

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

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In the Matter of)
)
Motorola, Inc.; Motorola SMR, Inc.; and)
Motorola Communications and Electronics, Inc.)
)
Applications for Consent to Assign)
900 MHz SMR Licenses to FCI 900, Inc.)

DA 00-2352

Application Nos. 000-224876
000-224877
000-224878

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To : Policy and Rules Branch
Commercial Wireless Division
Wireless Telecommunications Bureau

Reply Comments of Motorola, Inc.

Motorola, Inc. (“Motorola”) hereby submits this reply to the comments filed by Southern LINC (“Southern”) in the above-captioned matter.’ Southern filed its comments in response to the Wireless Telecommunications Bureau’s October 19, 2000, Public Notice² soliciting comment on the proposed assignment of fifty-eight 900 MHz Specialized Mobile Radio (“SMR”) licenses held by Motorola and two of its wholly-owned subsidiaries to FCI 900, Inc., a wholly-owned subsidiary of Nextel Communications, Inc. (collectively “Nextel”). Southern opposes the proposed transaction on the basis of its claim that any additional accumulation of 800 MHz or 900 MHz SMR spectrum by Nextel will adversely affect competition in the market for trunked dispatch services.

¹ Comments of Southern LINC, DA 00-2352 (filed Nov. 20, 2000) (“Comments of Southern LINC”).

² Public Notice, *Motorola, Inc. and Nextel Communications, Inc. Seek Consent to Assign 900 MHz SMR Licenses*, DA 00-2352 (rel. Oct. 19, 2000).

As discussed below, the application package submitted by Motorola and Nextel demonstrates that the proposed transaction will not adversely affect competition in any product market and will produce significant pro-competitive public interest benefits. In short, Motorola and Nextel have met their burden of establishing that the proposed assignment will serve the public interest, and Southern's arguments to the contrary – most of which have been rejected by the Commission in prior proceedings – do nothing to alter this fundamental fact.

I. Motorola and Nextel Have Demonstrated That Grant Of The Assignment Applications Is Appropriate And Will Serve The Public Interest

It is well settled that, in acting on an application for assignment or transfer of control of radio station licenses, the Commission must determine, in accordance with its obligations under Section 310(d) of the Communications Act, whether the proposed transaction will serve “the public interest, convenience, and necessity.”³ This standard has clearly been met in the instant matter.

In particular, as discussed in detail in the Public Interest Statement accompanying the assignment applications submitted by Motorola and Nextel, grant of the requested assignment will produce numerous pro-competitive benefits, including: (1) enhanced consumer choice stemming from Nextel's ability to offer innovative new services in more markets; (2) expanded transmission capacity; (3) realization by Nextel and its customers of cost and operational economies enjoyed by cellular and personal communications services (“PCS”) competitors; and (4) increased competition in the overall commercial mobile radio service (“CMRS”) marketplace through Nextel's improved spectrum position vis-a-vis cellular and PCS operators.

³ 47 U.S.C. § 310(d).

Motorola and Nextel explained that, regardless of whether the Commission uses a single CMRS product market to analyze the competitive effects of the proposed transaction or relies upon separate dispatch and interconnected mobile telephone product markets for its analysis, the result will be the same: Grant of the assignment request will serve the public interest. In particular, the parties showed that approval of the proposed assignment will produce significant competitive benefits for consumers in urban dispatch markets because, as Nextel's capacity and spectrum reuse capabilities expand, more consumers can be served while the resultant expanded capacity places downward pressure on prices. Although this transaction involves the merger of two dispatch providers in urban markets (Motorola presently uses its licenses to provide *traditional*, non-interconnected analog dispatch service in urban areas), the Commission has recognized that **trunked** dispatch customers have numerous competitive options, including traditional dispatch services, private internal radio systems, data dispatch services, other SMR providers at 800 MHz and 900 MHz, and cellular and PCS **firms**,⁴ in addition to dispatch providers below 450 MHz, and emerging competitors at 220-222 MHz and in the 700 MHz Guard Band spectrum. As discussed in detail in the application package, Motorola does not currently offer service in rural areas; thus, no competitor is being eliminated in these regions and customers will benefit from greater access to Nextel's dispatch and other advanced wireless offerings.

⁴ *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*, FCC 00-289, at 70-71 (rel. Aug. 18, 2000) ("*Fifth CMRS Competition Report*"); see also *Applications of Various Subsidiaries and Affiliates of Geotek Communications, Inc., Debtor-in-Possession, Assignors, and Wilmington Trust Company, et al.*, 15 FCC Rcd 790, 805-808 (2000).

Motorola and Nextel have also demonstrated that the proposed transaction will serve the public interest in urban and rural markets for interconnected mobile telephone service. Specifically, approval of the assignment applications will provide Nextel significant new capacity in urban markets, allowing it to meet increasing demand for its services and solidifying its competitive position vis-a-vis cellular and PCS operators. As for rural areas, the Commission has previously recognized its interest in facilitating broader availability of competitive mobile telephone services outside major metropolitan regions.’ The proposed transaction will promote this goal. Finally, because neither Motorola nor Nextel currently provides significant interconnected mobile telephone service in the rural areas at issue in this transaction, Nextel’s acquisition of Motorola’s authorizations covering these areas does not eliminate a competitor, it simply enhances Nextel’s capabilities.

II. Southern LINC’s Claim That The Proposed Assignment Will Adversely Affect Competition In The Market For Trunked Dispatch Services Is Inconsistent With Marketplace Realities

Against this backdrop, Southern argues that the proposed transaction is contrary to competition and the public interest because it will “facilitate Nextel’s dominance of the trunked dispatch market.”⁶ In support of this assertion, Southern maintains that “spectrum is the single most critical factor” in sustaining competition in the dispatch market. Southern disputes the Commission’s findings that cellular and PCS providers are competitive alternatives in this

⁵ See, e.g., *1998 Biennial Regulatory Review, Spectrum Aggregation Limits for Wireless Telecommunications Carriers*, WT Docket No. 98-205, FCC No. 99-244, at ¶ 84 (rel. Sept. 22, 1999).

⁶ *Comments of Southern LINC*, at 6.

market and contends that Nextel's accumulation of 800 MHz and 900 MHz SMR has prevented new competitors from obtaining the spectrum necessary to compete.' Southern also speculates that, as a result of the difference in scale between Nextel's operations and those of smaller carriers and new entrants, vendors may allocate their production resources to Nextel, to the exclusion of other these other companies.' Southern's arguments are addressed in turn.

As an initial matter, Southern's comments do not take into account the pro-competitive attributes of the proposed assignment. As discussed above and as shown in Motorola and Nextel's assignment applications, the proposed transaction will facilitate numerous competition-enhancing benefits in the product markets for **trunked** dispatch communications and interconnected mobile voice service. The pro-competitive benefits in rural areas in both product markets are easily identified: Nextel plans to put Motorola's spectrum in these areas to productive use without eliminating an existing competitor. Numerous pro-competitive benefits, including broader consumer access to innovative products and services and increased spectrum efficiency, to name a few, will also adhere to urban consumers in both product markets.

Southern's arguments also disregard numerous Commission decisions finding that significant competitive alternatives exist in the market for **trunked** dispatch services. As mentioned above, in the *Fifth CMRS Competition Report*, the Commission observed that firms providing **trunked** dispatch services "face considerable competitive pressures because their customers possess numerous competitive alternatives." In support of this observation, the

⁷ *Id.* at 7-8.

⁸ *Id.* at 8.

⁹ *Fifth CMRS Competition Report*, at 70-71 .

Commission cited traditional dispatch services, private internal radio system alternatives, data dispatch service, and cellular and PCS firms with price and service plans similar to Nextel's Direct Connect service offering."

In other contexts, the Commission has observed growing dispatch competition from cellular and PCS providers and has indicated that entry by cellular, PCS, and 220-222 MHz companies "can be relied upon to prevent competitive harm . . . because barriers to entry are low and numerous firms with qualifications and abilities to enter exist." Lending support to the Commission's observations, market analysts predict that the next five years will witness increases in the subscriber base for 217 MHz and 220 MHz services from 38,000 in 1999 to 425,000 by 2004 as well as doubling subscriber numbers at 900 MHz.¹² Dispatch is a staple service at both 220 MHz and 900 MHz, and dispatch service can be provided at 217 MHz. As pointed out by Motorola and Nextel in their assignment applications, significant dispatch competition also exists today from spectrum bands such as 450 MHz and 900 MHz. In addition to these competitive alternatives, the rule changes recently adopted by the Commission in WT Docket No. 97-87 open additional spectrum at 800 MHz to commercial operations, including

¹⁰ *Id.*

¹¹ *Applications of Various Subsidiaries and Affiliates of Geotek Communications, Inc., Debtor-in-Possession, Assignors, and Wilmington Trust Company, et al.*, 15 FCC Rcd at 806-807 (the Commission further noted cellular and PCS introduction of plans offering discounted billing for group-calling services, and observed that, "[i]f Nextel, or any firm, has identified a profitable niche, other firms will enter that niche to compete away excess profits").

¹² See *SMR Industry Far From Dead*, RCR Wireless News, Nov. 27, 2000, at 14 (Letter to the Editor from Bob McGowan, Chairman of AMTA) (citing an analysis performed by the Strategis Group).

dispatch service.¹³ Given this range of competitive options and spectrum opportunities, it is inaccurate to suggest that the assignment of Motorola's 900 MHz SMR licenses to Nextel will somehow prevent competitors from obtaining the spectrum necessary to compete in the dispatch market. Plenty of suitable spectrum exists for this purpose.

Finally, Southern expresses concern that the amount of SMR spectrum held by Nextel may cause vendors to find it more profitable to allocate their resources to Nextel to the exclusion of smaller companies. As an equipment manufacturer that serves both Nextel and Southern, Motorola can testify to the fact that it considers the particular needs of both customers equally important. In fact, Motorola tailors the iDEN product differently for each of its customers – Southern uses 6-to-1 iDEN while Nextel uses 3-to-1 iDEN.¹⁴ Also, initially the design of Southern's iDEN system included specific system operation, talk group, and dispatch organizing features that were unique to that system. In today's competitive market, equipment manufacturers are required to produce a number of different products tailored to the specific demands of customers. In order to stay competitive in this environment, it is essential that manufacturers pay attention to and address the demands of all of their customers.

¹³ *Implementation of Sections 309(j) and 337 of the Communications Act of 1934, As Amended, Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies, et al.*, FCC 00-403 (rel. Nov. 20, 2000) (permitting commercial operations on 800 MHz Business Radio and Industrial Land Transportation frequencies in certain circumstances and proposing similar flexibility at 900 MHz).

¹⁴ This distinction refers to the number of talk paths per 25 kHz channel bandwidth. 6-to-1 iDEN provides six talk paths for interconnect operations while 3-to-1 iDEN offers three talk paths for interconnect operations.

III. Conclusion

For the reasons set forth in the assignment applications filed by Motorola and Nextel as well as those outlined above, Motorola submits that the parties to this transaction have established that approval of the proposed assignment is appropriate because it will serve the public interest, convenience, and necessity. Accordingly, Motorola requests that the subject assignment applications be granted without delay.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Robin Walker, hereby certify that on this 30th day of November 2000, I caused a true copy of the foregoing "Reply Comments of Motorola, Inc." to be delivered to the following persons via first class, postage prepaid mail:

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