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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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.)	Applications Nos. 000-224876
)	000-224877
Applications for Consent to Assign)	000-224878
900 MHz SMR Licenses to FCI 900, Inc.)	

To: Chief, Wireless Telecommunications Bureau

**MOTION TO DISMISS OF
NEXTEL COMMUNICATIONS, INC.**

Nextel Communications, Inc. ("Nextel") respectfully submits this Motion to Dismiss the Reply of Southern LINC ("Reply") filed January 9, 2001 in the above-captioned proceeding. Filed forty days after Nextel filed an Opposition in this proceeding, and filed without authorization under any Public Notice, rule or regulation of the Federal Communications Commission ("Commission"), the Reply is unauthorized and should be dismissed immediately.

On October 19, 2000, the Commission released a Public Notice on Nextel's proposed acquisition of Motorola, Inc.'s ("Motorola's") 900 MHz Specialized Mobile Radio ("SMR") licenses.¹ In the Public Notice, the Commission stated that interested parties should file comments "no later than November 20, 2000," and all oppositions or replies were due "no later than November 30, 2000."² On November 20, 2000, Southern Communications Services, Inc. d/b/a Southern LINC ("Southern") filed comments opposing the proposed transaction. On November 30,

¹ Public Notice, "Motorola, Inc. and Nextel Communications, Inc. Seek Consent to Assign 900 MHz SMR Licenses," DA 00-2352, released October 19, 2000 ("Public Notice").

² *Id.*

2000, Nextel submitted an Opposition to Southern's comments. Nowhere in the Commission's Public Notice is a provision for subsequent responsive pleadings; accordingly, Southern's Reply is an unauthorized pleading that should not be included in the record herein. Even assuming Southern was filing pursuant to rules other than those established for this particular proceeding, Southern's reply would be more than a month late.³

Southern did not request leave to file its unauthorized pleading nor provide any justification for it. In fact, there is no justification for the additional pleading filed by Southern on January 9, 2001 as it presents no new facts or evidence to the Commission. Everything presented in the Reply – particularly Exhibit A,⁴ which is simply the resubmission of a pleading filed by Southern on January 5, 2001 – has been previously raised by interested parties and addressed by the Commission on many prior occasions.⁵ Therefore, even assuming Southern properly sought leave to file this unauthorized pleading, nothing in its Reply would justify its acceptance.

Ironically, however, Southern's January 9 Reply raises a new issue regarding Southern's own compliance with the Commission's rules in this proceeding. At Exhibit B, in a letter dated January 9, 2001, Ms. Carolyn Tatum Roddy of Troutman Sanders LLP states that she and her client discussed with members of the Wireless Telecommunications Bureau ("Bureau") "the relationship between Motorola and Nextel in the 700 MHz guardband auction as disclosed in their Form 175 filing as it

³ For example, Section 1.45(c) of the Commission's Rules provides parties five days to respond to Oppositions filed in response to Petitions to Deny. Thus, had there been no specific deadlines provided for filing Petitions to Deny and Oppositions in this proceeding, Southern would have been required to file its Reply **five days** after Nextel's Opposition. Here, however, the Commission established specific filing deadlines for this licensing proceeding.

⁴ Reply Of Southern LINC, filed January 9, 2001, at Exhibit A.

⁵ See Opposition of Nextel, filed November 30, 2000.

relates to Nextel's spectrum concentration." Southern has not previously raised on the record any issue relating to the 700 MHz guardband "relationship between Motorola and Nextel." Southern's passing reference to a matter it apparently has linked to the subject 900 MHz SMR license transaction with Motorola is the first Nextel has heard of the issue and is insufficient to enable Nextel to provide an adequate response.

Pursuant to Section 1.1206 of the Commission's Rules, Southern is required to provide in its *ex parte* summary "[m]ore than a one or two sentence description of the views and arguments presented. . ."⁶ Given that the purpose of the Commission's *ex parte* rules is to ensure an open and fair discussion of all relevant issues,⁷ it is paramount that Southern fully explain in an *ex parte* submission the matters it discussed with the Bureau Staff. At this time, Nextel and Motorola have fully disclosed their 700 MHz guardband auction plans to the extent required in the Form 175 process. Unless and until Nextel and Motorola understand the issues raised by Southern, neither can respond in a timely or fair manner.


⁶ 47 C.F.R. Section 1.1206(b)(2).

⁷ See Amendment of 47 C.F.R. § 1.1200 et seq. Concerning Ex Parte Presentations in Commission Proceedings, *Report and Order*, 12 FCC Rcd 7348, 7362-63 (1997) (stating that the Commission will "insist on strict enforcement of the existing notification requirement as to new data and arguments, both to ensure that parties receive fair notice of arguments made to the Commission and to ensure that a complete record is compiled.").

Southern's submission of this unauthorized pleading and its violation of the Commission's **ex parte** disclosure requirements demonstrate blatant disregard for the Commission's processes. For the reasons stated herein, Nextel respectfully requests that the Commission dismiss Southern's unauthorized Reply and require that Southern comply with the its **ex parte** rules, thus providing Nextel and Motorola an opportunity to fully and accurately respond to its assertions and arguments in this "permit but disclose" proceeding.

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 Attorney

January 17, 2001

CERTIFICATE OF SERVICE

I, Rochelle L. Pearson, hereby certify that on this 17th day of January 2001, caused a copy of the attached Motion To Dismiss of Nextel Communications, Inc. to be served by hand delivery to the following:

Chairman William Kennard
Federal Communications Commission
445 12th Street, SW
Room 8-B201
Washington, D.C. 20554

Commissioner Susan Ness
Federal Communications Commission
445 12th Street, SW
Room 8-B115
Washington, D.C. 20554

Commissioner Michael Powell
Federal Communications Commission
445 12th Street, SW
Room 8-A204
Washington, D.C. 20554

Commissioner Harold Furchtgott-Roth
Federal Communications Commission
445 12th Street, SW
Room 8-B201
Washington, D.C. 20554

Commissioner Gloria Tristani
Federal Communications Commission
445 12th Street, SW
Room 8-C302
Washington, D.C. 20554

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

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

John Branscome
Policy and Rules Branch
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Room 4-A163
Washington, D.C. 20554

Pieter T. van Leeuwen
Chief Economist
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Room 3-C254
Washington, DC 20554

Susan Singer, Economist
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Room 4-C121
Washington, D.C. 20554

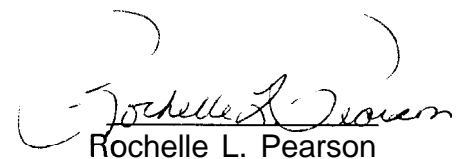
Office of Media Relations
Reference Operations Division
Federal Communications Commission
445 12th Street, SW
Room CY-A257
Washington, D.C. 20554

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

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

*Michael Rosenthal
Director of Regulatory Affairs
Southern LINC
5555 Glenridge Connector
Suite 500
Atlanta, GA 30342

*Carolyn Tatum Roddy
Todd N. Stein
Troutman Sanders LLP
Bank of America Plaza
600 Peachtree Street, NE
Suite 5200
Atlanta, GA 30308-2216


Rochelle L. Pearson

*Via First Class Mail