

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

RECEIVED

JAN 25 2001

FCC MAIL ROOM

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. )

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

**RESPONSE OF SOUTHERN LINC**

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

**AND MOTION TO STRIKE OF MOTOROLA, INC.**

By:

Carolyn Tatum Roddy  
Troutman Sanders LLP  
Bank of America Plaza  
600 Peachtree Street, N.E.  
Suite 5200  
Atlanta, GA 30308-2216  
404-885-3141

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

Date: January 24, 2001

Attorneys for Southern LINC

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

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

**RESPONSE OF SOUTHERN LINC**

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

**AND MOTION TO STRIKE OF MOTOROLA, INC.**

Southern Communications Services, Inc. d/b/a Southern LINC (“Southern”) hereby respectfully submits its Response to the Motion to Dismiss of Nextel Communications, Inc. (“Nextel Motion to Dismiss”) filed in the above-captioned proceeding on January 22, 2001, and the Motion to Strike filed by Motorola, Inc. (“Motorola Motion to Strike”) on January 18, 2001.

**BACKGROUND**

Motorola, Inc., Motorola SMR, Inc., and Motorola Communications and Electronics, Inc. (collectively “Motorola”) have filed applications to assign fifty-nine of its 900 MHz SMR licenses and authorizations to FCI 900, Inc., a wholly-owned subsidiary of Nextel Communications, Inc. (collectively “Nextel”).<sup>1</sup> Southern filed Comments requesting

---

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

the Federal Communication Commission (“FCC”) to deny Motorola’s license assignments on November 20, 2000. Motorola tiled Reply Comments and Nextel filed an Opposition to Southern LINC’s Comments on November 30, 2000. On January 9, 2001, Southern filed a Reply to the Motorola Comments and Nextel Opposition and participated in an ex parte presentation to FCC staff concerning the substance of the Southern Comments and Reply. A notice of this ex parte conversation was properly filed in the record and notice served on interested parties.

In its Motion to Dismiss, Nextel urges the FCC to Dismiss the Reply of Southern LINC as an “unauthorized” and “unjustified” pleading.\* According to Nextel, the Southern Reply was not authorized because the Commission’s Public Notice does not provide for subsequent responsive pleadings”<sup>3</sup> and “Southern did not request leave to tile its unauthorized pleading nor provide any justification for it.”<sup>4</sup> Motorola makes a similar argument.”<sup>5</sup> Nextel and Motorola note further that Southern’s Reply presents no new facts or evidence to the Commission.”

Finally, Nextel asserts that Southern violated the Commission’s ex parte disclosure requirements prescribed in Section 1.1206 of the Commission’s rules because it was required to fully explain in an ex parte submission the matters it discussed with the Bureau staff but that the ex parte notice filed by Southern stated only that there was a “short discussion of the relationship between Motorola and Nextel in the 700 MHz guardband auction as disclosed in their Form 175 filing as it relates to Nextel’s spectrum

---

<sup>2</sup> Motion to Dismiss of Nextel Communications, Inc., DA 00- 2352, filed January 22, 2000, at 2.

<sup>3</sup> Id.

<sup>4</sup> Id.

<sup>5</sup> Motorola Motion to Strike at 1.

<sup>6</sup> Nextel Motion to Dismiss at 2; Motorola Motion to Strike at 1.

concentration.” Nextel argues that Southern was obliged to provide more information than this in its ex parte notice.

Nextel asserts that this ex parte “violation” along with its “unauthorized pleading” demonstrates “blatant disregard for the Commission’s processes” and Nextel requests that the Commission require Southern to comply with its ex parte rules so that Nextel and Motorola have the opportunity to fully and accurately respond! Motorola also argues that Southern Reply’s will unfairly prejudice Motorola and Nextel by delaying final action on their underlying assignment.’

### **SOUTHERN’S REPLY WAS PROPERLY FILED**

Nextel’s argument that the Southern Reply is “unauthorized” is without merit and should be rejected. Nextel cites no authority for its view that a Public Notice silent concerning the date for filing of Replies, such as that released October 19, 2000, in this case, prohibits the filing of a responsive filing. Further, Nextel fails to explain why the FCC did not expressly prohibit Reply filings if that was its intention, as they have done in other cases and clearly have the authority to do.

It is Southern’s contention that the silence of the Public Notice, despite clear specification of the due dates for the filing of comments or petitions to deny and oppositions or replies, gave the parties notice that the FCC would not delay action pending the filing of a further responsive pleading but did not prohibit such a filing. The Public Notice cites 47

---

<sup>7</sup> Nextel Motion to Dismiss at 2-3.

<sup>8</sup> Id. at 3-4.

<sup>9</sup> Motorola Motion to Strike at 1.

U.S.C. § 309(b) and clearly stated that “(f)inal action will not be taken on these applications earlier than 31 days following the date of this Public Notice.” Under this Public Notice, Southern concedes that the FCC had no obligation to delay a decision until Southern had filed a Reply but maintains that its Reply was neither prohibited nor untimely.” Southern assumed the risk that the FCC would act on Motorola’s applications before its Reply was considered. Southern felt strongly that Nextel’s accusations impugning its service quality, motives and commitment to provide service to its customers could not be ignored and filed a Reply.

**SOUTHERN’S REPLY PROVIDED VALUABLE CONTRIBUTION  
TO THE RECORD**

Southern’s Reply provided important information responsive to the Nextel Opposition and Motorola Comments and was, therefore, “justified” by its valuable contribution to the record. The fact that Southern’s Reply provided some information filed in other dockets does not negate its worthiness. The information was clearly relevant to the instant proceeding and the record in this docket would have been silent on significant matters had Southern not filed its Reply with referenced to these other relevant matters.

Southern offered a cohesive, structured argument that : 1) the SMR market, not the CMRS market as a whole, was the relevant focus of consideration; 2) that Nextel was the overwhelmingly dominant SMR and that granting the requested assignment would

---

<sup>10</sup> Similarly, Southern was not obliged to seek special permission from the FCC to file its Reply.

further facilitate that dominance; 3) that the FCC should utilize this proceeding to balance the inequities in the SMR market, such as by conditioning any license assignments on Nextel providing roaming to other interested, technically-compatible digital SMRs; explained why previous decisions rest on different facts and should not be controlling; and 5) corrected various statements made by Nextel concerning Southern's service quality, commitment to do business and the impact of this proposed assignment on the SMR market as a whole.

**SOUTHERN'S REPLY DOES NOT UNFAIRLY PREJUDICE THE PARTIES**  
**OR DELAY FINAL ACTION**

Motorola asserts that the FCC should strike Southern's Reply because it would unduly prejudice Motorola and Nextel by delaying final action on their underlying assignment. Southern disagrees with this argument. First, if Motorola and Nextel are right that the Southern Reply offers no new facts or evidence to the Commission, it seems clear that making the Reply a part of the record in this matter would have no negative impact on these proceedings and should neither delay nor affect the FCC since it offers no new information for consideration.

Motorola fails to show how either Nextel or Motorola will be prejudiced by the filing of Southern's Reply or how the processes of the FCC were or will be abused by it. Further, Motorola ignores the benefit to be gained through acceptance of the Southern filing. Motorola does not discuss the importance of the FCC public interest examination under Section 310(d) of the Communications Act of 1934, as amended, when considering

the assignment of licenses, and the value of creating a competitive Specialized Mobile Radio (“SMR”) environment. Southern urges the FCC to consider the Southern Reply and accord it the weight that it concludes is appropriate as it examines yet another transfer of control of spectrum into the hands of a Nextel affiliate.

**SOUTHERN’S EX PARTE NOTICE WAS IN FULL COMPLIANCE  
WITH FCC REQUIREMENTS**

Nextel contends that Southern’s ex parte tiling notice “raises a new issue regarding Southern’s own compliance with the Commission’s rules in this proceeding” because the letter states that there was ex parte discussion of the relationship between Motorola and Nextel in the 700 MHz guardband auction “as stated in their Form 175 filing” as it relates to Nextel’s spectrum concentration. Nextel notes that Nextel and Motorola have disclosed their 700 MHz guardband auction plans as required in the Form 175 process and can not respond to Southern’s ex parte comments.

Southern has fully complied with its notice requirement under Section 1.1206 of the Commission’s rules. Southern provided a copy of the Reply which formed the basis for its meeting with the FCC staff and indicated in its formal ex parte letter that mention had been made about the guardband auction plans. Southern stated the extent to which the 700 MHz issue was discussed and cited the information as limited by Nextel’s Form 175 filing. There was no real discussion beyond the fact that Nextel and Motorola had

---

<sup>11</sup> If Nextel were correct that Southern’s Reply was unauthorized, it would nonetheless be a necessary filing because it was the substance upon which the exparte presentation was made and was offered during the presentation.

joined in partnership to increase Nextel's dominance in the SMR market. There was no greater discussion and Southern should not be criticized for not providing more information about an incidental mention of an FCC filing.

### CONCLUSION

WHEREFORE, Southern Communications Services, Inc., d/b/a Southern LINC hereby requests that the FCC deny the Motorola Motion to Strike and the Nextel Motion to Dismiss, deny the assignment of licenses to FCI 900, Inc. requested by Motorola, Inc., Motorola SMR, Inc., and Motorola Communications and Electronics, Inc. or, in the alternative, condition the approval of these transfers to provision of roaming to technically-compatible digital SMRs by Nextel and its affiliates.

Respectfully submitted,

*Carolyn Tatum Roddy*

Carolyn Tatum Roddy  
Troutman Sanders LLP  
Bank of America Plaza  
600 Peachtree Street, N.E.  
Suite 5200  
Atlanta, GA 30308-22 16  
404-885-3 141

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

Dated: January 24, 2001



## CERTIFICATE OF SERVICE

I, hereby certify that I have this day served a true and exact copy of the within and foregoing REPLY OF SOUTHERN LINC to Motorola's Application for Consent to Assign 900 MHz SMR Licenses to FCI 900, Inc., DA No. 00-2352, via first-class United States Mail, postage paid and properly addressed to the following:

Magalie R. Salas, Esq.           **(ORIGINAL PLUS 4 COPIES)**  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room TW-B204  
Washington, D.C. 20554

Michael Powell, Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., 8<sup>th</sup> Floor  
Washington, D.C. 20554

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

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

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

Mr. Thomas J. Sugrue  
Bureau Chief, Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12<sup>th</sup> 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 12<sup>th</sup> 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 12<sup>th</sup> Street, S.W.  
Room 4-A234  
Washington, DC 20554

Mr. Pieter Van Leeuwen  
Chief Economist  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room 4-A234  
Washington, DC 20554

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

Office of Media Relations  
Reference Operations Division  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room CY-A257  
Washington, DC 20554

International Transcription Services, Inc.  
445 12<sup>th</sup> Street, S.W.  
Room CY-B402  
Washington, DC 20554

Ms. Karen A. Kincaid  
Wiley, Rein & Fielding  
1776 K Street, N.W.  
Washington, DC 20006

Mr. James Wheaton  
Manager, Compliance  
FCI 900, Inc.  
200 1 Edmund Halley Drive  
Reston, VA 20191

Robert S. Foosaner  
Senior Vice President, Government Affairs  
Nextel Communications, Inc.  
2001 Edmund Halley Drive  
Reston, VA 20191

Lawrence R. Krevor  
Senior Director, Government Affairs  
Nextel Communications, Inc.  
2001 Edmund Halley Drive  
Reston, VA 20191

Laura L. Holloway  
Director, Government Affairs  
Nextel Communications, Inc.  
2001 Edmund Halley Drive  
Reston, VA 20191

James B. Goldstein  
Regulatory Counsel  
Nextel Communications, Inc.  
2001 Edmund Halley Drive  
Reston, VA 20191

Mary E. Brooner  
Director, Telecommunications Strategy and Regulation  
Motorola, Inc.  
1350 I Street, N.W., Suite 400  
Washington, DC 20005

Dated: January 24, 2001.

Carolyn Tatum Roddy  
Carolyn Tatum Roddy