PP-20,
	)	PP-26, PP-27, PP-41 through
	)	PP-52, PP-54 through PP-68,
	)	PP-72 through PP-78

Tot **The** Commission

PETITION FOR RECONSIDERATION

NEXTEL COMMUNICATIONS, INC

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SUMMARY

Nextel Communications, Inc. ("**Nextel**") respectfully seeks reconsideration of the Federal Communications Commission's (the "**Commission**") Third Report and Order (the "**Order**") in the Personal Communications Services ("**PCS**") pioneer's preference proceeding. The Order awarded pioneer's licensing preferences for 2 GHz PCS to American Personal Communications ("**APC**"), Cox Enterprises ("**Cox**") and Omnipoint Communications ("**Omnipoint**") while denying Nextel's application.

The Order, as it applies to **Nextel's** application, is arbitrary and capricious and not supported by substantial evidence in the record of this proceeding. The Commission has inconsistently applied its pioneer's preference rules and ignored record evidence that conclusively demonstrates that Nextel's development of Digital Mobile technology merits a 2 GHz PCS pioneer's preference.

The pioneer's preference rules provide that an applicant may receive a dispositive licensing preference if it develops "**an innovative proposal that leads to establishment of a service not currently provided or a substantial enhancement of an existing service.**" The record in this proceeding demonstrates that Nextel developed an advanced, innovative frequency agile communications technology capable of supporting new PCS mobile radio services in shared spectrum. This is absolutely necessary to function in the new 2 GHz PCS emerging technologies spectrum.

As the Commission's pioneer's preference award to APC

demonstrates, the **sin qua non** of a 2 GHz pioneer's preference for a radio-based innovator is a radio technology that **can** support a new service on spectrum that must be (for at least some time) shared with existing microwave systems. This is precisely what Digital Mobile does. **The Commission's award** of a pioneer's preference to APC for its frequency agile PCS technology cannot be reconciled with its denial of **Nextel's** application **and** must be corrected.

Digital **Mobile** supports an unprecedented array of PCS services. Using this technology, Nextel **can** offer integrated, **all-**digital PCS services including two-way mobile telephone, private network dispatch radio, alphanumeric paging, fully featured voice mail and mobile data communications -- all accessible through a single compact subscriber unit. **Digital Mobile enables** Nextel to offer highly customized and integrated services to satisfy a wide array of telecommunications needs -- *the essence* of the Commission's intentions for **PCS**.

Further, its intelligent network capabilities permit customers to replace their individual office, home, cellular, pager and voice mail **numbers** with a single Personal Telephone Number and direct calls to any location. These service enhancements: capacity for more customers, improved voice quality, improved mobile telephone service, individualized or customized fleet dispatch, **message** al-ert (paging) capabilities, mobile data applications including portable fax **and portable** computer capabilities are the very kinds of innovative new mobile communications the Commission is encouraging

within the realm of personal communications services and warrant a preference.

In the aftermath of the Northridge earthquake, **Nextel's** innovative Digital Mobile private network services proved invaluable in enabling disaster relief agencies to communicate both to individuals and defined groups -- capabilities not available from other communications providers. Digital **Mobile's** ability to support innovative services has *been confirmed* in both commercial operations and extraordinary emergency conditions.

Moreover , the Nextel Digital Mobile "experience" offers the primary record evidence supporting the Commission's adoption of 10 **MHz** PCS license assignments. **Nextel's** Digital **Mobile** innovation makes possible licensing rules that are a reasonable outgrowth of this technology. The *Commission's* arbitrary failure to grant Nextel's PCS pioneer's preference application is irreconcilable with its previous finding that Digital **Mobile** is a unique and innovative technology.

For all of these reasons, **the** Commission's denial of Nextel's application is factually incorrect and unsupported by the record in this proceeding. Its failure to award Nextel a PCS pioneer's preference is arbitrary and capricious and must be reversed. Accordingly, Nextel requests reconsideration of the Order and grant of its application for a 2 **GHz** PCS pioneer's preference.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	Gen. Docket No. 90-314
)	
Amendment of the Commission's	)	RM-7140, RM-7175, RM-7618
Rules to Establish New Personal)	
Communications Services	)	PP-6 through PP-10 , PP-12 ,
	)	PP-13 , PP-15 through PP-20 ,
	)	PP-26 , PP-27 , PP-41 through
	)	PP-52 , PP-54 through PP-68 ,
	)	PP-72 through PP-78

TO: **The Commission**

PETITION FOR RECONSIDERATION OF NEXTEL COMMUNICATIONS, INC.

I. **INTRODUCTION**

Nextel Communications, Inc. ("**Nextel**") respectfully files its Petition for Reconsideration of the Federal Communications Commission's (the "**Commission**") Third Report and Order (the "**Order**") in the above-captioned **proceeding.1/**

Nextel requested a **pioneer's** preference for a new Personal Communications Services ("**PCS**") license in this Docket for its highly-efficient, frequency-agile Digital **Mobile** communications technology. In the Order, the Commission confirmed its tentative decision awarding preferences to American Personal Communications ("**APC**"), Cox Enterprises ("**Cox**") and Omnipoint Communications ("**Omnipoint**") and denying the remaining 53 applications, including

1/ 9 FCC **Rcd** 1337 (1994).

Nextel's **application.2/**

The Order, as it **applies** to Nextel's application, is arbitrary and capricious and not **supported by** substantial evidence in the record of this proceeding. The Commission has inconsistently applied its pioneer's preference rules, arbitrarily articulated "**new**" standards as necessary to support a preordained outcome, and ignored record evidence that conclusively demonstrates that Wextel merits a pioneer's preference in this Docket. In addition, denial of Nextel's application is inconsistent with the Commission's own finding that Digital **Mobile** technology is both "**unique**" and "**innovative.**" Accordingly, Nextel requests reconsideration of the Order and award of a 2 **GHz** PCS pioneer's **preference.3/**

2/ See Order at paras. 210 - 216. **See also** Tentative Decision and Memorandum Opinion and Order, 7 **FCC Rcd** 7794 (1992) (the "Tentative Decision@), in which **the Commission** tentatively denied Nextel's application along with 13 other applications on the summary basis that they ". . . constitute compilations or aggregations of existing **communications** technologies or systems or otherwise do not constitute unique or innovative technology or service **proposals.**"

3/ The Commission is reviewing its pioneer's preference rules to assess the effect of receiving authority to assign licenses by competitive bidding. **See** Review of the Pioneer's Preference Rules, 8 **FCC Rcd** 7692 (1993). In that proceeding, Wextel stated that the fundamental public policy purpose of the pioneer's preference rules will be achieved through competitive bidding -- thereby obviating the public policy basis **for awarding preferences.** The Commission has decided, however, not to **change pioneer's preference** proceedings in which tentative decisions **have** been made, including the instant broadband PCS *proceeding.* **See** First Report and Order, FCC 93-551, released Jan. 28, 1994. Accordingly, although Nextel continues to believe that the preference process should be terminated in favor of **competitive** bidding, it **seeks** reconsideration herein of the Commission's arbitrary decision to deny its PCS preference application.

II. BACKGROUND

The pioneer's preference rules provide licensing preferences for technology pioneer⁶ to ensure their participation in new services that result from their innovation or in existing services in which they apply new technologies.&/ An applicant may receive a dispositive licensing preference by **demonstrating** that:

". . . it has developed an innovative proposal that leads to establishment of a service not currently provided or a substantial enhancement of an existing service."^{5/}

The **Commission** determines whether a proposal is innovative by examining whether it has "brought out the capability or possibilities of the (new) technology or service or has brought them to a more advanced or effective **state.**"^{6/} A preference is granted only if the innovation is technically feasible, and if the rules adopted for the new service are a reasonable outgrowth of the proposal and lend themselves to grant of a **preference.**^{7/}

Nextel's Digital Mobile technology meets every test for a

^{4/} **See Establishment of Procedures to Provide a Preference to Applicants Proposing an Allocation for New Services, 6 FCC Rcd 3488 (1991) (the Pioneer's Preference Order"); recon. 7 FCC Rcd 1808 (1992) (the "Reconsideration Order"); further recon. der, 8 F C C Rcd 1659 (1993).**

^{5/} **See Pioneer's Preference Order at para. 47 and Section 1.402(a) of the Commission's Rules. See also Tentative Decision at para. 3.**

^{6/} **Pioneer's Preference Order at para. 48 and Section 1.402(a) of the Commission's Rules.**

^{7/} **See Section 1.402(a) and Tentative Decision at para. 3. See also Allocate Spectrum for Fixed and Mobile Satellite Services for Low-Earth Orbit Satellites, Tentative Decision, 7 FCC Rcd 1625 at para. 13 (1992).**

pioneer's preference articulated by the Commission in the 2 **GHz** PCS pioneer's preference context.&/ **Much** more than "a mere aggregation of existing services," Digital Mobile is an innovative **frequency** agile technology making possible a new integrated, **wide-** area mobile radio system using non-contiguous spectrum in an existing, randomly-licensed, shared RF environment. This is absolutely necessary to function in the new 2 **GHz** PCS emerging technologies spectrum. Thus, Digital **Mobile** technology will lead to the establishment of new PCS services at 2 **GHz**. Digital Mobile offers added functionality, improved operating and technical characteristics, increased communications quality, reduced costs to the public and assured **feasibility.9/** Its inherent spectrum efficiency facilitates a competitive PCS market structure, thereby promoting a wide array of PCS **services.10/** This merits a

8/ Tentative Decision at **para. 4**; Pioneer's Preference Order at **para. 49**. In deciding whether PCS pioneer's preference requests are innovative, the Commission considered whether they offer: (1) an added functionality; (2) a different use of the spectrum than previously available; (3) a change in the operating or technical characteristics of a service; (4) increased spectrum efficiency; (5) increased speed or quality of information transfer; (6) technical feasibility; and (7) reduced cost to the public.

9/ The record in this proceeding includes a detailed analysis of the ways in which **Nextel's** Digital Mobile technology meets these preference standards. **See** Comments of Fleet Call, Inc. on the Tentative Decision for Pioneer's Preference, filed January 29, 1993, atpp. **9-10**. (Nextel was previously named Fleet Call, Inc.).

10/ The inherent spectrum efficiency of Digital **Mobile** technology supports the Commission's PCS allocation scheme providing for four 10 **MHz** licenses and a 20 **MHz** license, as well as two 30 **MHz** licenses. Thus, the PCS rules are a reasonable outgrowth of **Nextel's** proposal and lend **themselves** to grant of the requested preference. Indeed, the primary basis in the record for 10 **MHz** allocations is the "**Nextel** experience."

preference.

Further, the **Commission's conclusion** in the Order that Digital Mobile is not innovative is *irreconcilable* with its express finding only a few years ago that **Nextel's Digital Mobile technology platform is both "unique" and "innovative."**^{11/} The Order disingenuously attempts to support the Commission's capricious application of the pioneer's preference award standard by stating that this finding is somehow "inapplicable to the instant proceeding."^{12/} The Order's **attempt** to downplay a previous **Commission** finding that **Nextel's Digital Mobile** technology is innovative and to draw artificial and arbitrary distinctions among PCS pioneer's preference applicants to support its ill-considered preference awards must be reconsidered.

The pioneer's preference program is intended to reward **accomplishments**, not mere proposals or speculative experimental **trials.**^{13/} Nextel has initiated service using its Digital **Mobile** technology in the Los Angeles area and will implement advanced digital mobile communications services throughout California and other markets in 1994.^{14/} The Order ignores this

^{11/} Fleet Call *Waiver* Order at **para. 26.**

^{12/} Order at **para. 215.**

^{13/} Tentative Decision at **paras. 46-47.**

^{14/} Using Digital **Mobile** technology, Nextel is constructing Enhanced Specialized **Mobile** Radio ("**ESMR**") systems in the largest and **most** frequency-congested markets in the country, **See In Re** Request of **Fleet Call, Inc.** for Waiver and Other Relief to **Permit** Creation of Enhanced Specialized **Mobile** Radio Systems in Six Markets, 6 FCC Rcd 1533 (1991) (the "**Fleet Call Waiver Order**"),
(continued...)

proof of the feasibility and demonstrated capability of Digital **Mobile technology** to make possible new services in shared spectrum. **Nextel has** proven its technology in real world commercial **service -** not just demonstrations, trials or experiments. This is precisely the kind of risk-taking the Commission should reward with a pioneer's preference and **Nextel's** application meets this requirement better than any other proposal.

For all of these reasons, **the Order's** denial of **Nextel's** application is both factually wrong and unsupported by the record in this proceeding. The Commission's failure to award Nextel a PCS pioneer's preference is arbitrary and capricious and must be reversed.

XII. **DISCUSSION**

In denying **Nextel's** application, the Commission asserts that Nextel did not explain how it plans to use Digital Mobile technology for PCS; **i.e.**, that it did not define specific services or demonstrate their feasibility by experiment or technical showing in the 2 **GHz** PCS spectrum bands. The Commission also asserts that **Nextel** did not identify the advantages its PCS proposal **will** provide relative to 800 **MHz ESMR** services and that its proposed PCS

14/ (...continued)
Recon. den. 6 FCC (1 9 9 1) . Like PCS at 2 **GHz**, which must **share spectrum** with certain existing **microwave** licensees or undertake their relocation, **ESMR** systems must share spectrum with existing private land mobile licensees. Digital **Mobile** enables the creation of an integrated mobile radio system comprised of individual base stations permitting seamless hand-off **of mobile** calls in a heavily-used co-channel environment.

services are similar to those proposed by other applicants.=/

A. **Nextel's Digital Mobile Technology Will Support Advanced Personal Communications Services at 2 GHz**

The Order states that **Nextel's** preference request is a description of the services it is implementing within the Specialized Mobile Radio ("**SMR**") service. It also states that Nextel did not demonstrate the feasibility of using its technology in the PCS spectrum range "**where** propagation, technology and existing services present a significantly different environment [than the 800 **MHz** spectrum **bands**]"**.16/**

This conclusion ignores the record in this proceeding. Digital **Mobile** technology offers an innovative technology platform for PCS services using the newly allocated 2 **GHz** emerging technologies spectrum. Nextel has developed an advanced mobile communications technology capable of operating in a shared, congested **RF** environment and has proven its feasibility in commercial use. As the award to APC demonstrates, the **sin qua non** of a 2 **GHz** pioneer's preference for a radio-based innovator is a radio technology that can support a new service on spectrum that **must** be (for at least **some** time) shared with existing microwave systems.

15/ The Commission's rationale is internally inconsistent and thus reveals its arbitrary decision-making. On the one hand, it asserts that Nextel has not **proposed** specific PCS services; on the other hand it criticizes Nextel for proposing **services (i.e., two-way voice data, handoff, automatic power control)** similar to those of other 2 **GHz** PCS pioneer's preference applicants. The Order is arbitrary and capricious as **applied to Nextel** and must be reversed.

16/ Order at **paras.** 214 and 215.

This is precisely what Digital **Mobile** does. It is a **dynamic** technology that accounts for both existing fixed and mobile **co-**channel stations and makes the most effective use of limited spectrum. Nextel has demonstrated the frequency agility of its technology in real world applications on shared 800 **MHz** spectrum. The innovation deserving of a 2 **GHz** pioneer's preference is that of developing a technology that enables a PCS **system to** be established while the 2 **GHz** band is still shared with fixed microwave systems. As Bell Atlantic has pointed out in this proceeding, the basic principles of the operation of wireless **communications** systems are the same at 2 **GHz** as they are at 800 **MHz.**^{17/} Thus, **Nextel's** commercial demonstration of this inherent Digital Mobile capability should be accorded *more* weight than limited experimental trials, or carrying a **"PCS phone call"** over an operating cable system.

The Commission's failure to award Nextel a preference, while **granting** one to APC for its Frequency Agile Sharing Technology ("FAST"), is arbitrary and inconsistent with the record herein. FAST uses theoretical interference analyses to protect existing microwave operations as well as field strength measurements to identify optimum PCS channels and verify the theoretical **analyses.**^{18/} **APC's** FAST technology is the central concept justifying its preference award.

Digital Mobile is also a frequency agile technology **that**

^{17/} Comments of Bell Atlantic Personal Communications, Inc. on the Tentative Decision, at p. 3.

^{18/} Order at **paras.** 12-14; Tentative Decision at **para.** 8.

enables a 2 **GHz** PCS licenses to create an integrated mobile radio system comprised of individual base stations permitting seamless hand-off of mobile calls without interfering with existing **co-channel** stations. Like **FAST**, Digital Mobile uses theoretical interference analyses to protect existing operators as well as field strength measurements to identify optimum channels and verify the theoretical analyses. Just as **FAST** would identify unused non-contiguous spectrum, and enable future PCS licensees to "engineer **around**" existing microwave users, Digital Mobile technology enables **ESMR** licensees to "engineer around" and protect other co-channel systems and thereby share spectrum with existing 800 **MHz** licensees. Digital **Mobile** and **FAST** are very similar "breakthrough **technologies**" that can support new integrated wide-area radio systems on non-contiguous 2 **GHz** spectrum without causing interference to existing licensees.

Moreover, upon closer examination, the **Commission's** failure to reward **Nextel's** innovative Digital **Mobile** technology is even more egregious. **FAST** has been used only in limited experimental trials, whereas Digital **Mobile** is in commercial service in Los Angeles -- the most frequency congested and geographically challenging market in the Nation. While **FAST** accounts for co-channel fixed microwave systems, Digital Mobile supports coexistence of an advanced, high capacity PCS services with co-channel **mobile** systems as well as fixed operations. Accounting for incumbent mobile **operations** is a far more challenging task than accommodating only **incumbent** fixed services. In this respect, **Nextel's** Digital Mobile technology is

more sophisticated **and** more innovative than **FAST**. Thus, the **Commission's** award of a pioneer's preference to **APC** for developing **FAST** cannot be reconciled with its denial of a preference to Nextel. Both **are** innovative proposals that can lead to the establishment of new mobile communications services in the 2 **GHz** band.

B. **Nextel Has Demonstrated That Digital Mobile Technology Will Lead to the Establishment of New PCS Services in the 2 GHz Band**

In the Order, the Commission asserts that Nextel has simply described its **ESMR** offerings and has not proposed new PCS services. The Order ignores the Commission's own definition of PCS. The Commission has broadly defined PCS as a family of:

"Radio 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.**"^{19/}

PCS includes existing wireless communications services, such **as paging**, cellular and SXR, as well as mobile communications services that will be provided on the newly reallocated 2 **GHz** bands. By the Commission's own definition, PCS includes services that can be offered in other spectrum bands, as well as those that may also be provided by 2 **GHz** licensees.

As to specific PCS services, Digital Mobile technology offers tremendous new breakthroughs in the use and control of

^{19/} **Amendment** of the Commission's Rules to Establish **New** Personal Communications Services, Second Report and Order, 8 **FCC Rcd** 7700 (1993) at **para.** 24; Notice of Proposed Rulemaking, 7 **FCC Rcd** 5676 (1992) at **para.** 29.

communications to **increase** productivity, safety **and** **convenience**. Using this technology, Nextel can offer **an** unprecedented combination of all-digital, fully-integrated PCS services including two-way mobile telephone, private network dispatch radio, alphanumeric paging, fully featured voice mail and mobile data communications -- all accessible through **a** single compact subscriber **unit.**^{20/} This technology offers dramatically improved sound quality, customer privacy **and** security.

Digital Mobile enables Nextel to offer highly customized and integrated services that can satisfy a **wide** array of telecommunications needs -- the essence of the **Commission's** intentions for PCS. Its intelligent network capabilities permit customers to replace their individual office, home, cellular, pager and voice mail numbers with a single Personal Telephone Number and direct calls to any location. The technology can also integrate information services in both **audio** and text support making possible such services as sports scores, stock prices, news headlines, weather, etc. These service enhancements: capacity for more customers, improved voice quality, improved mobile telephone service, individualized or customized fleet dispatch, **message** alert (paging) capabilities, mobile data applications including portable fax and portable computer capabilities -- all of them available in a single, integrated service offering using a single mobile unit -- are the very kinds of innovative new mobile communications the

^{20/} Attachment A provides materials further illustrating the ability of **Nextel's** Digital **Mobile** technology to support innovative, integrated mobile communications services.

Commission is encouraging within the realm of personal communications services. Nextel has proposed new and innovative PCS services deserving **of a preference.**^{21/}

The new PCS communications capabilities supported by Digital Mobile technology **are** best illustrated by the essential role of **Nextel's** Digital Mobile-based communications systems in the aftermath of the Northridge earthquake. After the earthquake, the **American** Red Cross communications network was virtually useless due to power outages and congestion on cellular systems. Nextel provided disaster relief agencies with unprecedented ability to coordinate their efforts through its digital services -- giving them instant access to each other in emergency situations. In the words of Ron Crenshaw, Red Cross chief communications officer:

"When the ground started shaking and we began to lose land lines, Nextel became the primary **communications** systems for us for the entire (San Fernando) Valley. The first few days after the earthquake were a very important time for us and this system helped us tie all our different centers together. Once the Nextel system was in place, that helped us **dramatically.**"^{22/}

Digital Mobile's **unique** capabilities, such a private network

^{21/} PCS is intended to integrate a wide variety of wireless functionality and features. Digital **Mobile** offers a unique platform upon which to offer these services in an integrated package with unprecedented quality and capacity along with the enhancements consumers want; **i.e.**, cell forwarding, no answer transfer, conference calling, voice mail, privacy, and intra-and inter-system roaming capabilities.

^{22/} This and the following quote are taken **from** Nextel press materials concerning **Nextel's** role in the Northridge earthquake disaster relief effort. **See** Nextel News, **"Red Cross** Turns to Nextel After Los Angeles Earthquake."

dispatch, proved especially **critical** for relief **workers** by allowing communications with an individual **or a** series of **"talk** groups."

Red **Cross** volunteer **Nick Barran** stated:

While one conversation was going on, another party at a separate site could speak with another group **at** the same time. **That's** a feature this system offers that **others** don't. To have these units in place **from the** start in the future would be a very useful **thing.**"23/

Thus, the Commission erred in characterizing Digital **Mobile** as an aggregation of existing **SMR services.**24/ It enables an integrated offering of PCS mobile telephone, dispatch, paging and mobile data communications capabilities in a single portable handset. It makes possible fully-digital service using a low power system architecture designed from its inception to provide high quality in-building coverage and enhanced services. It makes all of this possible while sharing spectrum with other co-channel users at either 800 **MHz** or 2 **GHz**. Digital **Mobile** has all of **the** capabilities and characteristics upon which the Commission relied in awarding **APC** a preference. Its failure to award Nextel a preference is arbitrary and capricious and an abuse of its administrative discretion.=/

23/ Id.

24/ Order at para. 214.

25/ Teleprompter Cable Systems, Inc. v. FCC, 543 F. 2d 1379, 1385 (D.C. Cir. 1976); Sangamon Valley Television Corp. v. United States, 269 F.2d 221, 224 (D.C. Cir. 1959). See also Reuters, Ltd. v. FCC, 781 F.2d 996 (D.C. Cir. 1986), "A precept which lies at the foundation of the modern administration state is that agencies **must abide by **their rules and** regulations."**

The Order also states that **Nextel's** proposed PCS services are similar to those proposed by **"many other applicants."**^{26/} This illustrates **precisely** why the Commission's decision is arbitrary. Nextel's proposed PCS services are not simply similar to those proposed by parties awarded a preference; **they** are a **customized** integration of wireless communications services designed to offer customers the control and features promised by the Commission's PCS vision. The pioneer's preference rules state that an applicant that has developed an innovative proposal leading to the **establishment of new services**, or a substantial enhancement of existing **services** may receive a dispositive licensing preference.=/ **Nextel's** application meets this standard. Failure to award it a preference, when analyzed against the preferences that were granted, is reversible error.

c. **The Order is Inconsistent with the Commission's Finding that Digital Mobile is an Innovative and Unique Technology**

The Commission's denial of **Nextel's** application is wholly inconsistent with its previous determinations concerning Digital Mobile technology. In the Fleet Call Waiver Order, the Commission found that Digital **Mobile technology** "**falls** squarely within the

^{26/} Order at **para.** 215.

^{27/} Section 1.402(a) **of** the Rules. The Order states that merely transferring technology between 800 **MHz** and 2 **GHz** is not innovative **within** the pioneer's preference context. The pioneer's preference rules are intended to assure that innovators realize a return from implementing their innovative technologies. **Nextel has** at its own cost developed a technology that **will** enable the **introduction of new, efficient** PCS services at 2 **GHz**. Under the rules, this merits a preference.

spirit **of**" Section 303(g) **of** the Communications Act of 1934, **as** amended, which directs the Commission to study new uses for radio and **to** "generally encourage the larger and more efficient use of radio in the public **interest.**"^{28/} It specifically concluded that Fleet Call's Digital **Mobile technology is an "innovative" and "unique proposal "** :

"We believe that Fleet Call's **innovative** proposal to increase spectrum efficiency through use **of** multiple, low-power **SMR** facilities on an integrated basis in each of six major markets . . . presents **unique and special circumstances** justifying waiver of the **one-year construction rule.**"^{29/}

In the Order, the Commission conveniently attempts to **evade** this holding saying that it is inapplicable to the **PCS** pioneer's preference proceeding. This is at odds with the plain language of the Fleet Call Waiver Order finding Digital Wobile to fall squarely within Section 303 of the Act directing the Commission to promote new uses of radio -- not to mention the express finding that it is innovative, **as cited above.** This is another example of the arbitrary nature of the Order as applied to **Nextel's** application.

IV. **CONCLUSION**

Nextel's Digital Mobile technology warrants a preference. It **will** lead to the establishment of new, seamless mobile communications networks offering a wide array of advanced **PCS** services while sharing **the 2 GHz bands with existing microwave** licensees. It meets every test of innovation articulated by **the**

^{28/} Fleet Call Waiver Order at **para.** 11.

^{29/} **Id.** at **para.** 26 (emphasis added).

Commission in the PCS pioneer's preference context and has been proven feasible in actual commercial use, not just experimental testing or trials. Moreover, using Digital Wobile technology makes possible PCS licensing rules that lend themselves to grant of a preference and that are a reasonable outgrowth of this technology. Implementing Digital **Mobile** technology on 2 **GHz** PCS systems will foster maximum competition -- thereby spurring the creation of new **jobs**, and facilitating development of wireless off-ramps to the information superhighways of the future.

For all of these reasons, the **Commission must reconsider the Order** and, upon reconsideration, grant **Nextel's** application for a PCS licensing preference.

Respectfully submitted,
NEXTEL COWWUNICATIONS, INC.

By 
Robert **S. Poosaner, Esq.**
Senior Vice President -
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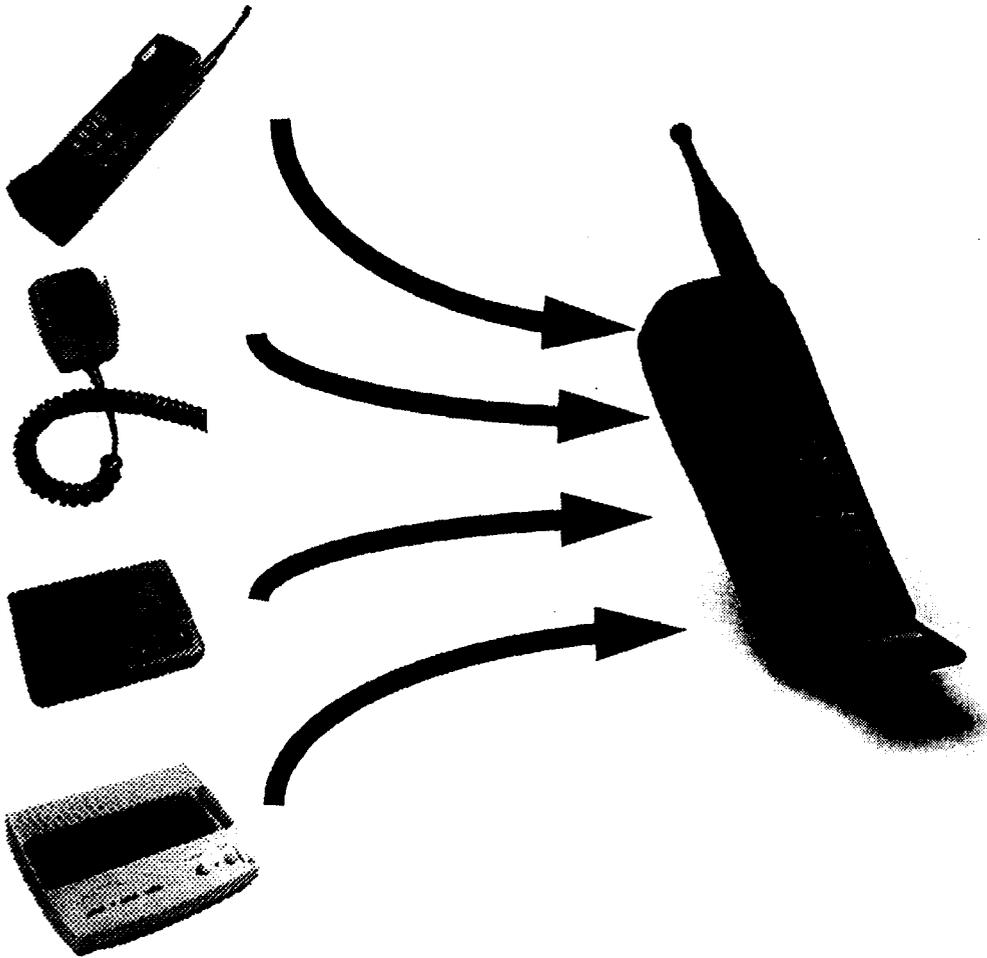
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DATED: March 30, 1994

ATTACHMENT A

What Nextel Means to You



Nextel Is

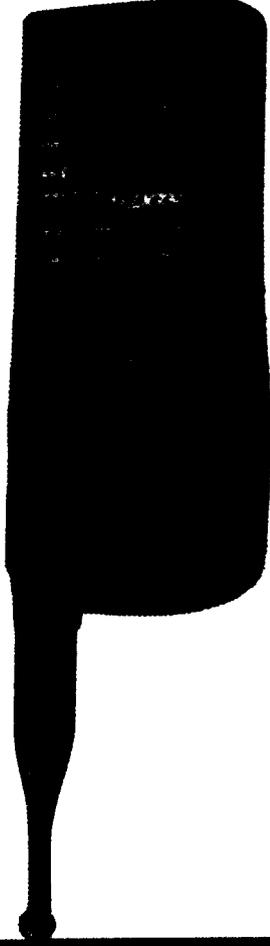
- More Than a Cellular Phone
- More Than a Dispatch Phone
- More Than a Paging/
Messaging Unit

Nextel is the only fully integrated wireless service available today.

NEXTEL

Easy-to-Use, Intelligent Phone

Alpha-Numeric Display



Digital Cellular

- Personal Telephone Number capability
- Voicemail Message Waiting
- Computer downloaded speed-dial

Private Network Dispatch

- Secure, customized conferencing
- Private calling
- Call alerting while you're away

Message Mail

- Return pages with one touch
- Call screening capability

Integrated Voice Mail

- Voice Mail status every time you turn on the phone
- Instant updating

NEXTEL

CERTIFICATE OF SERVICE

I, Ladonya D. Miller, hereby certify that a copy of the foregoing Petition for Reconsideration of Nextel Communications, Inc. has been mailed, first class mail, postage prepaid, this 30th day of March 1994, to the following parties:

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