

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

Wireless Telecommunications Bureau
Commercial Wireless Division
Policy and Rules Branch

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

COMMENTS OF SOUTHERN LINC

By:

Michael D. Rosenthal
Director of Regulatory Affairs
Southern LINC
5555 Glenridge Connector, Suite 500
Atlanta, Georgia 30342
678-443-1500

Dated: November 20, 2000

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EXECUTIVE SUMMARY

In this proceeding, the Commission seeks comments and petitions to deny on applications filed by Motorola, Inc., Motorola SMR, Inc., and Motorola Communications and Electronics, Inc. (collectively “Motorola”) to assign fifty-nine 900 MHz SMR licenses and authorizations held by Motorola to FCI 900, Inc., a wholly-owned subsidiary of Nextel Communications, Inc. (collectively “Nextel”). Southern Communications Services, Inc., d/b/a Southern LINC (“Southern”), opposes such assignment on the ground that allowing Nextel to further increase its already massively concentrated 800 and 900 MHz SMR spectrum holdings will adversely affect competition in the trunked dispatch market.

Section 310(d) of the Communications Act of 1934 requires that license assignments be in the public interest. In determining whether that is that case, the Commission must, among other things, balance the harmful and beneficial effects of the assignment to determine whether its overall effect will be to enhance competition in the relevant market. Southern asserts that the only relevant market is trunked dispatch, and permitting Nextel to amass fifty-nine additional SMR licenses can only harmfully exacerbate its already dominant position therein. Even if, *arguendo*, the interconnected mobile voice market is also considered, the detrimental effect on the trunked dispatch market would far outweigh any slight benefits to the interconnected mobile voice market.

One of the Commission’s primary reasons for previously allowing Nextel to accumulate large chunks of SMR spectrum was its belief that more carriers will soon penetrate the trunked dispatch market and offset Nextel’s dominance. However, there is no indication that such hopes will ever come to fruition. In fact, Nextel currently plans to buy-out Chadmoore Wireless

Group, one of the few remaining major players in the industry. Further, it recently won eight hundred additional 800 MHz SMR licenses at auction, to the exclusion of potential new entrants.

Southern also contends that that the Commission's decision to promulgate regulatory structures for cellular and PCS that ensure competition, but not promulgate such a structure for SMR, creates a regulatory imbalance that requires the Commission to be especially diligent in preventing anti-competitive spectrum concentration in the trunked dispatch market. In accordance therewith, the Commission should take a step toward reigning in Nextel's anti-competitive standing by denying the assignment at issue in this case.

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

COMMENTS OF SOUTHERN LINC

I. INTRODUCTION

Southern Communications Services, Inc., d/b/a Southern LINC (“Southern”) hereby respectfully submits Comments in response to the *Public Notice* released October 19, 2000 in the above-captioned matter.¹ In the *Public Notice*, the Federal Communications Commission (“FCC”) seeks comments and petitions to deny on applications filed by Motorola, Inc., Motorola SMR, Inc., and Motorola Communications and Electronics, Inc. (collectively “Motorola”) to assign fifty-nine 900 MHz SMR licenses and authorizations held by Motorola to FCI 900, Inc., a wholly-owned subsidiary of Nextel Communications, Inc. (collectively “Nextel”). As set forth below, Southern is opposed to the assignment of these licenses because it believes such assignment will adversely affect competition in the trunked dispatch market.

¹ *Motorola, Inc. and Nextel Communications, Inc. Seek Consent to Assign 900 MHz SMR Licenses, Public Notice*, DA 00-2352 (Oct. 19, 2000) (“*Public Notice*”).

Southern operates an advanced digital communications system using the same advanced technology as Nextel – Motorola’s iDEN technology. Southern provides digital dispatch, text messaging, paging, interconnected voice and inter-net service, all on a single handset, throughout most of the states of Alabama and Georgia, the panhandle of Florida and the southeastern third of the state of Mississippi. Southern provides the most comprehensive geographic coverage of any mobile wireless service in Alabama and Georgia, and serves areas of Florida and Mississippi that are not served by other advanced wireless providers. Its service is used by statewide public safety agencies, by local governments in rural areas, by public utilities operating in rural and urban areas, as well as by commercial and other government customers in urban and rural areas.

Southern competes vigorously with Nextel in areas where both carriers operate. However, it has grave concerns about the overwhelming concentration of available 800 and 900 MHz spectrum controlled by Nextel. It has made these concerns known to the FCC in various proceedings involving competitive issues.² Spectrum availability is *the single most critical issue in determining whether robust competition can develop in the trunked dispatch market*. However, the lack of an SMR spectrum cap makes chilling of robust competition possible when one entity can amass large amounts of spectrum to the exclusion of existing or potential competitors. Because one of the few brakes on such anti-competitive accumulation is the FCC’s ability to deny assignments of additional spectrum, the FCC must closely scrutinize applications for such assignments with an eye toward enhancing competition.

² Comments of Southern, *In the Matter of Biennial Review – Spectrum Aggregation Limits for Wireless Telecommunications Carriers*, WT Docket No. 98-205; Comments of Southern, *In the Matter of Amendment of Part 90 of the Commission’s Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band*, PR Docket No. 93-144; Petition to Deny of Southern, *In the Matter of Geotek Communications, Inc., Application for Consent to Assign 900 MHz SMR Licenses*, DA 99-1027.

II. ANALYTICAL FRAMEWORK

Pursuant to Section 3 10(d) of the Communications Act of 1934, licenses cannot be assigned unless the Commission finds “that the public interest, convenience, and necessity will be served thereby.” In applying the public interest test under Section 3 10(d), the Commission asks four questions, one of which is applicable here: Whether the transaction promises to yield affirmative public interest benefits.³ The applicants bear the burden of showing “that the predominant effect of the transaction will be to advance the public interest.”⁴ The Commission “must weigh any harmful and beneficial effects to determine whether, on balance, the transaction is likely to enhance competition in the relevant markets.”⁵ This review consists of determining the relevant market, assessing the effect on competition in that market, and analyzing whether transaction-specific public interest benefits will accrue.⁶

Applying the foregoing to Motorola’s applications, the relevant market is trunked dispatch, granting the applications at issue will further Nextel’s harmful control of this market segment, and no meaningful public interest benefit could possibly result. Alternatively, even if the Commission views the interconnected mobile voice market as also being relevant, the end analysis does not change; the Commission should not facilitate the restraint of competition in the

³ *In re Applications of Neoworld License Holdings, Inc.*, DA 00-1092, Memorandum Opinion and Order, DA 00-1765, ¶ 8 (Aug. 4, 2000).

⁴ *Id.*

⁵ *Id.* at ¶ 16.

⁶ *Id.*

trunked dispatch market to realize an infinitesimal gain in the interconnected mobile voice market.⁷

HI. NEXTEL'S MASSIVE CONCENTRATION OF SPECTRUM AND DOMINANCE OF THE SMR TRUNKED DISPATCH MARKET IS CONTRARY TO COMPETITION AND THE PUBLIC INTEREST

Several weeks ago the FCC flatly acknowledged a harsh truth about the trunked dispatch market: “*Digital SMR remains dominated by one provider, Nextel, which in 1999 had over 4.5 million subscribers. . . .*”⁸ Although the FCC’s quote expressly refers only to digital SMR, and its definition of the trunked dispatch market encompasses providers employing both digital and analog network architectures, the entire market is clearly concentrated in Nextel’s hands.’ This is reflected in the fact that in 1999 it was able to command an average revenue per unit of \$74.00 per-subscriber per month, the highest in the mobile telephone industry.” While other reasons for denying the applications at issue in this proceeding may exist, Nextel’s lock on the market provides an incontrovertible justification. As such, it is the focus of this submission.

A. The Relevant Market Is The Trunked Dispatch Market

Southern acknowledges that, in the FCC’s past several decisions involving assignments of 900 MHz SMR licenses, it has determined that the trunked dispatch and interconnected mobile

⁷ The interconnected mobile voice market consists of “all commercially available two-way, mobile voice services, providing access to the public switched telephone network via terrestrial systems.” *In re Applications of Neoworld License Holdings, Inc.*, DA 00- 1092, *Memorandum Opinion and Order*, DA 00- 1765, ¶ 19 (Aug. 4, 2000).

⁸ *In the Matter of Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Services*, WT Docket No. 00- 193, *Notice of Proposed Rulemaking*, FCC 00-361, ¶ 11 (Nov. 1, 2000).

⁹ *In re Applications of Various Subsidiaries and Affiliates of Geotek Communications, Inc.*, DA 00-89, *Memorandum Opinion and Order*, 1.5 F.C.C.R. 790,805 (Jan. 14, 2000).

¹⁰ *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, Fifth Report*, FCC 00-289, p. 30 (Aug. 3, 2000) (“*Fifth Report on Competition*”).

voice markets are both relevant for purposes of analyzing competition.” However, it submits that the only truly relevant market is trunked dispatch. While Motorola asserts in the Public Interest Statements attached to its applications that the trunked dispatch market has been completely assimilated into the greater interconnected mobile voice market that serves individual consumers, that is simply not the reality of the matter. Rather, trunked dispatch generally continues to serve a distinct group of government and business customers who purchase communications products that serve their particularized dispatch needs.

The fundamental feature which distinguishes the trunked dispatch market is that its customers first and foremost need to purchase a system with the dispatch function. This is not to say that they do not also desire the added advanced features which companies such as Southern and Nextel provide. Nevertheless, the fundamental product being purchased is the dispatch product, which is not available from PCS or cellular carriers. While a few PCS and cellular carriers now offer plans that allow unlimited calling among members of a defined group, these are marketing-driven pricing plans, not dispatch service; the FCC actually refers to some plans as “family-oriented price plans.”¹² The FCC’s *Fifth Report on CMRS competition* mentions only one non-dispatch carrier, SBC, that offers a service that approximates dispatch.¹³ Even that, however, provides only a streamlined conference call service in which simultaneous calls are

¹¹ *In re Applications of Neoworld License Holdings, Inc.* . . . , DA 00-1092, *Memorandum Opinion and Order*, DA 00-1765, ¶ 17 (Aug. 4, 2000); *In re Applications of Various Subsidiaries and Affiliates of Geotek Communications, Inc.* . . . , DA 00-89, *Memorandum Opinion and Order*, 15 F.C.C.R. 790, 802 (Jan. 14, 2000).

¹² *Fifth Report on Competition* at p. 71

¹³ *Id*

limited to 30 persons in a pre-programmed group,¹⁴ less than is possible with real trunked dispatch.

B. Granting the Applications Would Facilitate Nextel's Dominance of the Trunked Dispatch Market.

As the trunked dispatch market is the relevant market for purposes of this analysis, the next step is to review the effect upon it of the assignment of Motorola's fifty-nine 900 MHz licenses to Nextel. Toward that end, as an initial matter Southern would re-emphasize that the availability of spectrum is the single most critical factor in sustaining competition in the dispatch market. Because of the current constraints of technology, CMRS carriers who commit to particular technologies, *i.e.* cellular companies, PCS companies, and SMR carriers, typically cannot freely migrate to spectrum that may be available to these different services.¹⁵ That is, carriers using iDEN technology cannot now incorporate PCS spectrum in their systems even if it were readily available. Therefore, once a carrier has made a commitment to a particular technology (in Southern's case iDEN) and a service, in this case SMR, the spectrum market for its system expansion is necessarily limited to the spectrum available historically for SMR operation. If the Commission at the same time allows one competitor to monopolize that essential asset, competition will be stifled, because without spectrum, companies will not be able to expand capacity to service new customers regardless of their efficiencies in all other respects. In essence, control over spectrum is the equivalent to control of an essential facility.

¹⁴ *Id.*

¹⁵ This is particularly true for small carriers that normally do not have the potential customer base to make a new equipment line worthwhile for equipment vendors.

Given the unique historical evolution of the SMR market, Nextel has thus far been able to dominate the acquisition of 800 MHz and now 900 MHz spectrum. The Commission has allowed Nextel to continue to amass more and more spectrum despite this dominance in large part by clinging to the belief that entry of more carriers into the dispatch market is just around the corner.¹⁶ This belief, however, shows no signs of actually materializing. PCS and cellular carriers' "family-oriented price plans" and SBC's limited conference calling plan can hardly be said to threaten Nextel. This lack of significant new competition is unlikely to change for several reasons.

First, PCS and cellular carriers' technology prevents them from readily utilizing SMR dispatch spectrum. Their systems are designed for providing interconnected mobile voice service and would have to be retrofitted to provide the very different one-to-many dispatch service. Second, there is no indication that the trunked dispatch market fits PCS and cellular carriers' business plans. The fact that they have been legally permitted to utilize SMR dispatch spectrum for years but have virtually ignored it speaks volumes in that regard. Third, and perhaps most importantly for this analysis, *the fact that Nextel already has so much of 800 and 900 MHz SMR spectrum largely prevents new competitors from obtaining enough spectrum to enter the market to seriously challenge it.* - No new product line or company can be successful if competitors do not have spectrum available on which to provide service.

¹⁶ *In re Applications of Various Subsidiaries and Affiliates of Geotek Communications, Inc.*, DA 00-89, Memorandum Opinion and Order, 15 F.C.C.R. 790, 806-807 (Jan. 14, 2000).

¹⁷ In addition to simply holding the vast majority of spectrum, Nextel has taken anti-competitive advantage of its holdings by refusing to enter roaming agreements with Southern and Pacific Wireless (another SMR carrier).

Highlighting the unlikeliness of increased competition in the trunked dispatch market is Nextel's pending buy-out of Chadmoore Wireless Group, one of the few remaining major players in the industry." According to trade publications, Chadmoore has nearly five thousand 800 MHz SMR licenses covering 55 million POPs in 180 markets throughout the United States."

Also pointing to further consolidation is that Nextel is close to acquiring eight hundred additional 800 MHz SMR licenses that it successfully bid on in the 800 MHz General Category Auction (Auction No. 34).²⁰ Its success in that auction was largely a function of its already dominant position in most of the major markets; Nextel already holds so much spectrum in those markets that attempting to compete with it using the spectrum available at the 800 MHz General Category Auction would have been fruitless for many carriers that might have otherwise sought to make the highest bid. Furthermore, the large difference in scale between Nextel's operations and those of smaller carriers or new entrants means that vendors may find it more profitable to allocate their production resources to Nextel's needs. While its needs may sometimes overlap with those of other carriers (as in the case of the current iDEN product) in other cases they may not and, thus, could hinder existing carriers' growth or entirely shut-out new entrants.

The critical need for 800 and 900 MHz SMR spectrum to enter and successfully compete in the trunked dispatch market, Nextel's massive concentration of such spectrum, and its commensurate dominance of the market, point to only one conclusion about the effect of

¹⁸ *Nextel's Warm Handshake; Sutor Makes Offer Chadmoore Cannot Refuse*, Wireless Week, Aug. 28, 2000, at 1.

¹⁹ *Nextel Acquires Chadmoore*, Mobile Radio Technology, October 2000; *Nextel's Warm Handshake; Sutor Makes Offer Chadmoore Cannot Refuse*, Wireless Week, Aug. 28, 2000, at 1.

²⁰ *800 MHz Specialized Mobile Radio (SMR) Service General Category (851-854 MHz) and Upper Band (861-865 MHz) Auction; Applications Accepted for Filing, Public Notice*, DA 00-2337 (Oct. 16, 2000).

Motorola's instant applications on competition: granting them will exacerbate Nextel's dominance and further dim any hopes at increasing competition. Thus, the Commission should finally draw the line on Nextel's spectrum consolidation and deny the applications.*'

C. Consideration Of Both The Trunked Dispatch And Interconnected Mobile Voice Markets Does Not Favor Granting The Applications.

Southern believes that the trunked dispatch market is the only market that should be considered for this analysis. However, for the sake of argument it would note that considering the interconnected mobile voice market as well would not change the end result of its analysis. In its Public Interest Statements, Motorola contends that the fifty-nine licenses it is seeking to assign to Nextel will enhance its ability to compete in the interconnected mobile voice market and thus benefit the public interest. Southern would submit, however, that a fifty-nine license increase in the interconnected mobile voice market would be of negligible benefit given the presumably enormous spectrum holdings, subscriber bases, and infrastructure of carriers such as Verizon Wireless, AT&T Services, and Sprint PCS Group. Weighing the tiny benefit of the transaction to the interconnected mobile voice market against the far more significant detriment to the trunked dispatch market clearly indicates that the applications should be denied.

D. The Commission Should Utilize This Proceeding To Help Balance The Inequities Caused By Its Asymmetrical Regulatory Treatment Of The SMR Industry.

The Commission has established a regulatory structure for cellular, PCS, and paging services that ensures that each service is subject to competition, i.e., that there are at least two

²¹ Notably, a July 24, 1997 e-mail sent within Nextel reflected its interest in dominating the trunked dispatch market. E-mail messages from Daniel Akerson to Morgan O'Brien and from Morgan O'Brien to Daniel Akerson, dated July 24, 1997 (attached as Exhibit A). (Previously tiled in Memorandum of the United States in Opposition to Nextel's Motion to Vacate the 1995 Consent Decree, U.S. District Court for the District of Columbia, Case No. 1:94CV02331 (TFH)).

competitors with roughly comparable access to spectrum. Although Section 6002(d)(3)(B) of the 1993 Budget Act directed the FCC to enact “comparable” technical requirements for cellular, PCS, and SMR,²² the Commission has denied SMR providers a regulatory scheme that enables competition. For example, the lack of an SMR spectrum cap makes chilling of robust competition possible when one entity can amass large amounts of spectrum to the exclusion of existing or potential competitors. The Commission must offset its failure to provide a comparable regulatory scheme pursuant to the 1993 Budget Act by denying assignments of SMR licenses to carriers which hold undue concentrations of spectrum. Additionally, given the fact that SMR carriers lack the direct regulatory protection that all the other services enjoy, it would be inequitable for the Commission to allow carriers to accumulate anti-competitive concentrations of spectrum.

In this instance, allowing Nextel to amass Motorola’s 900 MHz licenses would further cement its control of the dispatch market. Thus, the Commission should take a step toward reigning in Nextel’s anti-competitive standing by denying the assignment.

²² Section 6002(d)(3)(B), 1993 Budget Act, 107 Stat. 3 12, 397.

Southern LINC
DA 00-2352
November 20, 2000

IV. CONCLUSION

WHEREFORE, THE PREMISES CONSIDERED, Southern respectfully asks the Commission to deny Motorola's license assignment applications.

Respectfully submitted,



Michael D. Rosenthal
Director of Regulatory Affairs
Southern LINC
5555 Glenridge Connector, Suite 500
Atlanta, Georgia 30342
678-443-1 500

Dated: November 20, 2000

CERTIFICATE OF SERVICE

I, Michael D. Rosenthal, do hereby certify that on this 20th day of November, 2000, a single copy (unless otherwise noted) of the foregoing "Comments of Southern Communications Services, Inc." was hand-delivered to the following:

Magalie R. Salas, Esquire **(ORIGINAL PLUS 4 COPIES)**
Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-A325
Washington, D.C. 20554

William E. Kennard, Chairman
Federal Communications Commission
445 12th Street, S.W., 8th Floor
Washington, D.C. 20554

Michael Powell, Commissioner
Federal Communications Commission
445 12th Street, S.W., 8th Floor
Washington, D.C. 20554

Harold Furchtgott-Roth, Commissioner
Federal Communications Commission
445 12th Street, S.W., 8th Floor
Washington, D.C. 20554

Gloria Tristani, Commissioner
Federal Communications Commission
445 12th Street, S.W., 8th Floor
Washington, D.C. 20554

Susan Ness, Commissioner
Federal Communications Commission
445 12th Street, S.W., 8th Floor
Washington, D.C. 20554

Mr. Thomas J. Sugrue
Bureau Chief, Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Room 3-C207
Washington, D.C. 20554

Ms. Lauren Kravetz
Policy and Rules Branch
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Room 4-A163
Washington, D.C. 20554

Mr. John Branscome
Policy and Rules Branch
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Room 4-A234
Washington, D.C. 20554

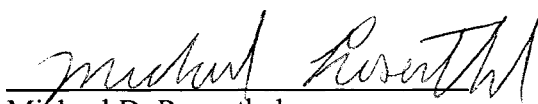
Mr. Pieter Van Leeuwen
Merger Task Force
Federal Communications Commission
445 12th Street, S.W., Room 4-A234
Washington, D.C. 20554

Office of Media Relations
Reference Operations Division
Federal Communications Commission
445 12th Street, S.W., Room CY-A257
Washington, D.C. 20554

ITS
445 12th Street, S.W.
Washington, D.C. 20554

Ms. Karen A. Kincaid (Via U.S. Mail)
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

Mr. James Wheaton (Via U.S. Mail)
Manager, Compliance
FCI 900, Inc.
2001 Edmund Halley Drive
Reston, VA 20191


Michael D. Rosenthal

Lotus cc:Mail for: Morgan O'Brien

Author: Daniel Akerson at NSCPOST
Date: 7/24/97 1:12 PM
Subject: Re: 900 MHZ

----- Message Contents -----

Morgan

I agree with everything you assert. Can we fashion a proactive strategy, with one derivative? The two paths should be without Geotek's spectrum and with Geotek's spectrum, ie they fail. The outline you had the other day appeared to be built on the basis that we need to solve the Industrial issue. Is there a better way? If so, let's start positioning now. I would like to continue the dialog in this area. I agree it is critical that we control the process.

Dan

Reply Separator

Subject: 900 MHz
Author: Morgan O'Brien at NSCPOST
Date : 7/24/97 12:17 PM

To make more clear the points I was trying to make Tuesday about our strategic position at 900 MHz:

- o Other than Nextel's iDEN system, the largest potential for a dispatch business is at 900 MHz: 200 trunked channels and 200 conventional -- a total of 10 MHz contiguous.
- o Sooner or later, these channels will be consolidated. by someone.
- o Geotek has the largest spectrum position at 900 MHz. Sooner or later, they will fail and those channels will hit the market.
- o Nextel's core competence and differentiating factor in the wireless world is dispatch.
- o Digital is better for dispatch (both voice and non-voice) than is analog. Digital, of course, is a much more efficient technology, as well.
- o Motorola is unlikely to back away from the 900 MHz iDEN product. Perseverance is their hallmark.
- o The market place is not likely to give Nextel a free shot at the dispatch market forever. Sooner or later, some other force will emerge. Most likely, it will come at 900 MHz.
- o The DOJ consent decree is vulnerable to attack. It is faulty in logic and its major internal proponent is no longer around. If Geotek fails, the major external proponent of the decree also goes away.

0 My conclusion: Despite the risks and headaches, the best strategic move for Nextel is to get in front of the 900 MHz digital technology and try to guide it in ways that complement our 800 MHz iDEN product. We are the leaders of the two-way business and we have to keep fighting to stay in that position.