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

In the Matter of	)	
	)	
Automatic and Manual Roaming	)	**WT Docket No. 00-193**
Obligations Pertaining to	)	
Commercial Mobile	)	
Radio Services	)	

To: The Commission

REPLY COMMENTS OF PACIFIC WIRELESS TECHNOLOGIES, INC.

Pacific Wireless Technologies, Inc. ("Pacific"), pursuant to the provisions of section 1.415 of the rules and regulations of the Federal Communications Commission ("FCC" or "Commission"), 47 C.F.R. § 1.415 (2000), hereby submits its Reply Comments responsive to the comments of other parties submitted pursuant to the *Notice of Proposed Rule Making* ("*Notice*")[1] in the above-captioned proceeding. For the reasons set forth more fully below, Pacific again urges that the Commission adopt regulations and policies mandating automatic roaming arrangements for the digital 800 MHz Specialized Mobile Radio ("SMR") industry. In particular, Pacific herein addresses certain arguments made in the comments submitted by Nextel Communications, Inc. ("Nextel"), which generally opposed FCC adoption of automatic roaming requirements.

A Continued Deregulatory Approach is Not Warranted.

Nextel claims that the FCC should continue with its hands-off, deregulatory approach to the commercial mobile radio services ("CMRS") marketplace. Nextel Comments at 3-8 (citing recent federal legislation for the proposition that the CMRS industry should not be actively regulated).

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1 *Notice of Proposed Rule Making*, WT Docket No. 00-193, FCC 00-361, rel. Nov. 1, 2000.

While Pacific agrees that the overall premise of the Telecommunications Act of 1996 ("1996 Act") and other recent federal statutes[2] requires that the FCC should generally limit its regulation of the CMRS industry, the Commission is also statutorily charged with ensuring widespread and efficient use of communications facilities. Similarly, the 1996 Act did not limit the FCC's ability to intervene in situations where regulation produces a tangible public benefit that is not otherwise bestowed by the marketplace. In fact, the 1996 Act is just as focused on limiting the market power of dominant carriers as it is focused on limiting regulation -- many of the 1996 Act's key provisions are focused on required, non-discriminatory, sharing of communications facilities controlled by dominant carriers. See e.g., 47 U.S.C. § 251 (specifying general duty of each telecommunications carrier to interconnect their facilities with other telecommunications carriers). Automatic roaming is an analogous concept.

There can be no question that an automatic roaming requirement would permit each of Pacific's 6,000 customers to use their existing iDEN handsets in areas where they cannot today. This simple fact cannot be disputed. Nextel is unilaterally preventing consumers that can otherwise access its network from doing so. An automatic roaming requirement would therefore have the tangible public interest benefit of promoting public safety and the widespread use of communications networks, with no countervailing burdens on carriers such as Nextel. Thus, while Pacific agrees with Nextel that the FCC should undertake to regulate only where appropriate, this is the appropriate situation for intervention because regulation will promote the public interest, and have no measurable or tangible adverse affects.

Nextel asks whether the CMRS marketplace has failed, such that regulatory intervention is necessary. Nextel Comments at 1-2. Nextel then concludes that the CMRS marketplace has not

[2] While the Omnibus Budget Reconciliation Act of 1993 was certainly deregulatory in nature, that legislation also converted all interconnected SMR licensees such as Nextel into common carriers. Nextel therefore errs in pointing to the 1993 Budget Act for the proposition that it should not be required to abide by Title II of the Communications Act of 1934, and provide service upon reasonable request to roamers.

failed, and that the Commission should not therefore intervene in this case. Nextel's arguments are correct generally with respect to the overall CMRS industry, but incorrect in the specific instances of its own actions. The market cannot be considered to be functioning properly when Nextel refuses to provide any service to as many as 6,000 Pacific customers that operate iDEN handsets that are willing to pay roaming rates for service and have technically compatible handsets.[3] Nextel provides these same services to customers of its foreign and domestic affiliates but refuses to so for Pacific's end users. See Pacific Comments at 5-6. Contrary to Nextel's assertions, Pacific believes that the FCC should conclude that a market failure exists when a large carrier refuses to provide services to a class of end users that have technically compatible handsets and are willing to pay for the service, especially when that large carrier only provides similar services to end users of carriers in which it has an ownership interest. Thus, even accepting the premise of Nextel's questionable analytical framework,[4] the Commission should intervene.

Requiring Automatic Interconnection will not Discourage Investment in Infrastructure.

Aside from its general advice that the agency not regulate where there is no market failure, Nextel raises what it believes to be an important adverse affect related to a mandated automatic roaming requirement. Nextel generally states that an automatic roaming requirement would

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[3] Nextel makes a technical argument that certain iDEN system handsets which operate on 6:1 iDEN systems cannot operate on Nextel's 3:1 iDEN system. Nextel Comments at n.5. However, Pacific uses precisely the same type of 3:1 iDEN system as Nextel. Therefore, there are no significant technical obstacles that prevent roaming from being implemented.

[4] Pacific does not believe that the FCC is so constrained in its regulatory authority that it must find a "market failure" before it can intervene. This is especially true for the CMRS industry, which is definitionally comprised of common carriers. The Communications Act does not condition the FCC's authority over common carriers based on the presence of a market failure. While a deregulatory approach is certainly laudable, that deregulation cannot be so severe that the FCC refuses to enforce the basic common carrier obligations found in the Communications Act. Yet that is precisely what Nextel urges. Nextel urges the Commission, under the guise of deregulation, to permit Nextel to stop functioning as a common carrier. Only Congress can make that determination.

discourage build-out and acquisition of communications facilities. Nextel Comments at 12-14. Nextel offers no tangible evidence for this proposition. Moreover, the opposite is precisely the case with respect to the domestic entities with whom Nextel has refused to enter into roaming arrangements. As noted in Pacific's comments in this proceeding, it has generally built-out all of its licensed network and seeks roaming relationships to permit its customers to use their phones outside that network.

Pacific's desire to enter into roaming arrangements with other carriers is no different from ClearNet's (a Canadian SMR operator in which Nextel has an ownership interest) desire to have its end users' iDEN handsets function in the United States, or from Nextel's desire to have its end users' iDEN handsets function in Canada. For this reason, Nextel and ClearNet have established a roaming relationship. Nextel Comments at n.20. Thus, the FCC should reject Nextel's argument that roaming discourages facilities or spectrum investments because Nextel clearly is investing heavily in its network, and at the same time employing roaming arrangements. Nextel's argument therefore rests on the belief that the FCC should accept unproven theories that attempt to predict behavior over Nextel's unintentional real-world example based on its own conduct. The latter evidence is more reliable.

Similar to Nextel, Pacific is also investing in additional infrastructure, and intends to offer facilities-based services in other markets outside its current coverage areas. However, just like Nextel, Pacific also desires to enter into roaming arrangements to give its customers the widest possible use of their mobile handsets. Nextel's Comments therefore do not demonstrate any causal link between the availability of roaming and facilities build-out.[5] Therefore, while Pacific has

[5] Nextel criticizes the Southern Company ("Southern") for insisting on roaming arrangements while at the same time - in Nextel's view - deciding to forego additional spectrum acquisitions. Nextel Comments at n. 30. Nextel's criticisms, however, should be considered in the full context of 800 MHz spectrum issues confronting the SMR industry. The FCC's spectrum auctions for the 800 MHz frequency band made very little unencumbered spectrum available. Southern was not foregoing an opportunity so much as it was unwilling to purchase geographic area licenses that were already heavily encumbered, mostly by Nextel.

demonstrated tangible public interest benefits related to an automatic roaming requirement, Nextel has only demonstrated a speculative countervailing "burden."

Nextel cites to the Commission's decisions regarding resale of CMRS services for the proposition that requiring resale or roaming will discourage facilities based competition. Nextel Comments at 6. While Pacific does not necessarily agree with Nextel's assertion generally, it is simply inaccurate with respect to Pacific. Pacific has constructed digital facilities and to the extent it is able to secure additional spectrum, it will construct others. Pacific is a facilities based competitor to Nextel in certain markets and Nextel wishes to act in an anti-competitive manner in others by refusing to allow Pacific's customers to roam on Nextel's system. Thus, while Nextel reminds the Commission that it should protect competition, not competitors, it is Nextel that is asking the FCC to protect it by sanctioning its refusal to provide service to Pacific's customers -- an outcome designed to discourage competition. Nextel Comments at n. 30.

WHEREFORE, THE FOREGOING PREMISES CONSIDERED, Pacific again respectfully urges the Commission to adopt automatic roaming requirements for the digital SMR service.

Respectfully submitted,

PACIFIC WIRELESS TECHNOLOGIES, INC.

By: /s/ Jeffery Fuller
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February 5, 2001

CERTIFICATE OF SERVICE

I, Marge Cribbin, of Pacific Wireless Technologies, Inc., certify that I have, this 5th day of February, 2001, caused a copy of the foregoing "Reply Comments" to be served upon the following by prepaid U.S. mail:

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