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FCC 603	FCC Wireless Telecommunications Bureau Application for Assignments of Authorization and Transfers of Control	Approved by OMB 3060 - 0800 See instructions for public burden estimate Submitted 07/27/2001 at 11:33AM File Number: **0000523796**

1) Application Purpose: **Assignment of Authorization**	
2a) If this request is for an Amendment or Withdrawal, enter the File Number of the pending application currently on file with the FCC.	File Number:
2b) File numbers of related pending applications currently on file with the FCC:	

Type of Transaction

3a) Is this a *pro forma* assignment of authorization or transfer of control? **No**
3b) If the answer to Item 3a is 'Yes', is this a notification of a *pro forma* transaction being filed under the Commission's forbearance procedures for telecommunications licenses?
4) For assignment of authorization only, is this a partition and/or disaggregation? **No**
5) Does this filing request a waiver of the Commission's rules? **No**
6) Are attachments being filed with this application? **Yes**
7a) Does the transaction that is the subject of this application also involve transfer or assignment of other wireless licenses held by the assignor/transferor or affiliates of the assignor/transferor(e.g., parents, subsidiaries, or commonly controlled entities) that are not included on this form and for which Commission approval is required? **No**
7b) Does the transaction that is the subject of this application also involve transfer or assignment of non-wireless licenses that are not included on this form and for which Commission approval is required? **No**

Transaction Information

8) How will assignment of authorization or transfer of control be accomplished? **Sale or other assignment or transfer of stock** If required by applicable rule, attach as an exhibit a statement on how control is to be assigned or transferred, along with copies of any pertinent contracts, agreements, instruments, certified copies of Court Orders, etc.
9) The assignment of authorization or transfer of control of license is: **Voluntary**

Licensee/Assignor Information

10a) Taxpayer Identification Number: **841509248**		10b) SGIN: **000**	10c) FCC Registration Number (FRN): **0004253696**
11) First Name (if individual):	MI:	Last Name:	Suffix:
12) Entity Name (if not an individual): **PACIFIC WIRELESS TECHNOLOGIES INC**			
13) Attention To:			
14) P.O. Box:	And / Or	15) Street Address: **6771 N Palm Ave**	
16) City: **FRESNO**		17) State: **CA**	18) Zip: **93704**
19) Telephone Number: **(559)437-6530**		20) FAX: **(559)432-6600**	
21) E-Mail Address:			

22) Race, Ethnicity, Gender of Assignor/Licensee (Optional)

Race:	American Indian or Alaska Native:	Asian:	Black or African-American:	Native Hawaiian or Other Pacific Islander:	White:
Ethnicity:	Hispanic or Latino:	Not Hispanic or Latino:			
Gender:	Female:	Male:			

Transferor Information (for transfers of control only)

23a) Taxpayer Identification Number:		23b) SGIN:	23c) FCC Registration Number (FRN):
24) First Name (if individual):	MI:	Last Name:	Suffix:
25) Entity Name (if not an individual):			
26) P.O. Box:	And / Or	27) Street Address:	
28) City:		29) State:	30) Zip:
31) Telephone Number:		32) FAX:	
33) E-Mail Address:			

Name of Transferor Contact Representative (if other than Transferor) (for transfers of control only)

34) First Name:	MI:	Last Name:	Suffix:
35) Company Name:			
36) P.O. Box:	And / Or	37) Street Address:	
38) City:		39) State:	40) Zip:
41) Telephone Number:		42) FAX:	
43) E-Mail Address:			

Assignee/Transferee Information

44) The Assignee is a(n): **Corporation**			
45a) Taxpayer Identification Number: **223130303**		45b) SGIN: **000**	45c) FCC Registration Number (FRN): **0003293511**
46) First Name (if individual):	MI:	Last Name:	Suffix:
47) Entity Name (if other than individual): **NEXTEL OF CALIFORNIA, INC.**			
48) Name of Real Party in Interest: **NEXTEL COMMUNICATIONS, INC.**			49) TIN: **363939651**
50) Attention To:			
51) P.O. Box:	And / Or	52) Street Address: **2001 EDMUND HALLEY DRIVE**	
53) City: **RESTON**		54) State: **VA**	55) Zip: **20191**
56) Telephone Number: **(703)433-4000**		57) FAX: **(703)433-4035**	
58) E-Mail Address:			

Name of Assignee/Transferee Contact Representative (if other than Assignee/Transferee)

59) First Name: **ROBERT**	MI: **H**	Last Name: **MCNAMARA**	Suffix:
60) Company Name: **NEXTEL COMMUNICATIONS INC**			
61) P.O. Box:	And / Or	62) Street Address: **2001 EDMUND HALLEY DRIVE**	
63) City: **RESTON**		64) State: **VA**	65) Zip: **20191**
66) Telephone Number: **(703)433-4000**		67) FAX: **(703)433-4035**	
68) E-Mail Address: **robert.mcnamara@nextel.com**			

Alien Ownership Questions

69) Is the Assignee or Transferee a foreign government or the representative of any foreign government?	**No**
70) Is the Assignee or Transferee an alien or the representative of an alien?	**No**
71) Is the Assignee or Transferee a corporation organized under the laws of any foreign government?	**No**
72) Is the Assignee or Transferee a corporation 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?	**No**
73) Is the Assignee or Transferee directly or indirectly controlled by any other corporation 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 'Yes', attach exhibit explaining nature and extent of alien or foreign ownership or control.	**No**

Basic Qualification Questions

74) Has the Assignee or Transferee or any party to this application had any FCC station authorization, license or construction permit revoked or had any application for an initial, modification or renewal of FCC station authorization, license, construction permit denied by the Commission? If 'Yes', attach exhibit explaining circumstances.	**No**
75) Has the Assignee or Transferee or any party to this application, or any party directly or indirectly controlling the Assignee or Transferee, or any party to this application ever been convicted of a felony by any state or federal court? If 'Yes', attach exhibit explaining circumstances.	**No**
76) Has any court finally adjudged the Assignee or Transferee, or any party directly or indirectly controlling the Assignee or Transferee guilty of unlawfully monopolizing or attempting unlawfully to monopolize radio communication, directly or indirectly, through control of manufacture or sale of radio apparatus, exclusive traffic arrangement, or any other means or unfair methods of competition? If 'Yes', attach exhibit explaining circumstances.	**No**
77) Is the Assignee or Transferee, or any party directly or indirectly controlling the Assignee or Transferee currently a party in any pending matter referred to in the preceding two items? If 'Yes', attach exhibit explaining circumstances.	**No**

78) **Race, Ethnicity, Gender of Assignee/Transferee** (Optional)

Race:	American Indian or Alaska Native:	Asian:	Black or African-American:	Native Hawaiian or Other Pacific Islander:	White:
Ethnicity:	Hispanic or Latino:	Not Hispanic or Latino:			
Gender:	Female:	Male:			

Assignor/Transferor Certification Statements

1) The Assignor or Transferor certifies either (1) that the authorization will not be assigned or that control of the license will not be transferred until the consent of the Federal Communications Commission has been given, or (2) that prior Commission consent is not required because the transaction is subject to streamlined notification procedures for *pro forma* assignments and transfers by telecommunications carriers. See *Memorandum Opinion and Order*, 13 FCC Rcd. 6293(1998).

2) The Assignor or Transferor certifies that all statements made in this application and in the exhibits, attachments, or in documents incorporated by reference are material, are part of this application, and are true, complete, correct, and made in good faith.

79) Typed or Printed Name of Party Authorized to Sign

First Name: **Damon**	MI:	Last Name: **Silva**	Suffix:

80) Title: **Director of Operations**

Signature: **Damon Silva**	81) Date: **07/27/01**

Assignee/Transferee Certification Statements

1) The Assignee or Transferee certifies either (1) that the authorization will not be assigned or that control of the license will not be transferred until the consent of the Federal Communications Commission has been given, or (2) that prior Commission consent is not required because the transaction is subject to streamlined notification procedures for *pro forma* assignments and transfers by telecommunications carriers *See Memorandum Opinion and Order,* 13 FCC Rcd. 6293 (1998).

2) The Assignee or Transferee waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests an authorization in accordance with this application.

3) The Assignee or Transferee certifies that grant of this application would not cause the Assignee or Transferee to be in violation of any pertinent cross-ownership, attribution, or spectrum cap rule.*
*If the applicant has sought a waiver of any such rule in connection with this application, it may make this certification subject to the outcome of the waiver request.

4) The Assignee or Transferee agrees to assume all obligations and abide by all conditions imposed on the Assignor or Transferor under the subject authorization(s), unless the Federal Communications Commission pursuant to a request made herein otherwise allows, except for liability for any act done by, or any right accured by, or any suit or proceeding had or commenced against the Assignor or Transferor prior to this assignment.

5) The Assignee or Transferee certifies that all statements made in this application and in the exhibits, attachments, or in documents incorporated by reference are material, are part of this application, and are true, complete, correct, and made in good faith.

6) The Assignee or Transferee certifies that neither it nor any other party to the application is subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1998, 21 U.S.C § 862, because of a conviction for possession or distribution of a controlled substance. See Section 1.2002(b) of the rules, 47 CFR § 1.2002(b), for the definition of "party to the application" as used in this certification.

7) The applicant certifies that it either (1) has an updated Form 602 on file with the Commission, (2) is filing an updated Form 602 simultaneously with this application, or (3) is not required to file Form 602 under the Commission's Rules.

82) Typed or Printed Name of Party Authorized to Sign

First Name: **ROBIN**	MI: **J**	Last Name: **GLENNY**	Suffix:

83) Title: **MANAGER, REGULATORY**

Signature: **ROBIN J GLENNY**	84) Date: **07/27/01**

WILLFUL FALSE STATEMENTS MADE ON THIS FORM OR ANY ATTACHMENTS ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. Code, Title 18, Section 1001) AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. Code, Title 47, Section 312(a)(1)), AND/OR FORFEITURE (U.S. Code, Title 47, Section 503).

Authorizations To Be Assigned or Transferred

85) Call Sign	86) Location Number	87) Path Number (Microwave only)	88) Lower or Center Frequency (MHz)	89) Upper Frequency (MHz)	90) Constructed Yes / No
WNSN279					**Yes**
KGQ445					**Yes**
WGH782					**Yes**
KBL980					**Yes**
KNRT551					**Yes**
KNNP782					**Yes**
WNXF644					**Yes**
WPIU769					**Yes**
WPIU819					**Yes**
KNNF604					**Yes**
WNQC737					**Yes**
WPFP908					**Yes**
KNAN842					**Yes**
WPFS990					**Yes**
WPID461					**Yes**
WPIH356					**Yes**
WPIH357					**Yes**
WPIH370					**Yes**
WPIH329					**Yes**
WPHX770					**Yes**
WPHX786					**Yes**
WPHQ690					**Yes**

WPHQ699	Yes
WPHI644	Yes
WPIT730	Yes
WNLH964	Yes
WPIJ915	Yes
WPIZ565	Yes
WPFR214	Yes
WPFR266	Yes
WPEB452	Yes
WPIG289	Yes
WPIG231	Yes
WNPY672	Yes
WNPY704	Yes
WPFX960	Yes
WPFX962	Yes
WPFX963	Yes
WPFH665	Yes
WPIM749	Yes
WPLU509	Yes
WPHP465	Yes
WPHR437	Yes
KNBX930	Yes
WPIU886	Yes
WPIE332	Yes
WPLS529	Yes
WNXS362	Yes
WNXR206	Yes
WPHY570	Yes
WPHY573	Yes
WPFY290	Yes
WPIF656	Yes
WNSK464	Yes
WPGN615	Yes
WPLG234	Yes
WPLG235	Yes
WPLG242	Yes
WPNP461	Yes
WPNP462	Yes
KNFY959	Yes
WPHY279	Yes
WPIB357	Yes
WNSS524	Yes
WPCG253	Yes
WNSK925	Yes
WPMZ487	Yes
WPMZ491	Yes
WPMZ494	Yes
WNPW287	Yes
WPBG222	Yes
WPGH886	Yes

WPCE385	Yes
WPFU350	Yes
WPKZ247	Yes
WPKZ450	Yes
WPKZ451	Yes
KMA683	Yes
WPHX607	Yes
WPHX612	Yes
WPIF456	Yes
WPIF424	Yes
WPIU826	Yes
WPIU870	Yes
WPHK796	Yes
WNQU886	Yes
WPIH886	Yes
WPIH891	Yes
WPFP291	Yes
WPHU613	Yes
WPIB936	Yes
WPIC367	Yes
WPII368	Yes
KFO262	Yes
WPCG751	Yes
KNNM506	Yes
WNYB909	Yes
WNVW873	Yes
WNVW874	Yes
WPHP936	Yes
WPHV830	Yes
WPHV842	Yes
WPHV855	Yes
WPHV858	Yes
WPHV871	Yes
WPID433	Yes
WPID437	Yes
WPKX410	Yes
WPHV458	Yes
WPHV462	Yes
WPHS738	Yes
WPHS813	Yes
WPID722	Yes
WPIE515	Yes
WPIE577	Yes
WPID519	Yes
WPID523	Yes
WNPS273	Yes
WPIJ291	Yes
WPMN273	Yes
WPGP669	Yes
WPGY801	Yes

WNQY362	Yes
WNSR575	Yes
WNSS399	Yes
WPLF978	Yes
WPLF979	Yes
WPGV304	Yes
WPGN663	Yes
WPHT289	Yes
WPHT298	Yes
WPHT314	Yes
WPHX675	Yes
WPHX678	Yes
WPHX679	Yes
WPHX682	Yes
WPHX684	Yes
WPGW921	Yes
WPHS730	Yes
WPDC578	Yes
WPHK728	Yes
WPID527	Yes
WPIH559	Yes
WPIH560	Yes
WPHS825	Yes
WPHS829	Yes
WPHS840	Yes
WPFU340	Yes
WPFW800	Yes
KJW912	Yes
KUE975	Yes
WPHX270	Yes
WPKS294	Yes
KNRP929	Yes
WPLU635	Yes
WPHG493	Yes
WPHY542	Yes
WNPD945	Yes
WPHT325	Yes
WPHT334	Yes
WPHT338	Yes
WPHT361	Yes
WPLZ645	Yes
WPIF371	Yes
WPIF375	Yes
WPIF401	Yes
WPPY433	Yes
WPIF664	Yes
KJX947	Yes
KJX952	Yes
WNWJ261	Yes
WPIQ654	Yes

WPJK856	Yes
WNYA774	Yes
WQP565	Yes
KNBC542	Yes
WNFG913	Yes
WNCU718	Yes
WPDU242	Yes
WNXG496	Yes
WPBH586	Yes
WPBH757	Yes
WPHZ620	Yes
WNSW332	Yes
WNNJ633	Yes
WNUX458	Yes
WPSP958	Yes
WPSP959	Yes

FCC Form 603 Schedule A	**Schedule for Assignments of Authorization and Transfers of Control in Auctioned Services**	Approved by OMB 3060 - 0800 See instructions for public burden estimate

Assignments of Authorization

1) Assignee Eligibility for Installment Payments (for assignments of authorization only)

Is the Assignee claiming the same category or a smaller category of eligibility for installment payments as the Assignor (as determined by the applicable rules governing the licenses issued to the Assignor)?	No
If 'Yes', is the Assignee applying for installment payments?	

2) Gross Revenues and Total Assets Information (if required) (for assignments of authorization only)

Refer to applicable auction rules for method to determine required gross revenues and total assets information

Year 1 Gross Revenues (current)	Year 2 Gross Revenues	Year 3 Gross Revenues	Total Assets:

3) Certification Statements

For Assignees Claiming Eligibility as an Entrepreneur Under the General Rule

Assignee certifies that they are eligible to obtain the licenses for which they apply.

For Assignees Claiming Eligibility as a Publicly Traded Corporation

Assignee certifies that they are eligible to obtain the licenses for which they apply and that they comply with the definition of a Publicly Traded Corporation, as set out in the applicable FCC rules.

For Assignees Claiming Eligibility Using a Control Group Structure

Assignee certifies that they are eligible to obtain the licenses for which they apply.

Assignee certifies that the applicant's sole control group member is a pre-existing entity, if applicable.

For Assignees Claiming Eligibility as a Very Small Business, Very Small Business Consortium, Small Business, or as a Small Business Consortium

Assignee certifies that they are eligible to obtain the licenses for which they apply.

Assignee certifies that the applicant's sole control group member is a pre-existing entity, if applicable.

For Assignees Claiming Eligibility as a Rural Telephone Company

Assignee certifies that they meet the definition of a Rural Telephone Company as set out in the applicable FCC rules, and must disclose all parties to agreement(s) to partition licenses won in this auction. See applicable FCC rules.

Transfers of Control

4) Licensee Eligibility (for transfers of control only)

As a result of transfer of control, must the licensee now claim a larger or higher category of eligibility than was originally declared?

If 'Yes', the new category of eligibility of the licensee is:

Certification Statement for Transferees

Transferee certifies that the answers provided in Item 4 are true and correct.

Attachment List

Attachment Type	Date	Description	Contents
Other	07/27/01	Attachment 1 - Dismissal and Revocations Statement	17674090.0.pdf
Other	07/27/01	Attachment 2 - Public Interest Statement	17674092.0.pdf
Other	07/27/01	Attachment 2 - Exhibit 1 - 800 MHz Site Licensees	17674093.0.pdf
Other	07/27/01	Attachment 2 - Exhibit 1 - 800 MHz EA Licensees	17674094.0.pdf
Other	07/27/01	Attachment 2 - Exhibit 1 - 900 MHz Site Licensees	17674096.0.pdf
Other	07/27/01	Attachment 2 - Exhibit 1 - 900 MHz MTA Licensees	17674097.0.pdf
Other	07/27/01	Attachment 2 - Exhibit 1 - 450 MHz Site Licensees	17674098.0.pdf
Other	07/27/01	Attachment 2 - Exhibit 1 - 220 MHz EA Licensees	17674099.0.pdf
Other	07/27/01	Attachment 2 - Exhibit 1 - 220 MHz EAG Licensees	17674100.0.pdf
Other	07/27/01	Attachment 2 - Exhibit 1 - AMTS Licensees	17674101.0.pdf
Other	07/27/01	Attachment 2 - Exhibit 1 - Cellular CMA Licensees	17674102.0.pdf
Other	07/27/01	Attachment 2 - Exhibit 1 - PCS BTA Licensees	17674103.0.pdf
Other	07/27/01	Attachment 2 - Exhibit 1 - PCS MTA Licensees	17674104.0.pdf
Other	07/27/01	Attachment 2 - Exhibit 2 - Market Channel Counts	17674107.0.pdf

Other	07/27/01	Attachment 2 - Exhibit 3 - Mobile to Mobile Calling Plans	17674108.0.pdf
Other	07/27/01	Attachment 2 - Exhibit 3 - AT&T Webpage	17674110.0.pdf
Other	07/27/01	Attachment 2 - Exhibit 4 - Rosston Report	17674112.0.pdf

Exhibit 1

DISMISSALS AND REVOCATIONS

In response to FCC Form 603, Item 74, Applicant has had no licenses revoked by the FCC. Applicant hereby provides the circumstances of various insignificant dismissals or denials of applications filed by the applicant and/or its affiliates.

Applicant and/or its affiliates hold many Federal Communications Commission ("Commission") licenses primarily for Special Mobile Radio ("SMR") systems, many authorizing several hundred channels in a station's area of operation. From time to time, an application associated with one of these facilities may be dismissed by the FCC, in whole or in part, typically for technical reasons such as a mistake in calculating the SMR interference protection standards set forth in Sections 90.621(b) of the Commission's Rules. To the best of Applicant's knowledge, however, none of the above-referenced dismissals or revocations was based on a character issue as defined by the FCC's Rules and policies. Therefore, the FCC should find the Applicant has the requisite basic qualifications to be awarded the grant of the instant application.

Attachment 2

PUBLIC INTEREST STATEMENT

I. INTRODUCTION

This application proposes the assignment of 188 800 MHz licenses from Pacific Wireless, Inc. ("Pacific") to Nextel of California, Inc., a wholly owned subsidiary of Nextel Communications, Inc. ("Nextel"). In support of this application, Nextel respectfully submits this public interest statement evidencing that the proposed assignments will not result in any competitive harm. On the contrary, the assignments will advance the public interest by enhancing Nextel's ability to heighten competition within the Commercial Mobile Radio Services ("CMRS") market – a marketplace that is increasingly converging as the Wireless Telecommunications Bureau ("Bureau") recently recognized,[1] and one that continues to become increasingly competitive and innovative as prices decrease and service diversity increases.[2]

This public interest statement demonstrates that the assignments will benefit the public without competitive harm whether the Bureau, as it should, follows the Commission's recent findings in the Sixth Report on Competition and uses a CMRS market definition or chooses instead to analyze the transaction in separate dispatch and interconnected mobile voice telephony

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[1] *See* Motorola, Inc., Motorola SMR, Inc. and Motorola Communications and Electronics, Inc., Assignors and FCI, 900, Inc., Assignee, For Consent to Assignment of 900 MHz Specialized Mobile Radio Licenses, DA 01-947, released April 17, 2001 (hereinafter "*Motorola*") at para. 12 ("[w]e also recognize the increasing convergence of CMRS services and may well adopt a broader market definition in reviewing future transactions."); *see also* AWI Spectrum Co., LLC, Assignor and ACI 900, Inc., Assignee For Consent to Assignment of Specialized Mobile Radio Licenses, DA 01-1268, rel. May 25, 2001 ("*Arch*") at para. 11 ("We recognize that these product markets continue to evolve so that the dividing lines between are becoming less clear.")

[2] In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, *Sixth Report*, FCC 01-192, released July 17, 2001 (hereinafter "Sixth Report on Competition").

markets.[3] Because of the significant degree of competition for all of these services, there is no chance for Nextel to act anticompetitively and harm consumers. Rather, as with Nextel's previous spectrum acquisitions, the proposed transaction will allow it to increase capacity, lower prices, and provide innovative services in competition with other CMRS providers.

This transaction, however, unlike other Nextel acquisitions of 800 and 900 MHz Specialized Mobile Radio ("SMR") spectrum, presents a significantly different factual scenario that does not fit the Bureau's previously used bifurcated marketplace analysis. Unlike those previous assignments, where Nextel was acquiring licenses used to provide analog dispatch services, e.g., Mobex Communications, Inc. ("Mobex"), Arch Wireless, Inc. ("Arch") and Motorola, Inc. ("Motorola"), here Nextel is acquiring licenses that currently are in use by Pacific to provide digital mobile services, both interconnected and non-interconnected to the Public Switched Telephone Network ("PSTN"), nearly identical to those provided by Nextel. No capacity is being eliminated from the Bureau's "trunked dispatch market" by the completion of this transaction as Pacific's spectrum will continue in very nearly the same use it is in today – i.e., competing in the CMRS marketplace, albeit with more features and capacity. Therefore, the Bureau's bifurcated marketplace analysis is not applicable to this proposed transaction.

The appropriate analysis for this transaction between two digital SMR providers, Nextel and Pacific, is the very analysis just relied upon by the Commission in the Sixth Report on Competition – the "mobile telephony" or CMRS sector.[4] Recognizing that digital SMR providers still offer a dispatch service "functionality" as part of their service offering, the

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[3] Sixth Report on Competition at p. 4 ("...there has been an increasing convergence of services provided by dispatch and other mobile telephony providers [and] public information regarding dispatch services, as distinct from mobile telephony services, has become more limited.")

[4] *Id.* at pp. 3-4.

Commission also found that they have become "more significant competitors in mobile telephony. . ."[5] With the proposed assignment of Pacific's SMR licenses, Nextel intends to continue its efforts to transform the pricing and billing of interconnected mobile telephone services,[6] provide advanced dispatch services in the CMRS market, foster the increasing competitiveness of the CMRS marketplace, and assist in "bringing the benefits of mobility to an ever-increasing segment of the country."[7] As the Commission has stated, "the operator most responsible for using digital technology to make SMR a mobile telephone competitor has been Nextel."[8] Adding Pacific's spectrum to Nextel's existing digital SMR system will enhance Nextel's ability to compete in the CMRS marketplace.

Nextel's plan to acquire Pacific's licenses to support and improve Nextel's offerings of integrated digital wireless services will put this spectrum to its highest and best use as an effective and innovative competitor in the CMRS marketplace. Pacific's licenses will increase Nextel's spectrum holdings in the relevant geographic markets, leaving Nextel with approximately 20 MHz of non-contiguous 800 and 900 MHz spectrum therein – still less than the minimum of 25 or 30 MHz currently assigned each and every one of its cellular and Personal

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[5] *Id.* at p. 11.

[6] *See, e.g.,* State of the SMR Industry: Nextel and Dispatch Communications, The Strategis Group, September 2000 (hereinafter "September 2000 Strategis Report") at p. 54 ("The Strategis Group believes that Nextel's subscriber growth rates have evoked a profound response from AT&T Wireless and other cellular operators.")

[7] Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, *Fourth Report*, 14 F.C.C.R. 10145, 10150 at fn. 18 (1999) ("Fourth Report on Competition") at p. 5.

[8] Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, *Fifth* Report, 15 FCC Rcd 17660 ("Fifth Report on Competition") at p. 30.

Communications Services ("PCS") competitors, and well below the 45-55 MHz permitted under the Commission's CMRS spectrum cap. Nextel, moreover, is best positioned to use these licenses to benefit the public interest because it can integrate them immediately into its digital mobile network to achieve efficiencies in the nationwide provision of mobile communications services. The proposed assignment of Pacific's licenses to Nextel ultimately will fuel a virtuous cycle of competition as its CMRS competitors are forced to respond with additional product and pricing innovations – all to the benefit of the American consumer.

II. BACKGROUND

Pacific, the assignor of the 800 MHz licenses discussed herein, is a provider of CMRS services in the Central Valley of California. The company's coverage area ranges from Bakersfield, California, in the south, to Redding, California in the north and from the Pacific Ocean on the west into the Sierra Nevada mountains on the east. The total population covered by Pacific Wireless' system is approximately 13.5 million. Pacific offers consumers a package of digital wireless services, including digital dispatch and interconnected mobile voice services. Pacific provides these services using an iDEN technology similar to that deployed throughout Nextel's markets.[9] Pacific constructed its iDEN system using site-by-site 800 MHz licenses acquired through the secondary marketplace, i.e., none of the subject licenses were obtained in a Commission auction, launched service in July 2000, and currently serves approximately 7,500 subscribers.

[9] There are two differences in the iDEN digital SMR systems of Pacific and Nextel. First, Pacific employs a high-tower, high-power antenna configuration in a cellular-like architecture that permits channel re-use and call-handoff. Nextel's system, on the other hand, consists of low-power, low-tower cell sites in a cellular-like architecture providing the same capabilities. Second, Nextel's iDEN service package includes data capabilities; Pacific's does not.

Nextel currently provides CMRS service in some 400 cities in the U.S. and serves nearly eight million subscribers,[10] as one of at least six CMRS providers with a national footprint.[11] Nextel has invested more than $7 billion dollars to establish a national digital network to provide a full range of wireless communications services in competition with other CMRS providers. Nextel's digital CMRS service integrates in a single mobile handset a digital dispatch service (known as Nextel Direct Connect(sm)) with interconnected mobile telephone service, Internet access, short messaging and mobile data service.[12] Even standing alone, Nextel's Direct Connect service offers more than simply trunked dispatch. According to the Commission, Direct Connect "to some degree [ ] is a substitute for mobile voice features such as speed dialing and conference calling."[13] Thus, by offering this integrated package of services, Nextel "straddle[s] the mobile telephony and dispatch sectors,"[14] has become a significant competitor to the established CMRS carriers throughout the Nation and continues to compete successfully in the provision of CMRS services.[15]

The attached Exhibit 1 provides a list of the geographic markets within which Pacific currently holds 800 MHz licenses, and a listing of all cellular, PCS, 800 and 900 MHz, 220 MHz,

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[10] *See* Press Release "Nextel Reports Second Quarter 2001Results," released July 24,, 2001.

[11] Fifth Report on Competition at pp. 9-10; *see also* Sixth Report on Competition at p. 13.

[12] Nextel's Direct Connect is a significant advancement over traditional analog dispatch services because it expands the typical dispatch service coverage area, uses the spectrum more efficiently, provides extra security through the use of digital technology, and offers the user a number of options and features, including mobile telephone, paging, wireless Internet and voice mail.

[13] Fifth Report on Competition at p. 70.

[14] Sixth Report on Competition at p. 4.

[15] Fifth Report on Competition at pp. 11, 30; *see also* Fourth Report on Competition.

450 MHz and 217-219 MHz licensees in those markets.[16] All of the licensees listed in Exhibit 1 are authorized by the Commission to provide interconnected mobile telephone service and/or dispatch services to the public. Each of these licensees, therefore, provides actual or potential competition to Nextel and Pacific in those geographic areas. Exhibit 2 provides a listing of the relevant markets and the respective channel counts of Nextel and Pacific in each.

III. DISCUSSION

Section 310(d) of the Communications Act requires the Commission to determine whether the proposed assignment of Pacific's licenses to Nextel will serve the public interest, convenience and necessity.[17] As explained in the Bureau's recent Order approving Nextel's acquisition of Motorola's 900 MHz licenses, this public interest determination includes an assessment of the transaction's impact on competition.[18] In this case, transfer of Pacific's licenses will put the spectrum to more efficient use by achieving additional economies of scope and scale that result from integrating the spectrum into Nextel's nationwide iDEN system,[19] and it will provide Nextel additional capacity to enhance its ability to compete in the CMRS marketplace. As demonstrated

[16] These markets represent the major markets within which Pacific is providing service today. Each of the competitors listed in Exhibit 1 hold either site-by-site or geographic area licenses within 25 miles of the core of each market.

[17] 47 U.S.C. § 310(d).

[18] *Motorola* at para. 9; *see also Arch* at para. 9; Geotek Communications Inc., *Memorandum Opinion and Order*, 15 F.C.C.R. 790 (WTB 2000), *aff'd*, *Order on Reconsideration*, DA 01-51 (WTB, rel. Jan. 9, 2001) ("*Geotek*") at para. 8.

[19] *See* Sixth Report on Competition at p. 13 ("The Commission has concluded previously that operators with larger footprints can achieve certain economies of scale and increased efficiencies compare to operators with smaller footprints.")

herein, the transaction is not "likely to cause competitive harm. . . and is likely to produce some public interest benefits."[20]

A. The CMRS Marketplace Is the Relevant Market for the Bureau's Public Interest Analysis

In analyzing these potential pro-competitive impacts of this transaction between two digital SMR providers operators providing a combination of wireless telecommunications services to the public, the Bureau should rely on its and the Commission's findings that wireless voice services have converged into a single CMRS marketplace within which both Nextel and Pacific currently compete. Vigorous competition is driving this convergence by forcing every CMRS provider to develop a full range of wireless offerings, including mobile telephone, group calling and data capabilities. Whether a carrier utilizes cellular, PCS or SMR spectrum, or any combination thereof,[21] that carrier must offer not just mobile voice or just trunked dispatch service, but a menu of mobile telephone, group calling and advanced data capabilities in order to remain competitive in the CMRS market because consumers base their purchasing choices on the full array of services and pricing options offered by all CMRS carriers.

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[20] *Motorola* at para. 38; *see also Arch* at para. 16.

[21] These categories reflect only the spectrum band on which a carrier may have initiated service originally. Many providers now hold licenses, for example, for both "cellular" and "PCS" spectrum and their customers have dual-band based phones capable of operating on either cellular or PCS frequencies. *See* Sixth Report on Competition at pp. 12-13, 25-27. As a result of technology and marketplace dynamics, all CMRS carriers are developing integrated suites of mobile communications services that compete with one another for the communications business of people "on the go." From the customer's perspective, the fact that Nextel primarily operates using spectrum denominated as "SMR" and Sprint PCS, for example, operates primarily on spectrum denominated as "PCS" is irrelevant in choosing between their competing offerings. Given the irrelevance of the spectrum band to the consumer, the Commission concluded that it would not bifurcate its marketplace analysis in the Sixth Report on Competition among mobile telephony and dispatch services. *Id.* at p. 4.

As Chairman Powell stated just last month, "[e]verything [the Commission does] is about consumers."[22] This "cardinal rule," as the Chairman described it, should be used in analyzing transactions, such as this one, that will promote consumer welfare by enhancing competition, spectrum efficiency and product and service innovation. Consumers base their purchasing decisions on their own communications needs and how a particular provider's menu of services can meet those needs; they do not base their purchasing choices on the spectrum used by each carrier providing these mobile services. Therefore, the Commission should not base its competitive analysis on such artificial spectrum classifications, but instead should consider the competitive realities of the wireless marketplace.[23]

As explained above, this CMRS analysis is particularly applicable to Nextel's acquisition of Pacific's 800 MHz licenses because Pacific, like Nextel, does not limit its service offerings to any pre-defined narrow category of service; on the contrary, Pacific provides a bundled wireless telecommunications service offering that includes both dispatch and interconnected mobile voice to meet the needs of consumers "on the move." Pacific and Nextel are "digital SMR providers" competing, as the Commission found in the Sixth Report on Competition, with cellular and PCS providers.[24]. Thus, rather than bifurcating Pacific's spectrum holdings and service offerings for

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[22] Remarks by Michael K. Powell, Chairman, Federal Communications Commission, Before the Federal Communications Bar Association, Washington, D.C., June 21, 2001, at p. 6.

[23] Indeed, the FCC long ago eliminated prohibitions on the offering of dispatch services by CMRS providers. *See* Use of Radio Dispatch Communications, *Report and Order*, 10 F.C.C.R. 6280, para. 1 (1995) ("we eliminate our prohibition on the provision of dispatch service by providers of Commercial Mobile Radio Service . . . including cellular licensees . . . After reviewing the record, we find that these restrictions no longer serve the public interest and should be eliminated.").

[24] Sixth Report on Competition at p. 4.

purposes of analyzing this transaction in each of two separately defined markets, the Bureau should consider the overall impact on competition in the larger marketplace within which Pacific and Nextel are competing: the CMRS marketplace.

Pronouncements from Congress, the Commission, the Bureau, industry analysts and CMRS carriers support this type of marketplace analysis. Based on the facts presented herein, *i.e.*, the assignment of licenses used for digital mobile services to another provider of digital mobile services, the CMRS marketplace is the appropriate analysis under Section 310(d).

1. Congress, the Commission and the Bureau Have Recognized the Existence of a Single CMRS Product Market and the Need to Promote Regulatory Parity Within CMRS.

As early as 1994, the Commission concluded that all CMRS services are competitive or potentially competitive and are, therefore, part of a single product market.[25] Congress created this CMRS classification of mobile services in 1993 due to the convergence of numerous private and common carrier mobile services, such as cellular, 800 MHz SMR and 900 MHz SMR, that were fulfilling similar consumer needs through similar service offerings.[26] As technologies had improved and these services increasingly began to address the same consumer needs, Congress changed the law to ensure that all CMRS carriers would be subject to a common regulatory framework.[27]

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[25] *See* Third Report and Order, 9 F.C.C.R. 8009, at paras. 37 *et seq.* (1994) ("Third R&O"); *see also* Applications of Nextel Communications, Inc. for Transfer of Control of OneComm Corporation, 10 F.C.C.R. 3361(WTB 1995) ("OneComm") at para. 27; Order on the Assignment of Motorola Licenses, 10 F.C.C.R. 7783 (WTB 1995)("1995 Motorola Order") at para. 17. In these decisions, the Bureau concluded that, based on the Third R&O, "800 MHz SMR [is viewed] as just one of many competitive services within the large CMRS marketplace." OneComm at para. 27; 1995 Motorola Order at para. 17.

[26] *Omnibus Budget Reconciliation Act of 1993*, Pub. L. No. 103-66, 107 Stat. 312 (1993)("1993 Budget Act"). *See also* Sixth Report on Competition at p. 1 (""Congress created the statutory classification of [CMRS] to promote the consistent regulation of mobile radio services that are similar in nature.")

[27] *See* Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, *Second Report and Order*, 9 F.C.C.R. 1411, 1418, at para. 13 (1994).

In 1997, when the Bureau evaluated Nextel's proposed acquisition of Pittencrieff Communications, Inc.,[28] nascent mobile competition from SMR providers such as Nextel had not developed sufficiently to provide cellular and PCS service providers an incentive to offer an array of products to compete against SMR providers' menu of mobile voice, paging and dispatch services. Thus, the Bureau in *Pittencrieff* found that, while cellular and PCS "entry into dispatch services is not inherently costly, challenging, or unduly time-consuming," and that the regulatory barriers to non-SMR carriers providing dispatch services had been removed in 1995, separate product markets for mobile voice and trunked dispatch services still existed at that time.[29] Looking forward to cellular and PCS carriers' future response to SMR competition, however, the Bureau noted that, "[w]hile carriers currently find it more profitable to devote their spectrum to uses other than voice dispatch, substantial growth in mobile communications service capacity, especially in urban centers, is likely to change the relative profitability of these other services and create incentives to allocate more spectrum to the provision of dispatch-type services."[30]

By last year, in *Geotek*, the Bureau found that "legitimate questions can be raised about the suitability of the market definitions we found appropriate in *Pittencrieff* three years ago [and w]e are now more prepared to broaden our consideration of the competitive impact of market participants outside of the sharply delineated wireless sectors we have used recently when evaluating proposed transfers and assignments."[31] However, because the Bureau found that the transfer of Geotek's 900

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[28] Applications of Pittencrieff Communications, Inc., Transferor, and Nextel Communications, Inc., Transferee, for Consent to Transfer Control of Pittencrieff Communications, Inc. and its Subsidiaries, *Memorandum Opinion and Order*, 13 F.C.C.R. 8935 (WTB 1997) ("*Pittencrief*").

[29] *Id.* at paras. 44, 54.

[30] *Id.* at para. 54.

[31] *Geotek* at para. 27.

MHz licenses to Nextel would be pro-competitive "regardless of the market definition adopted," it evaluated the proposed transfer's competitive effects under the two-market framework of *Pittencrieff* "for convenience," while emphasizing that "the boundaries between various CMRS sectors are fluid."[32]

In April 2001, the Bureau again "recognize[d] the increasing convergence of CMRS services" and stated that it "may well adopt a broader market definition in reviewing future transactions."[33] Just this month, the Commission also noted that barriers were being eliminated among mobile voice services, finding that "while traditional dispatch service continues to be provided, *there has been an increasing convergence of services provided by dispatch and other mobile telephony providers.*"[34]

The Commission's findings in the Sixth Report on Competition and the Bureau's own previous conclusions demonstrate that the dispatch and mobile telephony markets have converged. The Bureau, therefore, should follow its and the Commission's lead by adopting that converged marketplace for analyzing transactions involving 800 and/or 900 MHz SMR license transactions. The Commission's broader analysis is particularly applicable to the proposed Nextel-Pacific transaction since both operators are providing a menu of mobile services that "straddle" the more narrowly-defined marketplace definitions. Therefore, bifurcating the analysis is unnecessary and

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[32] *Id.* at paras. 27-28 ("These changes result from the Commission's general policy of allowing flexible use in the CMRS sector, and even more importantly, from the rapid evolution of technology and the wireless marketplace. For example, mobile data services are emerging and are becoming closely integrated with mobile voice and other offerings. Also, services offered by cellular and broadband PCS firms are increasingly competing with services offered by paging and messaging carriers.")

[33] *Motorola* at para. 12; *see also Arch* at para. 11 (". . . we do not foreclose the possibility that we may adopt an expanded market definition in a future transaction. . .").

[34] Sixth Report on Competition at p. 4 (emphasis added).

at odds with the reality of the marketplace, as well as the Commission's and the Bureau's own findings.

2. The Marketplace Recognizes that Cellular, PCS and SMR Providers All Compete Directly With One Another in a Single Integrated CMRS Market.

The Commission's and the Bureau's conclusions regarding mobile service convergence are supported by events in the wireless marketplace. The Strategis Group recently stated in its report on the state of SMR that "[d]ispatch communications is neither an industry nor a distinct technology. Rather, it is an application that can be provided by several different technologies."[35] Similarly, industry analysts have noted the wireless industry's convergence toward a single CMRS market as cellular and PCS licensees have launched an array of service packages to compete with digital SMR carriers' provision of integrated voice/dispatch services, spearheaded by Nextel:

- "'You can't compare the SMR market as an independent market anymore. . . . They are part of the PCS market nowadays. Their services are definitely not marketed toward the dispatch market exclusively anymore.'"[36]

- SMR integrated voice/dispatch service "awakened the sleeping giant of the cellular industry, which previously had never paid much attention to the dispatch market."[37]

- "'In conversations with cellular carriers, there is a concern that they need to offer service to compete with Nextel. . . . Group calling 'does represent the notion that Nextel has a differentiated service in an increasingly competitive market. These guys need to do something to lessen the differences in services . . . Group calling is only the first of several steps carriers will take to compete with Nextel.'"[38]

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[35] September 2000 Strategis Report at p. 7.

[36] Dan Meyer, "The Winds of Change: Southern Linc, Nextel Partners Define their Roles in Market", Radio Comm. Rept., at p.16, Nov. 13, 2000 (quoting Elliot Hamilton, Senior Analyst, Strategis Group).

[37] Alan Tilles, "Is there still a place for plain old dispatch?", Radio Comm. Rept., at p.42, Feb. 28, 2000.

[38] Lynnette Luna, Group Calling is Weapon in Wireless Wars, Radio Comm. Rept., at p. 20, June 28, 1999 (quoting Steven Virostek, Vice President, Strategis Group in Washington D.C.) ("Wireless Wars").

- "Management indicated some of the competition is going after Nextel's business market focus. For example, VoiceStream and Verizon Wireless are offering free unlimited mobile-to-mobile minutes. While we acknowledge these do not offer the same advantages as Nextel's direct connect system, we believe this will give the 'typical Nextel user' more of a reason to pause when making a decision on which mobile device to purchase. This in turn lengthens the sales cycle significantly and may result in lower net additions and higher churn in the near term [for Nextel]."[39]

- "Many regional operators such as Bell Atlantic Mobile have been offering free or reduced rates for mobile-to-mobile calls in an effort to fight off intense competition for business users from Nextel, which is targeting work groups with its integrated cellular and dispatch service."[40]

- "Noel Salmi, director of corporate communications with AT&T Wireless, said the company's group calling plan targets much of the same market segments Nextel is going after, but the advantage is that customers can call five landline numbers for free."[41]

- "Some cellular operators are offering creative billing plans, including discount prices for mobile-to-mobile minutes, and bundled service packages that include large amounts of airtime . . .. Other carriers believe they can create *de facto* dispatch systems by combining speed dialing and conferencing features over intelligent networks."[42] These "dispatch calling plans will grow rapidly in the next five years."[43]

As the Bureau has recognized, Nextel started this revolution with its "bundled offering of mobile voice and the Direct Connect service option [that] straddle[s] the two *Pittencrieff* markets,"[44] and its CMRS competitors – including Pacific – have been forced to follow a menu of services to satisfy the range of wireless consumers' needs. Industry analysts – and more importantly CMRS carriers themselves – recognize that, to be competitive, a carrier must offer not just mobile voice or

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[39] *See* First Union Securities Covers NXTL, First Union Securities, Nov. 11, 2000 http://www.cnetinvestor.com/yahoonews/newsitem-yahoo.asp?SYMBOL=R657350).

[40] Wireless Wars at p.20.

[41] *Id.*

[42] US Dispatch Markets, The Strategis Group, January 2000, at p.75 ("January 2000 Strategis Report").

[43] *Id.* at p.82.

[44] *Geotek* at para. 27.

just trunked dispatch service, but a package of voice, group calling and data capabilities, and soon Third Generation (3G) wireless functionalities. Nextel and Pacific offer dispatch functionality not as a stand-alone dispatch service, but as part of an integrated service package to provide "a differentiated service in an increasingly competitive [CMRS] market."[45]

Moreover, as the Commission just recognized, cellular and PCS carriers, "in an apparent response to the dispatch functionality of SMR services," are following Nextel's lead by "offering dispatch-like options (e.g., group calling and conferencing) as part of their service offerings, particularly for businesses."[46] The attached Exhibit 3 lists some of the innovative calling plans developed by cellular and PCS competitors to respond to Nextel's and other CMRS providers' integrated service packages in the CMRS marketplace, including using mobile telephone service as a direct substitute for two-way radios (*i.e.*, trunked dispatch services). Specifically, Exhibit 3 includes a promotion of AT&T Wireless' mobile-to-mobile Group Calling Plan, stating that "[w]ith the quality, performance, security, and coverage of AT&T Group Calling, *there's no longer a need to connect your workgroup with two-way radios or pagers.*"[47]

In short, the Commission's review, industry analysts' studies, carriers' business plans, and consumer response all confirm, as Congress intended in the 1993 Budget Act, the death of artificial boundaries between mobile voice and trunked dispatch services and the birth of a single integrated CMRS market in which cellular, PCS and, at a minimum, digital SMR providers such as Nextel and

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[45] Wireless Wars at p.20.

[46] Sixth Report on Competition at p. 11; *see also* Exhibit 3.

[47] Exhibit 3, emphasis added.

Pacific,[48] all must compete for the same consumers' dollars by providing an array of mobile communications services to satisfy the needs of people "on the go." Convergence toward a single CMRS market will only accelerate as technology evolves and service providers are forced to compete even more intensely for customers. Consequently, the relevant market for analysis of this assignment application between two digital SMR providers is the CMRS market.

B. The Assignment of Pacific's Licenses to Nextel Will Increase Competition in the CMRS Market.

The assignment of Pacific's licenses to Nextel will provide needed fuel for the growth of digital wireless services, 3G mobile innovations and accelerated competition in the CMRS market. Nextel has engaged in a number of transactions to acquire spectrum licenses over the past ten years. Despite the complaints of competitors, each and every one of these transactions has led to increased consumer benefits. Typically, Nextel has taken underutilized spectrum, invested significantly in technology and increased the number of subscribers supported on the spectrum by orders of magnitude. Here, Nextel plans to integrate spectrum, already used in a digital system, into its digital mobile network to increase the effectiveness of Pacific's spectrum by achieving economies of scale on Nextel's nationwide network. Additionally, by combining the systems of Nextel and Pacific in overlapping markets, Nextel can enhance the channel re-use potential of the overlapping facilities, thus further increasing spectrum efficiencies, and add functionality to the Pacific network by providing data capabilities unavailable to Pacific's current subscribers. Consumer harm would come from a *decrease* in service, but the evidence from Nextel's growing subscriber base, now numbering

[48] Sixth Report on Competition at p. 11, noting that the evolution of digital technologies on SMR systems changed the nature of SMR services and allowed them to become "significant competitors in mobile telephony."

nearly eight million, shows that Nextel has no ability or incentive to decrease service offerings. To the contrary, Nextel's innovations have maximized public interest benefits from this spectrum.

The Strategis Group has stated that, "[t]o continue to grow its customer base and offer consumer services as well [as business-focused services], Nextel will need to add capacity."[49] Nextel is acquiring Pacific's licenses to integrate the spectrum into its iDEN network, thus increasing customer capacity, enabling competition-enhancing cost savings, enhancing system robustness, improving coverage, and accelerating introduction of 3G services. As Nextel increases its spectrum capacity and puts this 800 MHz spectrum to more efficient use in a nationwide network – a significant public interest benefit – there should be a downward pressure on consumer prices and increased development of service options industry-wide.

The Bureau has recognized that Nextel's deployment of efficient digital technologies provides a direct public interest benefit, and the addition of Pacific's spectrum will enhance Nextel's ability to continue this trend.[50] As discussed above, Nextel's offering of integrated mobile voice/dispatch services has invigorated competition among CMRS providers and led to the offering of an array of innovative service and pricing options. The Bureau has recognized Nextel's pro-competitive pricing efforts to date, including "Nextel's early introduction of per-second billing, and its elimination of roaming and long distance charges."[51] In discussing the pro-competitive effects of previous license assignments to Nextel, the Bureau further observed that Nextel likely can provide

[49] September 2000 Strategis Report at p. 6.

[50] *Pittencrieff* at para. 65.

[51] *Geotek* at para. 47.

greater competitive benefits than other prospective buyers of these licenses because Nextel is one of a limited number of firms that can provide nationwide service over its own network.[52]

The addition of Pacific's spectrum to Nextel's network, however, still leaves Nextel short of the amount of spectrum held by its chief CMRS competitors, who typically have at least 25-30 MHz (with some controlling spectrum up to the 45 MHz spectrum cap and 55 MHz spectrum cap in rural areas). The acquisition of Pacific's licenses will move Nextel closer towards achieving some of the operational economies enjoyed by competitors such as Verizon, Sprint PCS, Cingular Wireless, VoiceStream and AT&T Wireless, but still places Nextel at a average of only 20 MHz in any market and less in most. The Bureau's approval of the proposed assignment thus will increase competition in the CMRS market to the benefit of all wireless consumers and advance the public convenience, interest.[53]

C. Analysis of a "Separate" Trunked Dispatch Service Market Still Leads to the Conclusion that the Proposed Assignment Will Cause No Harm to Competition.

The Bureau recognized in *Geotek* and *Motorola* that, regardless of the market definition adopted, strong existing and potential competition in the provision of both mobile voice and trunked dispatch services ensures that Nextel's acquisition of additional SMR licenses will not cause competitive harm to consumers.[54] As stated above, Pacific does not provide traditional analog

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[52] *Id.* at para. 46.

[53] Although Nextel's acquisition of Pacific's licenses will eliminate a competitor from the impacted markets, overall competition is not adversely impacted because (a) there are numerous providers of competitive CMRS services in these markets; (b) the overall public interest benefits of integrating these channels into Nextel's nationwide digital mobile network far outweigh the minimal impact on the landscape of CMRS competitors in the markets; and (c) Nextel's spectrum holdings will continue to be well below the Commission's CMRS spectrum cap. Moreover, Pacific's existing customers will benefit from their ability to access data services on the Nextel network, as well as the larger coverage of Nextel's national network.

[54] *Geotek* at para. *27; Motorola* at para. 12; *see also Arch* at para. 11.

trunked dispatch services nor does it sell a stand-alone digital dispatch service. Nonetheless, if the Bureau believes its analysis should bifurcate Pacific's spectrum holdings, thus "counting" some of the spectrum as "dispatch" and some as "interconnected mobile," the state of competition in that separate dispatch market will not be adversely impacted by the proposed transaction.

As the Commission just recognized, "traditional dispatch service continues to be provided,"[55] but those "services are being provided increasingly on non-SMR spectrum bands."[56] Thus, competition in the trunked dispatch market will not be adversely impacted because, as the Bureau concluded in *Motorola*, there are numerous providers of trunked dispatch services competing for those consumers in search of push-to-talk dispatch service. Whether these services are being provided at 800 MHz, 900 MHz, 220 MHz, 450 MHz or 217-219 MHz -- those services that "at the very least" make up the trunked dispatch market as defined by the Bureau in *Motorola* and *Arch*[57] -- users seeking such services will continue to have competitive alternatives.[58] Within the separate trunked dispatch service market, Nextel is but one of several providers of dispatch services, and as the Commission has found, would have no ability to increases prices even in this narrowly defined relevant market.[59]

Additionally, those same consumers are finding a dispatch alternative in interconnect mobile telephone services. In *Motorola*, the Bureau declined to include any cellular and PCS spectrum in

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[55] Sixth Report on Competition at p. 4.

[56] *Id.* at p. 11.

[57] *Motorola* at para. 12; *Arch* at para. 14.

[58] *See* Exhibit 1 attached hereto.

[59] *See, e.g., Geotek* at para. 38.

its trunked dispatch market analysis because it did "not have information in the record as to the nature of customer dispatch usage to make a determination regarding the extent to which cellular and PCS group calling plans should be included in a trunked dispatch market."[60] However, the Commission has concluded that cellular and PCS providers are offering certain interconnected mobile service packages that are designed to compete with the dispatch functionality of SMR licensees.[61] Since the vast majority of Nextel's Direct Connect calls are only between two units,[62] the mobile-to-mobile calling plans offered by cellular and PCS providers can serve the needs of almost all dispatch users. Nextel's own customer churn experience,[63] and AT&T Wireless' web page promotion stating that "there's no longer a need to connect your workgroup with two-way radios or pagers,"[64] provide two additional pieces of evidence that traditional cellular and PCS licensees are real competition for dispatch services. Because cellular and PCS providers are offering services that are substitutable for trunked dispatch calling, the Bureau must consider these providers as competitors in the trunked dispatch market.[65]

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[60] *Motorola* at para. 22.

[61] Sixth Report on Competition at p. 11.

[62] Report of Gregory L. Rosston, attached hereto at Exhibit 4, at p. 13, *citing* September 2000 Strategis Report at p. 50.

[63] *See Id.* at p. 12, noting that nearly half of Nextel's departing customers who are moving to a cellular or PCS plan, state that they are moving to a calling plan that does not charge airtime for mobile-to-mobile calling.

[64] *See* Exhibit 3 attached hereto.

[65] The Bureau can accomplish this in either of two ways. One, it could acknowledge that these interconnected services are converging with dispatch services and analyze competition in a single marketplace; or, two, it could conduct separate analyses of the trunked dispatch market and interconnected mobile voice market by including a portion of cellular and PCS spectrum in each market.

In *Motorola,* the Bureau concluded that the appropriate trunked dispatch market analysis must exclude a portion of Nextel's 800 MHz spectrum holdings since much of Nextel's spectrum is used to provide competitive interconnected mobile services.[66] Excluding spectrum used by Nextel and Pacific to provide interconnected services,[67] while properly including the 220 MHz, 217-129 MHz, 450 MHz and 800 and 900 MHz spectrum available for dispatch services, results in a finding that Nextel's acquisition of Pacific's spectrum has no adverse competitive impact on the trunked dispatch market. Additionally, in *Motorola*, the Bureau found that there continues to be a likelihood of competitive entry by licensees in the 800 Business and Industrial Land Transportation spectrum band,[68] as well as by providers of "traditional dispatch services," licensees that "own[] and operat[e] an in-house radio system or private dispatch system," and licensees that provide "wireless data communications. . ."[69]

In addition to these opportunities for carriers to provide competitive alternatives to trunked dispatch services, the Commission recently licensed additional spectrum that likely will

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[66] *Motorola* at para. 28.

[67] According to Pacific's most recent billing period, the average user had 140 total minutes of use. Of those minutes, 43 were for interconnected calls Thus, 30.7%of Pacific's spectrum should be excluded from any HHI analysis performed solely on a trunked dispatch market because that spectrum is used for interconnected calls.

[68] *Motorola* at para. 31. There also is potential dispatch entry in the 900 MHz Business and Industrial Land Transportation spectrum as the Commission currently is considering permitting commercial operations on those channels. *See* Report and Order and Further Notice Of Proposed Rulemaking, WT Docket No. 99-87, FCC 00-403, at para. 144.

[69] *Id.* at para. 32. The Strategis Group found in its January 2000 report on dispatch service developments that, "[f]or dispatch applications, wireless data is increasingly becoming a viable alternative to voice communications." January 2000 Strategis Report at p. 85; *see also* September 2000 Strategis Report at p. 8. The report explained that "mobile data service providers are offering increasingly sophisticated fleet management, automated scheduling, and dispatch communications capabilities" and, as a result, "[s]ome radio users have reportedly selected commercial wireless data services for their dispatch communications needs . . .." *Id.*

be used to provide trunked dispatch services – the 700 MHz Guard Band licenses.[70] Although Nextel was the high bidder on a number of the 700 MHz Guard Band licenses, Nextel's role is that of the "Band Manager," leaving the introduction and deployment of services to a number of Guard Band spectrum lessees.[71] Moreover, the 700 MHz spectrum to be made available on a lease basis, likely will be used for trunked dispatch services because the Commission has explicitly prohibited the introduction of cellular-like technology and architecture on these particular channels.[72] Thus, the auction of 700 MHz Guard Band licenses added yet another mechanism for interested parties to provide trunked dispatch services.

As the Bureau recognized in *Geotek*, this intense competition for the provision of dispatch services presents Nextel with one fundamental reality: if Nextel or any other provider seeks to impose supra-competitive pricing or terms on consumers, "other firms will enter that niche to compete away excess profits."[73] In fact, the provision of service in the dispatch segment of the CMRS market is very robust. Although there have been few new entrants offering dispatch services this is because of "[d]eclining real prices suggest[ing] that dispatch market capacity has been outpacing demand" and the recognition that, as the Bureau stated in *Geotek*, "[there is] no reason to

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[70] Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *Second Report and Order*, 15 F.C.C.R. 5299 (2000) ("Guard Band Order").

[71] The Guard Band Order requires that Nextel, as a Guard Band licensee, lease at least 50.1% of its licensed spectrum to non-affiliates. Guard Band Order at para. 59. We note that another significant 700 MHz Guard Band license winner was Access Systems – an affiliate of ITA, the industry association and frequency coordinator for private dispatch systems used by businesses – which is likely to promote this spectrum for dispatch use.

[72] Guard Band Order at paras. 19-24.

[73] *Geotek* at para. 38. In fact, the intense competition among wireless carriers at the close of 2000 evidences the inability of Nextel or any other provider to impose supra-competitive pricing and terms. *See* Fifth Report on Competition at p. 4. *See also Motorola* at para. 32 ("Further, we believe that the ability of at least some consumers to use, in the alternative, traditional dispatch, private dispatch, and data dispatch provides additional constraint against the ability of Nextel to wield market power.")

believe that these trends are poised for significant change."[74] As further evidence that dispatch supply far outpaces demand, the Bureau found that "spectrum assets are exiting traditional dispatch in search of higher returns."[75]

The market evidence illustrates the competitiveness of the CMRS market overall and the dispatch segment in particular as spectrum is used to provide the highest value to consumers. In rural areas in particular, the Bureau has recognized that there is significantly less demand for dispatch services than in urban areas.[76] In many cases, therefore, dispatch service providers use their capacity not only for dispatch services but also for interconnected mobile telephone services. All CMRS licensees, regardless of their spectrum classification, typically have excess capacity in these less-populated areas, and all have the ability and opportunity to provide dispatch services. Consequently, there is – just as the Bureau found in *Motorola* -- significant opportunity for additional market entry.

D. Analysis of a "Separate" Interconnected Mobile Voice Service Market Also Leads to the Conclusion that the Proposed Assignment Will Increase Competition.

There can be no dispute that the proposed assignment of Pacific's 800 MHz licenses to Nextel will increase competition in the provision of mobile voice services. Pacific currently uses its 800 MHz licenses to provide interconnected mobile telephone service in a package of integrated wireless services including digital dispatch. There also are a number of other providers of interconnected mobile voice service in these markets with as much – and often more – spectrum than

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[74] *Geotek* at para. 41 ("while dispatch demand has grown, dispatch supply appears to have been growing even more rapidly.").

[75] *Id.* at para. 43.

[76] *Pittencrieff* at para. 73.

the combined holdings of Nextel and Pacific in the markets.[77] Moreover, the combined spectrum holdings of Nextel and Pacific remain well below the Commission's spectrum cap. As a result of this transaction, the Bureau will be facilitating the enhancement of interconnected mobile competition by allowing Nextel and Pacific to realize the efficiencies that will result from combining their spectrum holdings to lower costs and increase output. This will give the combined entity access to more spectrum (albeit still less than its cellular and PCS competitors), and increase overall competitiveness in the provision of interconnected mobile voice services.

Nextel has demonstrated that its presence in the CMRS marketplace has helped transform the pricing and billing of interconnected mobile telephone services,[78] provided advanced dispatch services in the CMRS market, fostered the increasing competitiveness of the CMRS marketplace, and assisted in "bringing the benefits of mobility to an ever-increasing segment of the country."[79] As the Commission has stated, "the operator most responsible for using digital technology to make SMR a mobile telephone competitor has been Nextel."[80] Competition among Nextel and other CMRS licensees, according to the Commission, has fueled a consumer movement to digital technologies,[81] increased overall mobile telephone subscribership,[82] and initiated a continued

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[77] *See* Exhibit 1.

[78] *See, e.g.*, September 2000 Strategis Report at p. 54 ("The Strategis Group believes that Nextel's subscriber growth rates have evoked a profound response from AT&T Wireless and other cellular operators.")

[79] Fourth Report on Competition at p. 5.

[80] Fifth Report on Competition at p. 30.

[81] *Id.* at pp. 13-14.

[82] *Id.* at p. 9.

downward trend in prices.[83] This decrease in prices, moreover, appears to have resulted in overall increased usage by subscribers.[84]

Mobile voice service is, of course, already the poster-child for competition in the telecommunications industry, as subscriber numbers continue to increase and prices continue to decline.[85] The Commission has significantly increased opportunities for companies to provide commercial interconnected mobile services to the public, and, as a result, mobile telephone subscribership continues to grow at a rapid pace. The World Wide Web home page of the Cellular Telecommunications and Internet Association (CTIA) reports that total mobile telephone subscribership is over 118 million as of July 2001.[86] By auctioning the A, B, C, D, E and F blocks in the PCS service, the Commission created up to six new wireless competitors in mobile telephone service. Many PCS providers already have deployed systems in a number of markets throughout the country, including many of the markets on which the Nextel-Pacific transaction might have an impact. As of 2001, 91% of the U.S. population had at least three mobile telephone providers offering service within their geographic market; 75% had a choice of at least five providers; and 47% of the population could choose among six different providers.[87]

It is this competitive reality that is driving Nextel's proposed acquisition of Pacific's 800 MHz licenses, both as a means to enhance the competitiveness of its services and to respond to the initiatives of competitors. Wireless mobile communications consumers in California have numerous

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[83] *Id.* at pp. 18-20.

[84] *Id.* at p. 23.

[85] Sixth Report on Competition at p. 6.

[86] *See* www.wow-com.com

[87] Sixth Report on Competition at p. 6.

options for fulfilling their need to communicate on the move.[88] Thus, with the availability of AT&T Wireless, Sprint PCS, Cingular, Verizon and others, consumers in the relevant geographic markets will not experience a diminution in the scope of available wireless services. The Strategis Group projects that 20% of all cellular/PCS subscribers by 2004 will be using a mobile-to-mobile calling plan – plans aimed at competing directly with Nextel's Direct Connect service.[89] Consequently, as the Bureau found in *Geotek*, assigning additional spectrum to Nextel "should promote public interest benefits by introducing new capacity, which in turn will allow possible price decreases, output increases, or a combination of these effects."[90] Acquisition of this spectrum will facilitate Nextel's ability to aggressively respond to the evolving and increasingly innovative marketing and pricing plans resulting from competition among CMRS providers.

As the Bureau also has recognized, the assignment of additional spectrum to Nextel will benefit the public by moving Nextel closer to realizing the same cost and operational economies enjoyed by its chief CMRS competitors currently operating on up to 45 MHz of spectrum. These economies, moreover, will be provided while ensuring that Nextel's spectrum position remains far below the 45 MHz permitted by the CMRS spectrum cap. The increased spectrum capacity provided by Pacific's 800 MHz licenses will strengthen Nextel as a CMRS competitor in the provision of mobile voice services, thereby fueling competition in the CMRS market.

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[88] *See, e.g.,* Exhibit 1.

[89] September 2000 Strategis Report at p. 67.

[90] *Geotek* at para. 48.

IV. CONCLUSION

The transfer of Pacific's SMR licenses to Nextel will result in an increase in competition in the CMRS marketplace and benefits to consumers because it will enhance the competitiveness of one of the players in that market without raising any competitive concerns. Pacific is a provider of digital SMR services, offering consumers a bundled service offering that includes both interconnected mobile voice functionality and dispatch functionality. Pacific is not, as in previous Nextel acquisitions of SMR licenses, a provider of stand-alone analog dispatch services. Thus, since there will be no change in the provision of traditional dispatch services, there is no need to evaluate the impact of this transaction on that market. Because Pacific and Nextel "straddle the mobile telephony and dispatch sectors,"[91] it is more appropriate to analyze the overall impact of this particular transaction on the larger CMRS marketplace – of which both of these service sectors are a part. Nevertheless, as demonstrated herein, even if the Commission views mobile telephony and the dispatch sector as different markets, the proposed acquisition of Pacific's 800 MHz spectrum by Nextel will increase, not reduce competition, in both marketplaces.

The assignment of Pacific's licenses to Nextel will not result in any competitive harm, given the strong actual and potential competition – recognized by the Commission -- to provide CMRS services, including mobile voice and dispatch-like services. Additionally, the acquisition of Pacific's spectrum does not cause Nextel to reach, much less exceed, the Commission's CMRS spectrum cap. The proposed assignment will benefit the public by fueling competition and innovation among CMRS providers. Accordingly, Nextel respectfully asks that the Commission approve the assignment of Pacific's 800 MHz licenses to Nextel as soon as possible in order to expedite the delivery of this transaction's significant public interest benefits to the American consumer.

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[91] Sixth Report on Competition at p. 4.