

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

In the Matter of )  
)  
Motorola, Inc.; Motorola SMR, Inc.; and ) DA 00-2352  
Motorola Communications and )  
Electronics, Inc. ) Application Nos. 000-224876,  
Applications for Consent to Assign ) 000-224877, 000-224878  
900 MHz SMR Licenses to FCI 900, Inc.)

To: Chief, Wireless Telecommunications Bureau

**OPPOSITION OF NEXTEL COMMUNICATIONS, INC. TO  
SOUTHERN LINC'S PETITION FOR CLARIFICATION  
AND RECONSIDERATION**

**I. INTRODUCTION**

Pursuant to the Section 1.106(g) of the Rules of the Federal Communications Commission ("Commission"),<sup>1</sup> Nextel Communications, Inc., on behalf of its wholly owned subsidiary FCI 900, Inc. (collectively "Nextel"), respectfully submits this Opposition to the Petition for Clarification and Reconsideration of Southern Communications Services, Inc. d/b/a/ Southern LINC ("Southern") in the above-captioned proceeding.<sup>2</sup>

On September 23, 2000, Nextel and Motorola, Inc., Motorola SMR, Inc., and Motorola Communications and Electronics (hereinafter collectively "Motorola") filed applications to assign 59 900 MHz Specialized Mobile Radio ("SMR") licenses from Motorola to Nextel. On April 17, 2001, the Wireless

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<sup>1</sup> 47 C.F.R. Section 1.106(g). Because Southern served Nextel via US Mail, Nextel is timely submitting this Opposition on May 31, 2001. See Section 1.4(h) of the Commission's Rules.

<sup>2</sup> Petition for Clarification and Reconsideration, submitted May 17, 2001 (hereinafter "Petition").

Telecommunications Bureau (“Bureau”) granted the assignment applications, concluding that Nextel’s planned integration of the 900 MHz licenses into its digital iDEN network is in the public interest.<sup>3</sup> According to the Bureau, “Nextel, facilitated by the Commission’s flexible use policies, will be in a position to make the highest valued use of the spectrum[,]”<sup>4</sup> and immediately free up additional 800 MHz SMR spectrum by relocating incumbents to this 900 MHz SMR spectrum.<sup>5</sup> Both result in putting the 800 and 900 MHz spectrum to its highest and best use.”

Southern’s Petition provides no basis for reversing the Bureau’s decision to grant the assignments. The Bureau, having decided to review the transaction based on a bifurcated marketplace analysis – trunked dispatch and interconnected mobile voice – properly counted in the separate trunked dispatch market only the spectrum Nextel uses to provide trunked dispatch services, thus excluding Nextel’s SMR spectrum used to provide interconnected mobile voice services.<sup>6</sup> Additionally, the Bureau properly included in its trunked dispatch market licensees other than those operating only in the 800 MHz and 900 MHz

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<sup>3</sup> *In re Applications of 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*, Order, DA 01-947, released April 17, 2001 (hereinafter “Order”) at para. 36.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Nextel still believes that the evidence strongly supports a single CMRS market analysis, but for purposes of this opposition, will take as given the Commission’s market definitions.

band, as Southern had proposed.<sup>7</sup> For these reasons, the Bureau should dismiss Southern's Petition and uphold its decision.

## II. DISCUSSION

### A. **The Bureau Properly Included Only a Portion of Nextel's SMR Spectrum Holdings in the Trunked Dispatch Market**

The Bureau, having decided in the Order to bifurcate its product market analysis, properly bifurcated Nextel's spectrum holdings for purposes of performing a Herfindahl-Hirschman Indices ("HHI") analysis of the trunked dispatch market. Southern's attempt to narrow the product market while, at the same time, expanding Nextel's spectrum holdings therein simply to produce a high HHI, ignores reality. As Dr. Gregory L. Rosston explained in his Report attached to Nextel's March 8, 2001 submission in this proceeding, "only 47% of Nextel's minutes are dispatch and [because] the compression ratio is 6:1 for dispatch and 3:1 for interconnect . . . only 31% of Nextel's capacity is used for dispatch and should be included in [the trunked dispatch market analysis]."<sup>8</sup> Just as the Bureau would exclude cellular and Personal Communications Services ("PCS") spectrum holdings from a separate trunked dispatch market HHI merger analysis, it properly excluded from that analysis spectrum Nextel uses to provide

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<sup>7</sup> See Order at para. 12.

<sup>8</sup> *Ex Parte* Letter to Magalie R. Salas, Secretary, submitted in DA 00-2352 on March 8, 2001, from Robert S. Foosaner, Senior Vice President and Chief Regulatory Officer, at Attachment 1, Report of Gregory L. Rosston, at p. 16. There, Dr. Rosston explains that 47% of Nextel's minutes of use for dispatch service uses 31% of Nextel's spectrum capacity because the dispatch service uses a compression ratio of 6:1 while interconnected mobile voice services use a 3:1 compression ratio. Thus,  $0.47/(0.47+2(0.53)) = 31\%$ .

interconnected mobile telephone service and included in its HHI calculations only spectrum that supports Nextel's dispatch services.

In its Petition, Southern repeats its assertion that Nextel's entire spectrum position should be counted in the HHI trunked dispatch analysis. It supports that assertion by stating that "the Bureau's reliance on current relative spectrum **usage**, rather than actual spectrum holdings, is a key flaw in the Order's analysis."<sup>9</sup> In other words, the Bureau should ignore the functional realities of Nextel's spectrum use and simply include it all in the trunked dispatch market. Yet, Southern excludes all cellular and PCS carriers' spectrum even though their spectrum holdings are perfectly capable of providing exactly the same dispatch service. Southern is correct that spectrum holdings are the appropriate unit of analysis, and a single CMRS marketplace is based on exactly Southern's premise. Southern's argument, therefore, is both transparently self-serving and unavailing, as it promotes a marketplace analysis that ignores the functional realities of spectrum and focuses instead on nothing more than the spectrum license designation: "SMR." Southern's attempt to inflate Nextel's spectrum position (and therefore the HHI) in the separate trunked dispatch market, therefore, should be dismissed.<sup>10</sup>

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<sup>9</sup> Petition at p. 3 (emphasis added).

<sup>10</sup> Southern also asserts that all of Nextel's spectrum should be counted as dispatch spectrum because Nextel's customers – not Nextel – control whether the service is used for dispatch purposes or interconnected mobile voice purposes. Petition at p. 5. However, Southern provides no explanation for its conclusion that customer control results in a 100% dispatch spectrum rather than 100% interconnected mobile voice spectrum. Again, this type of argument, wherein Southern attempts to stretch reality and impose form over substance, demonstrates why the Bureau must move to a more realistic analysis of the marketplace – *i.e.*, a single CMRS marketplace – for reviewing CMRS spectrum transactions.

Southern's attempt to paint a misleading picture of Nextel's "trunked dispatch" position is an additional reason for the Bureau to rely on its own finding that there is an "increasing convergence of CMRS services" and to adopt the more realistic, and economically and legally supported Commercial Mobile Radio Service ("CMRS") market definition for purposes of merger analyses herein. The Bureau's bifurcated analysis of the product market is not supported by the facts in today's wireless marketplace and unnecessarily creates opportunities for competitors to perpetuate unsupported arguments simply to delay transactions that are manifestly in the public interest.

All CMRS license transactions should be analyzed for their impact on the CMRS marketplace because all CMRS products and services are substitutable. As the Commission found in 1994, all CMRS services fulfill a user's need to communicate while "on the move."<sup>11</sup> It is because these services are substitutable that 85% of all new Nextel subscribers, *i.e.*, customers who generally use up to half of their airtime for dispatch calling, are former cellular subscribers.<sup>12</sup> Nextel's subscribers, to a large extent, are substituting dispatch use for interconnected mobile voice use. For the same reason, 27% of all analog dispatch churn is attributable to "competition from Cellular/PCS/Nextel."<sup>13</sup> Former dispatch users are replacing their service with interconnected mobile

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<sup>11</sup> Third Report and Order, 9 FCC Rcd 7988 (1994) at para. 58.

<sup>12</sup> See *Id.* at p. 6, *citing* State of the SMR Industry: Nextel and Dispatch Communications, The Strategis Group, September 2000 at p. 49.

<sup>13</sup> *Id.*, *citing* State of the SMR Industry: Nextel and Dispatch Communications, The Strategis Group, September 2000 at p. 28.

voice service. Nextel's "dispatch spectrum" and "interconnected mobile voice spectrum" compete for the same customer and are substitutable among wireless users. All of the spectrum is used to compete in the CMRS marketplace; accordingly, all of Nextel's current and future spectrum transactions should be analyzed for their impact on the CMRS marketplace.

**B. The Bureau Properly Included in the Separate Trunked Dispatch Market the 450-470 MHz Spectrum on Which Licensees Provide Dispatch Services.**

The Bureau, having decided to define a separate relevant trunked dispatch market for purposes of analyzing Nextel's acquisition of Motorola's 900 MHz SMR licenses, properly included therein 450-470 MHz spectrum that is used for dispatch service.<sup>14</sup> Although Nextel continues to believe that the analysis should include all 20 MHz of spectrum available at 450-470 MHz, Nextel supports the Bureau's conclusion. As Dr. Rosston explained in Nextel's March 8 submission, there are more than 16 million private dispatch users in the 150 MHz and 450 MHz bands, and equipment for those services is readily available.<sup>15</sup> Additionally, Dr. Rosston pointed out that the refarming that is set to take place on these bands in the very near future will result in additional capacity for

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<sup>14</sup> See Order at para. 29.

<sup>15</sup> March 8 submission, Attachment A at p. 15, *citing* the Commission's Fifth Report on Competition, 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 (2000) at p. 69.

dispatch and other services.<sup>16</sup> For these reasons, the Bureau correctly included the 450-470 MHz band in its separate trunked dispatch market HHI analysis.

### III. CONCLUSION

The Bureau properly granted the assignment of Motorola's 900 MHz SMR licenses to Nextel based on its conclusion that the assignments are in the public interest. Although the Bureau reached this decision based on a product market analysis that is no longer applicable in today's wireless industry, it recognized that all CMRS services are converging, thus potentially requiring "an expanded market definition in reviewing a future transaction."<sup>17</sup> Continuing to apply a bifurcated analysis creates delays and uncertainties for applicants trying to compete in the increasingly competitive wireless industry. Therefore, the time is now for adopting the CMRS marketplace for analyzing all CMRS spectrum transactions.

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<sup>16</sup> *Id.*

<sup>17</sup> Order at para. 17.

For the reasons discussed herein, Nextel respectfully requests that the Commission reject Southern's Petition and uphold its grant of the subject applications.

Respectfully submitted,

NEXTEL COMMUNICATIONS, INC.

By, 

Robert S. Foosner  
Senior Vice President – Government Affairs

Lawrence R. Krevor  
Vice President – Government Affairs

Laura L. Holloway  
Director – Government Affairs

James B. Goldstein  
Regulatory Counsel

2001 Edmund Halley Drive  
Reston, VA 20191  
703-433-4141

Date: May 31, 2001



CERTIFICATE OF SERVICE

I, Rochelle L. Pearson, hereby certify that on this 31st day of May 2001, caused a copy of the attached Opposition of Nextel Communications, Inc. to Southern LINC'S Petition For Clarification And Reconsideration to be served by hand delivery or first-class mail to the following:

Mr. Thomas Sugrue, Chief  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Room 3-C207  
Washington, DC 20554

Mr. James D. Schlicting, Deputy Chief  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Room 3-C207  
Washington, DC 20554

Ms. Lauren Kravetz  
Policy and Rules Branch  
Commercial Wireless Division  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Room 4-A163  
Washington, DC 20554

Mr. John Bransome  
Policy and Rules Branch  
Commercial Wireless Division  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Room 4-A234  
Washington, DC 20554

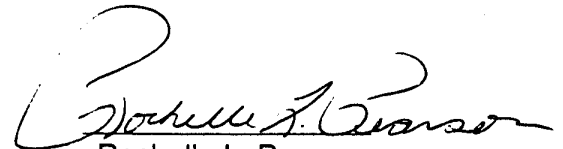
Mr. David Furth  
Senior Legal Adviser  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Room 3-C207  
Washington, DC 20554

Ms. Monica Desai, Esq.  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Room 4-A163  
Washington, DC 20554

Susan Singer  
Economist  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Room 4-C121  
Washington, DC 20554

\*Ms. Karen A. Kincaid  
Wiley Rein & Fielding  
1776 K Street, NW  
Washington, DC 20006

\*Mary Brooner  
Director, Telecommunications Strategy and Regulation  
Motorola, Inc.  
1350 I Street, NW  
Suite 400  
Washington, DC 20005

  
Rochelle L. Pearson

\*\*first-class mail