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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Interconnection Between Local Exchange)
Carriers and Commercial Mobile Radio)
Service Providers)

CC Docket No. 95-185

To: The Commission

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REPLY COMMENTS OF NEXTEL COMMUNICATIONS, INC.

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SUMMARY

In the Notice of Proposed Rule Making ("NPRM") in this proceeding, the Federal Communications Commission ("Commission") has taken the first real step towards enforcing a "fair and reasonable" interconnection policy among Local Exchange Carriers ("LECs") and Commercial Mobile Radio Service ("CMRS") providers. It has proposed eliminating the current inequities practiced by LECs in their CMRS interconnection policies, and instead, would permit CMRS carriers to more readily implement competitive CMRS networks and rapidly establish a nationwide "network of networks."

To achieve these objectives, the Commission proposes adopting a "bill and keep" rate plan on an interim basis for all LEC-CMRS interchange of traffic. After reviewing the comments in this proceeding, Nextel Communications, Inc. ("Nextel") continues to strongly support the Commission's tentative conclusion, with the modifications discussed in its initial comments; *i.e.*, that bill and keep encompass all commonly used CMRS-LEC interconnection arrangements including interconnection at LEC access tandems.

Nextel is the largest provider of traditional and enhanced Specialized Mobile Radio ("SMR") services in the Nation. For two decades, SMR providers have sought fair and equitable interconnection arrangements but have had to accept standard arrangements from LEC monopoly providers whether suited to their offerings or not. For more than a decade, cellular carriers have attempted to negotiate just and reasonable interconnection terms and conditions with LECs, but have been unsuccessful in obtaining

compensation for terminating land-to-mobile traffic. Despite their efforts -- and a Commission mandate of mutual compensation -- the bottleneck/monopoly LEC providers continue to tax CMRS carriers through unjustified, insupportable "monopoly rent" rates. No LEC has ever provided cost justification for any interconnection rate charged Nextel.

Commenters in this proceeding provided evidence showing that, although LECs generally charge three to four cents per minute of use for call termination, the actual cost of such termination is closer to two-tenths of a cent per minute of use. Not a single LEC has effectively challenged this finding. Moreover, two-tenths of a cent per minute approximates the interconnection rate many state regulatory authorities are approving in establishing rates for LEC-to-LEC interconnection.

Given this un rebutted evidence of unjust, unreasonable and discriminatory treatment -- in sharp contrast to the explicit requirement of "fair and reasonable" interconnection -- the Commission must take bold steps to bring the LECs' anti-competitive practices to an end. An interim bill and keep requirement provides the appropriate means for ending the unjust enrichment currently enjoyed by the LECs, and replacing it with a level playing field from which the industry and the Commission can determine the most appropriate long-term interconnection solution.

Prolonging or delaying this decision, or allowing it to be overcome by the issues involved in implementing the Telecommunications Act of 1996, access charge reform, or universal

service reform, will only prolong these inequities and delay development of a more competitive telecommunications marketplace. Achieving lasting competition among all telecommunications services requires the Commission to use its regulatory authority to eliminate abuses by parties, such as the LECs, who continue to control essential bottleneck facilities.

Under current conditions, the LECs have no incentive to change the *status quo*. They can, however, be incited to implement fair, reasonable and competitive policies by enlightened regulatory initiatives. The Communications Act provides the Commission ample authority to establish a single, federal LEC-CMRS interconnection policy; interim bill and keep is the regulatory initiative necessary to eliminate the LECs' anti-competitive behavior and foster nationwide, ubiquitous networks. The Commission must take immediate action and impose interim bill and keep for all LEC-CMRS interconnection.

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REPLY COMMENTS OF NEXTEL COMMUNICATIONS, INC.

I. INTRODUCTION

Pursuant to Section 1.415 of the Rules of the Federal Communications Commission ("Commission"), Nextel Communications, Inc. ("Nextel") respectfully submits these Reply Comments in the above-captioned proceeding.

On March 4, 1996, Nextel and some 80 other parties filed Comments on the Commission's Notice Of Proposed Rule Making ("NPRM") in this proceeding. The NPRM sought comment on the Commission's tentative conclusion to impose an interim "bill and keep" requirement on interconnection arrangements between Local Exchange Carriers ("LECs") and Commercial Mobile Radio Service ("CMRS") providers.^{1/} The comments evidence a significant industry division on the issue of interim bill and keep, with LECs opposing it and CMRS carriers supporting it.

This division of opinion is *per se* evidence of the necessity for an immediate interim solution to the ongoing anticompetitive inequity of unilateral compensation to LECs only for

^{1/} Notice Of Proposed Rule Making, CC Docket No. 95-185, FCC 95-505, released January 11, 1996, at para. 3.

interconnection of CMRS and LEC networks. No CMRS carrier believes that the current state of affairs is equitable, reasonable or otherwise appropriate. Although the LECs support the *status quo* (or, in some cases mutual compensation^{2/}), they provide no evidence that their existing interconnection rates and policies are "reasonable and fair," as required by the Commission.^{3/}

These legal and factual disputes, and the conflicting evidence presented in the comments, support the Commission's tentative conclusion to impose interim bill and keep on all LEC-CMRS interconnection. Interim bill and keep would provide all industry participants an opportunity to investigate the most appropriate long-term solution while, at the same time, lowering the unjustified, unnecessary high-cost entry barriers currently imposed on CMRS carriers by the bottleneck LECs.^{4/}

Under an interim bill and keep regime, CMRS carriers could more readily implement their systems and get new competitive wireless services to the consumer. LECs, moreover, would not be significantly disadvantaged in light of the "monopoly rents" they have imposed during their decade of ignoring the Commission's

^{2/} Pacific Bell at p. 5.

^{3/} See Second Report and Order, 9 FCC Rcd 1411 (1994) at para. 230.

^{4/} As Nextel discussed in its Comments at pages 7-9, only a properly defined bill and keep requirement, encompassing interconnection at all points on the LEC network, will effectively eliminate the existing inequities in LEC-CMRS interconnection.

mutual compensation requirement.^{5/} Interim bill and keep is not -- as the LECs assert -- unsustainable one-sided relief.^{6/} It offers the LECs interim relief from the obligation (albeit one they have essentially ignored) to compensate CMRS carriers for terminating land-to-mobile traffic.

II. BACKGROUND

Nextel is the largest provider of traditional and enhanced Specialized Mobile Radio ("SMR") services in the Nation, offering commercial analog SMR services, i.e., traditional dispatch services, in all 50 states, and commercial enhanced SMR services in, among other places, Northern California, Los Angeles, San Diego, Denver, Washington State, Oregon, Chicago, Detroit, Atlanta, and along the East Coast from Maine to Washington, D.C.

Nextel's enhanced SMR services employ digital GSM-based technology to offer users an integrated package of paging, mobile telephone, dispatch, voice mail, and data services. Nextel was one of the first -- if not the first -- non-cellular CMRS carrier offering two-way voice services competitive with cellular service

^{5/} Pacific Bell argues that bill and keep would provide an "unfair advantage" for CMRS carriers and that, to avoid this "unfair advantage," the Commission should ensure that each carrier "pay the cost of using the others' network." Pacific Bell at p. 58. Nextel asserts that this argument would never have been proffered by the LECs but for the proposed bill and keep requirement. Their claims of "unfair advantage" ignore the previous decade of "unfair advantages" enjoyed by the LECs who have not paid anything for their terminated calls while CMRS carriers have paid, in some instances, for calls terminated on both wireline and wireless networks.

^{6/} See, e.g., Illinois Telephone Association at 2; National Telephone Cooperative Association at pp. 10-12; NYNEX at pp. 30-34; Anchorage Telephone Utility at pp. 6-9.

to seek interconnection with the LECs.^{7/} In many cases, LECs initially refused to provide Nextel with interconnection comparable to that offered cellular carriers even though Nextel's technical requirements were essentially identical. Some states "exercised" their jurisdiction over LEC intrastate rates to subject Nextel's interconnection agreements to state approval not required of cellular-LEC interconnection agreements -- even though Nextel had negotiated the same Type 2A interconnection on comparable rates, terms and conditions to a similarly situated cellular carrier.

Moreover, despite the fact that a LEC's costs to provide such interconnect could not be higher than for providing the same service to a cellular carrier, Nextel faced substantial opposition from both LECs and state regulators in achieving non-discriminatory treatment. Even today, Nextel and other new entrants cannot be sure in many states that they are obtaining non-discriminatory interconnection. None of the LECs with whom Nextel interconnects has ever justified its interconnection rates with any supporting data or documentation. Given the obstacles Nextel has faced in just obtaining essential interconnection, it has been in no position to fight the LECs' intentional disregard of the Commission's mutual compensation directive.

^{7/} Nextel began implementing its enhanced digital SMR systems prior to the initiation of any Personal Communications Services ("PCS"). Although SMR providers have offered interconnected services for years, they were and typically are treated by the LECs as regular business customers and are not offered the more sophisticated interconnection required by a high volume mobile communications network available to the general public.

Under an interim bill and keep regime, Nextel would no longer be forced to subsidize the LEC's termination of calls on Nextel's system. It would not be bogged down in negotiations with LECs intended to slow the interconnection process and delay the introduction of Nextel's services to the public.^{8/} Bold Commission action is necessary now; failing to do so will perpetuate existing inequities and undermine its own efforts to promote competition and the development of a nationwide "network of networks."

III. DISCUSSION

A. The LECs' Anecdotal Evidence Of CMRS "Success" Does Not Prove The Existence Of "Reasonable And Fair" Interconnection Agreements

In an effort to justify existing LEC-CMRS interconnection practices, some LEC commenters cite to the "health" and "remarkable success" of the CMRS industry as evidence that interim bill and keep is not necessary.^{9/} For example, citing the penetration levels of CMRS services, the phenomenal growth of the cellular industry, and the rapid introduction of new PCS services, Bell Atlantic argues that this proves "interconnection arrangements have

^{8/} Nor should Nextel have to accept the rates and terms offered by LECs who simply claim that their contract terms are non-negotiable and cannot be changed, or that their rates have already taken into account mutual compensation.

^{9/} See United States Telephone Association ("USTA") at p. 12 ("the wireless business is healthy and growing quickly"); Bell Atlantic at p. 9 ("CMRS carriers have enjoyed remarkable success. . .").

facilitated -- rather than hindered -- the development of wireless telecommunications services."10/

To the extent that there can be no cellular/PCS/enhanced SMR service without access to the LEC monopoly-controlled PSTN, LECs have facilitated CMRS implementation and growth. However, Nextel disagrees that LEC interconnection policies have contributed to the phenomenal success of the wireless telecommunications industry. On the contrary, the CMRS industry has grown despite inequitable LEC interconnection policies.

Nextel must interconnect with the PSTN if it is to provide ubiquitous service to the public. An interconnection agreement that requires Nextel to pay for LEC termination of wireless originating calls, but does not allow Nextel to recover the costs of terminating LEC-originated calls, does not "facilitate" Nextel's growth and success.11/ Nextel's experience, and the experiences relayed in the comments filed herein, confirm what CMRS providers have been saying for almost a decade: the essential component of

10/ Bell Atlantic at p. 11. Bell Atlantic boldly states that this arrangement has "facilitated" the success of the CMRS industry. The Commission should consider "what might have been" had the LECs provided the "reasonable and fair" interconnection that they have intentionally ignored for a decade. Had CMRS carriers not been forced to absorb these costs, CMRS carriers would have been operating under more economically rational parameters and could have made more rational choices, perhaps recovering their costs, reinvesting them in their networks, more rapidly providing services to the public, and thereby furthering the Commission's goal of enhanced CMRS competition and a nationwide seamless network. See House Report, No. 103-111 at 261.

11/ As Nextel's services grow and its traffic increases, this built-in subsidy of LEC-originating traffic will continue to increase.

CMRS service, LEC interconnection, comes only at a high price -- one that is not cost-based and is intended to disadvantage potential LEC competitors. In fact, studies submitted by certain commenters reveal the extent to which the LECs use interconnection to disadvantage disfavored users on their systems, charging them interconnection rates that far exceed cost -- in some cases by 7400 percent or more.^{12/}

B. LECs Mischaracterize The Telecommunications Act Of 1996 In An Attempt To Retain The Inequitable Status Quo While Awaiting The Adoption Of A Long-Term Solution

In an effort to retain the inequitable *status quo* while awaiting a truly "reasonable and fair" long-term interconnection solution, LEC commenters misconstrue the Telecommunications Act of 1996 ("TCA") by arguing that it prohibits any further action in this proceeding.^{13/} They claim that the TCA preserves state authority over all interconnection arrangements, including the LEC-CMRS interconnection arrangements heretofore governed by Section 332 of the Communications Act, as adopted in the Omnibus Budget

^{12/} See "Incremental Cost of Local Usage," Dr. Gerald W. Brock, Director of the Graduate Telecommunications Program, George Washington University, filed on behalf of Cox Enterprises, Inc., CC Docket No. 94-54 (March 21, 1995). State inquiries and cost study investigations also have confirmed that current rates charged by LECs are far in excess of reasonable levels, even when provision is made for some additional "contribution" over and above the incremental cost of terminating traffic. See e.g., Illinois Bell Telephone Company, State of Illinois Commerce Commission, Docket No. 94-0096 at 85 (released April 7, 1995) (determining that rates (including a "contribution" over and above incremental cost) charged to competing carriers for termination of traffic should be \$.0075 per minute use for tandem switched termination and \$.005 per minute use for end office switched termination).

^{13/} See, e.g., National Association of Regulatory and Utility Commissioners at pp. 5-6; PacBell at p. 92; and GTE at pp. 42-43.

Reconciliation Act of 1993 ("Budget Act").^{14/} The California Public Utilities Commission ("CPUC") even argues that the Budget Act never preempted state jurisdiction over LEC-CMRS interconnection; rather, it simply promoted such interconnection.^{15/}

Nextel disagrees with this interpretation of the TCA and supports the positions of Cox Enterprises, Inc. ("Cox"), Comcast Corporation ("Comcast"), and others.^{16/} If the Congressional objective of nationwide, seamless wireless telecommunications networks is ever to be achieved, the Commission must leverage its jurisdiction over all aspects of LEC-CMRS interconnection. Nextel is building a nationwide mobile communications system; leaving the regulation of interconnection to local exchange monopolies to 50 different state jurisdictions will only hinder, delay, and perhaps prohibit implementation of these systems.^{17/} The ambivalence of

^{14/} Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI Section 6002(b), 107 Stat. 312 (1993).

^{15/} CPUC at p. 20.

^{16/} See Cox at pp. 42-47; Comcast at pp. 42-44; Personal Communications Industry Association at p. 18; and Sprint and American Personal Communications ("APC") at pp. 37-39.

^{17/} Under the current regime, wherein the Commission has clearly stated that mutual compensation must be provided in LEC-CMRS interconnection agreements, some states have refused to implement the Commission's policy. See State of Connecticut Department of Public Utility Control, DCPUC Investigation into Mutual Compensation Plans, Docket No. 95-04-04 at 15 (September 22, 1995)(prohibiting incumbent LECs from entering into reciprocal compensation agreements with wireless carriers); California Public Utilities Commission, Competition for Local Exchange Service, D.95-07-054, R.95-04-044 at 15, 35 (July 24, 1995)(conditioning eligibility for mutual compensation on service providers' (continued...))

states to facilitate equitable interconnection, coupled with the morass of state regulatory hurdles that a nationwide provider would encounter, amply justifies the Commission's decision to impose and enforce a federal LEC-CMRS interconnection policy.

In the Budget Act, Congress vested all LEC-CMRS interconnection jurisdiction in the Commission, thereby ensuring a consistent, uniform national policy for wireless telecommunications providers. When Congress addressed interconnection in the TCA, it neither expressly nor implicitly preempted its earlier state preemption of LEC-CMRS interconnection arrangements. On the contrary, the Conference Report to the TCA expressly preserved existing Commission jurisdiction over LEC-CMRS interconnection, stating that the interconnection provisions in the TCA "are in addition to, and in no way limit or affect, the Commission's existing authority regarding interconnection under Section 201 of the Communications Act."18/

LEC efforts to roll this proceeding into the TCA implementation process are nothing more than attempts to delay implementation of a just and reasonable interconnection policy. Such LEC sandbagging cannot be tolerated. Each day that the Commission delays adopting bill and keep, CMRS providers are denied "reasonable and fair" interconnection at just, reasonable and non-

17/(...continued)
willingness to seek state certification as "competitive local carriers."

18/ See Preface to the Telecommunications Act of 1996, Joint Explanatory Statement of the Commission of Conference, 104th Cong. Rec. 1107, 1110 (January 31, 1996).

discriminatory rates, and LECs are permitted to continue charging monopoly rents. The Commission cannot allow this to continue, and it cannot depend on the LECs (or state regulators) to correct the inequities that ultimately discourage a competitive nationwide wireless telecommunications network.^{19/}

A Commission-mandated federal interconnection policy is further justified by the inseverability of wireless telecommunications services.^{20/} Although, in the past, the Commission has found avenues for separating interstate and intrastate costs for various telecommunications services, the Commission should not impose any such artificial demarcation on CMRS services. As Nextel explained in its Comments,^{21/} the increasingly regional and national scope of CMRS services results in carriers who provide their services without regard to state jurisdictional boundaries.

Roaming, the mobility of the user, the placement of radio towers at or near state boundaries, and the use of interstate

^{19/} Some commenters also argue that the Budget Act only preempted rates charged by the CMRS carrier and not rates charged to the CMRS carrier. See, e.g., Cellular Resellers Association, Inc. at pp. 7,9; CPUC at pp. 17-18. This interpretation could result in a complicated, nonsensical regulatory regime under which, if the LEC is actually paying the CMRS carrier for terminating its calls, the Commission would regulate that rate. However, the rate paid by the CMRS carrier to the LEC would be regulated by the states -- potentially 50 different regulatory structures. This interpretation defies common sense -- mutual compensation is simply opposite sides of the same equation and must be subject to the same overriding federal regulatory scheme.

^{20/} See Louisiana Public Service Commission v. FCC, 467 U.S. 355 (1986).

^{21/} Nextel at pp. 14-16.

service areas make it literally impossible to determine the actual interstate or intrastate nature of each and every call. Moreover, even if every call could be so categorized, it could change from interstate to intrastate and back to interstate during a single phone call. Therefore, any attempt to categorize each wireless call would be a purely artificial, unnecessary regulatory impediment, resulting in inefficient marketplace decisions and reactions.

IV. CONCLUSION

At this juncture in the development of the telecommunications marketplace -- the recent adoption of the Telecommunications Act of 1996, the on-going evolution of the telecommunications industry, the continuing improvements in technology, and the every-increasing competitiveness among telecommunications service providers -- the Commission has a unique and substantial opportunity to wield its regulatory authority as a proponent of marketplace competition by enacting a pro-competitive framework for LEC-CMRS interconnection.

As one of the new entrant CMRS providers dependent on LEC interconnection to the PSTN, Nextel urges the Commission to adopt, without delay, a properly defined interim bill and keep requirement that would encompass the most common forms of LEC-CMRS interconnection. When the Commission adopted its tentative conclusion in the NPRM, the propriety of bill and keep remained largely un rebutted and there were no other "concrete alternatives

that [met the Commission's] public interest objectives."22/ To date, no LEC has proffered any viable alternative to the administrative efficiency of bill and keep, nor has evidence been placed in the record to rebut the comprehensive studies substantiating the inflated and discriminatory nature of current LEC interconnection rates. The Commission, therefore, should adopt interim bill and keep arrangements for CMRS-LEC interconnection.

Respectfully submitted,

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Dated: March 25, 1996

22/ See Separate Statement of Commissioner Susan Ness, Notice Of Proposed Rule Making, CC Docket No. 94-54; CC Docket No. 95-185 at 2 (released January 11, 1996).

CERTIFICATE OF SERVICE

I, Rochelle L. Pearson, hereby certify that on this 25th day of March 1996, I caused a copy of the attached Reply Comments of Nextel Communications, Inc. to be served by hand delivery or first-class mail, postage prepaid to the following:

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