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

JAN - 9 2001

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. )

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

**REPLY OF SOUTHERN LINC**

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Date: January 9, 2001

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## **EXECUTIVE SUMMARY**

Southern Communication Services, Inc., d/b/a Southern LINC (“Southern”) requests that the FCC deny the assignment of licenses requested by Motorola and its subsidiaries to FCI 900, Inc., a Nextel subsidiary. Southern urges the FCC to conclude that the transaction will not satisfy the public interest standard required under Section 310(d) of the Communications Act of 1934, as amended, because Nextel’s massive concentration of spectrum and market dominance will stifle competition in the trunked dispatch market, the relevant market for the public interest examination in this case. Southern shows that prior decisions by the FCC and Department of Justice are not controlling because they were based on different facts and provided an overly optimistic view of the growth of competition in the SMR market. Southern urges the Commission to use this proceeding to help balance the inequities caused by its asymmetrical regulatory treatment of the Specialized Mobile Radio (“SMR”) industry. If the assignment is granted, Southern urges the FCC to condition the grant on the requirement that Nextel provide roaming services to Southern and other interested technically-compatible, digital SMRs.

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REPLY OF SOUTHERN LINC

INTRODUCTION

Southern Communications Services, Inc. d/b/a Southern LINC (“Southern”) hereby respectfully submits its Reply to the Opposition of Nextel Communications, Inc. (“Nextel Opposition”) and the Reply Comments of Motorola, Inc. (“Motorola Reply”), filed in the above-captioned proceeding on November 30, 2000. This Reply incorporates by reference Southern’s previous Comments (“Southern Comments”) filed in response to the Federal Communication Commission (“FCC”) Public Notice of the above-described applications of 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”).’

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<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 Southern Comments filed previously in this Docket assert that the Motorola applications should be denied for failure to satisfy the requirements of Section 310(d) of the Communications Act of 1934, as amended (“Act”). This provision requires that the assignment be in the “public interest, convenience, and necessity.”<sup>2</sup> Southern contends that the transaction will not yield affirmative public interest benefits because Nextel’s massive concentration of spectrum and market dominance will stifle competition in the trunked dispatch market, the relevant market for the public interest examination in this case. Southern shows that prior decisions by the FCC and the Department of Justice (“DOJ”) are not controlling because they were based on different facts and provided an overly-optimistic view of the growth of competition in the Specialized Mobile Radio (“SMR”) market. Southern urges the Commission to use this proceeding to help balance the inequities caused by its asymmetrical regulatory treatment of the SMR industry. If the assignment is granted, Southern urges the FCC to condition the grant on the requirement that Nextel provide roaming services to Southern and other interested technically-compatible, digital SMRs.<sup>3</sup>

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<sup>2</sup> See *In re Applications of Various Subsidiaries and Affiliates of Geotek Communications, Inc.*, DA 00-89, Memorandum Opinion and Order, 15 FCC. Rcd. 790, 794-795 (“Geotek”) for discussion of requirements of Section 310(d) as applied in the context of the license assignment context.

<sup>3</sup> In support of the request that the FCC condition any assignment on the grant of roaming rights, Southern incorporates by reference its comments filed January 5, 2001, *In the Matter of Automatic and Manual Roaming Obligations Pertaining to Commercial Radio Services*, WT Docket No. 00-193, Notice of Proposed Rulemaking, FCC No. 00-361 (Nov. 1, 2000) filed January 5, 2001. A copy is attached as Exhibit “A”.

The Motorola Reply and Nextel Opposition filed on November 30, 2000, have failed to show either that the assignment is in the public interest or that the assertions made by Southern are invalid.

## DISCUSSION

### **I. The relevant market for purposes of examining Section 310(d) is the trunked dispatch market.<sup>4</sup>**

Motorola and Nextel argue that trunked dispatch customers have numerous competitive options and that the Commercial Mobile Radio Service (“CMRS”) market, rather than the trunked dispatch market, is the relevant one. Nextel notes that the DOJ and FCC have considered this question.

Southern disagrees with these assertions. The trunked dispatch market has not been assimilated into the greater interconnected mobile voice market. The trunked dispatch market continues to serve a distinct group of government and business customers who purchase communications products to serve their particularized dispatch needs. The iDEN system employed by Nextel and Southern is not interoperable with other CMRS services and the functions they perform are not comparable.

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<sup>4</sup> The FCC considered both the interconnected mobile phone and dispatch (mobile voice and trunked dispatch) markets when it considered whether SMR licenses should be transferred by bankrupt Geotek Communications, Inc. to the solvent Nextel affiliate FCI 900, Inc. See *Geotek*, 15 FCC Rcd. 790, 802. Southern has concluded that the above-captioned applications should be denied under an examination of either market but urges the FCC to recognize the unique qualities of the trunked dispatch marketplace and consider the trunked dispatch market as the relevant one for all matters affecting SMRs.

Although Nextel may argue that it competes in the greater interconnected voice market - cellular, broadband PCS, and SMR - the degree to which it attracts the same type of customer as individual consumer-oriented providers such as Verizon Wireless and VoiceStream Wireless is irrelevant. What is important is the fact that SMR is the only service capable of addressing the needs of customers that demand both dispatch and interconnected voice in the same handset. Because that sizable universe of customers can only look to SMR providers for their needs, SMR providers must be viewed as a separate industry for all purposes.

The Commission's *Fifth Report* on CMRS competition mentions that several cellular and broadband PCS carriers "attempt to provide" dispatch service by providing group calling features.<sup>6</sup> However, those are marketing-driven pricing plans, not dispatch service; the FCC actually refers to some plans as "family-oriented price plans."<sup>7</sup> The *Fifth Report* mentions only one non-dispatch carrier, SBC, that offers a service that approximates dispatch.<sup>7</sup> Even that, though, provides only a streamlined conference call service in which simultaneous calls are limited to 30 persons in a pre-programmed group which is less than is possible with real dispatch.

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<sup>5</sup> 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. 71 (Aug. 3, 2000) ("Fifth Report on Competition").

<sup>6</sup> Id.

<sup>7</sup> Id.

Even if 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.

**II. Nextel dominates the trunked dispatch market and granting the Motorola assignments would further allow Nextel to dominate and control the market and would make it even more difficult for competition to develop.\***

Nextel clearly dominates a highly concentrated market and Southern's Comments outlined Nextel's increasing dominance of licenses for services. The FCC itself has acknowledged that "[d]igital SMR remains dominated by one provider, Nextel, which in 1999 had over 4.5 million subscribers . . . ." <sup>9</sup> At this time Nextel's network has coverage in more than 400 cities, including 178 of the top 200 markets in the United States and has over 6.1 million subscribers. As of June 1999, Nextel had launched its iDEN-based services in at least 187 BTAs, which contained 76% of the U.S. population. Nextel has the only nationwide network, and it continues to amass spectrum.<sup>10</sup> Moreover, its majority-

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\* Southern takes exception to Nextel's statement that no new entrant or existing provider will be harmed by Nextel's acquisitions in this proceeding. See Nextel Opposition at 10. Southern believes that it will be disadvantaged. Southern also finds it hard to believe that Neoworld License Holdings, LLC or other similarly situated companies will not find it more difficult to pursue plans for a 900 MHz iDEN dispatch and voice system if Nextel has already concentrated a vast amount of 900 MHz licenses. Such a statement can only be considered a nonsensical attempt to ignore business realities.

<sup>9</sup> 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 No. 00-361 (Nov. 1, 2000) ("NPRM") at ¶ 11.

<sup>10</sup> As stated on Nextel's web site, < [http://www.nextel.com/information/fact\\_background.shtml](http://www.nextel.com/information/fact_background.shtml) >.



owned affiliate, Nextel Partners, is establishing facilities and gaining subscribers in the smaller and mid-size areas of the country that Nextel does not reach.’<sup>1</sup>

At the same time, the list of other significant players, never long to start with, is shrinking. In its *Fifth Report* on competition, the FCC lists just five major SMR carriers: Southern and Nextel-controlled Nextel Partners each have 200,000 subscribers; Mobex has 65,000; Chadmoore Wireless Group has 37,475; and Securicor Wireless has 11,400. One of these, Chadmoore Wireless Group is now being purchased by Nextel. According to industry reports, Chadmoore holds nearly 5,000 800 MHz SMR licenses covering 55 million POPS in 180 markets throughout the United States.”

Nextel has also been aggressively acquiring licenses through auctions. In the recent auction for 800 MHz General Category SMR licenses (Auction No. 34), Nextel was awarded 800 of the 1,053 licenses offered.<sup>13</sup> Additionally, in the recent auction for 800 MHz Lower 80 SMR licenses (Auction No. 36), Nextel was the successful bidder on 2,579 of the 2,800 licenses offered.<sup>14</sup> Nextel’s success in these auctions is directly related to its dominance in the major markets. Prior to the first SMR auction, it amassed a vast number

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<sup>11</sup> Nextel and Nextel Partners, given its presumably Nextel-controlled Board, should be considered one for purposes of this proceeding.

<sup>12</sup> Nextel Acquires Chadmoore, Mobile Radio Technology, Oct. 2000; Nextel’s Warm Handshake; Suitor Makes Offer Chadmoore Cannot Refuse. Wireless Week, Aug. 28, 2001 at 1.

<sup>13</sup> Wireless Telecommunications Bureau Grants 800 MHz Specialized Mobile Radio (SMR) Service General Category (851-854 MHz) and Upper Band (861-865 MHz) Auction Licenses, Public Notice, DA 00-2874 (Dec. 20, 2000).

<sup>14</sup> 800 MHz SMR Service Lower 80 Channels Auction Closes, Public Notice, DA 00-2752 (Dec. 7, 2000).

of 800 MHz licenses throughout the country and is able to dominate the 800 MHz “overlay” auctions because it controls so many of the underlying licenses. Bidders without an existing foothold in the 800 MHz band simply cannot bid on an equal basis with Nextel. Given Nextel’s already dominant 800 and 900 MHz spectrum holdings, it is clear that market entry by future competitors will be made more difficult by problems in acquiring an adequate number of licenses.

The FCC and DOJ decisions have consistently spoken optimistically” about the emergence of competition and convergence with other wireless carriers, but this competition has not emerged and, in fact, the field of SMR competition has contracted because of Nextel’s continued acquisition of licenses. Any decisions premised on this emerging competition should be considered suspect because the SMR marketplace has not responded as anticipated. The FCC has been anticipating competitive entry in the SMR trunked dispatched market for more than four years. These assessments were not made in accordance with the Department of Justice merger guidelines. It is not clear how the analysis was done, but it is clear that the competition has not materialized as anticipated. To continue to make these unsupported assertions without consideration of the Department of Justice merger guidelines is arbitrary and capricious.

There are only two sets of frequencies available for trunked dispatch SMR operations: 800 and 900 MHz spectrum. The availability of 800 and 900 MHz spectrum is crucial to the competitive viability of SMR providers currently in the market, and to companies interested in entering the SMR market because technological constraints

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<sup>15</sup> *Geotek* at 801.

prevent SMR providers committed to a particular technology from moving freely to other spectrum bands that may be available for other CMRS services. A total of approximately 19 MHz is available for use by SMRs, 14 in the 800 MHz band and 5 in the 900 MHz band. While existing equipment places limitations on the interchangeability of 800 and 900 MHz SMR spectrum,<sup>16</sup> Motorola is conducting research with regard to the development of an iDEN handset that will incorporate both bands. The availability of 900 MHz frequencies in sufficiently large blocks will be essential to a competitor's ability to expand its service because there is virtually no more 800 MHz spectrum available.

With its national spectrum holdings in the 800 MHz and 900 MHz bands, Nextel has near complete control over the 800 and 900 MHz spectrum that is required by existing or potential new entrants to provide their services and develop new product lines. This spectrum dominance results in Nextel's control of the national network necessary to maintain a competitive SMR market and gives it the ability to raise prices and exclude competitors and potential new entrants from the market. The record is abundantly clear that Nextel has strategic dominance in the SMR market by virtue of its acquisition of 800 and 900 MHz SMR spectrum.

Further, the 220 MHz band is not a reasonable alternative to 800 and 900 MHz SMR spectrum. While the Commission has made 220 MHz spectrum available for development in the SMR market as a possible alternative to 800 and 900 MHz SMR spectrum, it has not proved to be a viable substitute. No major SMR manufacturer

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<sup>16</sup> See Specialized Mobile Radio Service, Wireless Telecommunications Bureau at <http://www.fcc.gov/wtb/smrs>.

provides equipment compatible with 220 MHz spectrum. The equipment manufacturers which dominate the 800 and 900 MHz SMR spectrum markets (Motorola, Kenwood, Ericsson, Uniden) are notably absent from the 220 MHz equipment market. (SEA and Intek Global are the only manufacturers offering equipment that supports 220 MHz spectrum.)

The failure of the Commission to sell a substantial number of licenses in the first 220 MHz auction, and the low prices the Commission had to settle for when it held a follow-up auction, also demonstrate that SMR providers do not consider 220 MHz spectrum a competitively viable alternative.<sup>17</sup> It is clear that 220 MHz spectrum subjects adjoining systems to interference and cross-talk and that an SMR provider would need sizable investment to develop the infrastructure necessary to eliminate those sorts of problems and reach economies of scale to use it to compete. Even Nextel acknowledged in *United States v. Motorola Inc., and Nextel Communications, Inc.*, CIV. A. 94-233 1, Ex.8 at 121 (D.D.C. 1995) that the number of 220 MHz systems constructed “cannot compare with the incumbent systems at 800 and 900 MHz” and estimated that 220 MHz licensees “may” capture 4 percent of the SMR market by 2004, “assuming a reasonable licensing and construction schedule.” The consensus appears to be that 220 MHz spectrum is simply not a viable alternative to 800 and 900 MHz SMR spectrum.

Nextel’s assertion that the 1.9 GHz spectrum can be used as a substitute for 800 and 900 MHz is similarly not valid. This is evidenced by their decision to withdraw from the C & F Block PCS auction without acquiring new licensing authority.

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<sup>17</sup> See *FCC Closes 220 MHz Auctions; Raises \$21.6 Million*, Network Briefing, Oct. 27, 1998; *FCC’s Reauction of 220 MHz Licenses Draws to a Close*, Wireless Today, June 3.

Southern also takes exception to Nextel's assertion that it appears to have "chosen to deploy a business strategy that relies on its utility status to acquire private spectrum, convert it to commercial use and then depend on regulatory intervention to achieve its business goals." Nextel Opposition at 11. Southern recently spent more than \$50 million in the 800 MHz General Category SMR auction alone (Auction No. 34) and has made numerous efforts to acquire more.

Nextel's assertions that Southern has "passed on numerous opportunities to acquire additional spectrum" is similarly without validity. Nextel Opposition at 10. Southern has actively sought to acquire additional licenses, although its efforts have been overshadowed by Nextel. In fact, Southern attempted to buy spectrum from Chadmoore Wireless Group and from the Geotek Communications bankruptcy trustee, but both these opportunities have gone to Nextel. Southern was the second highest bidder for spectrum in the recent 800 MHz General Category and Lower 80 SMR auctions (Auction Nos. 34 and 36) in which Southern aggressively competed with Nextel. Southern also expressed an interest in acquisition of the subject 900 MHz licenses before they were sold by Motorola without notice to Nextel. Southern's failed attempt to acquire spectrum, illustrates the difficulty of dealing with a market-niche monopoly such as Nextel. New entrants will have an even more difficult time competing with Nextel.

Southern rejects Nextel's assertion that its system is somehow technically superior because it uses 3 to 1 calling capability rather than Southern's 6 to 1 calling capability. Nextel Opposition at 13. Southern notes proudly that its service is widely used by public safety agencies, emergency services, school districts, rural local governments and public utilities because of its expansive and reliable coverage. Rather than being technologically

inferior, Southern's system is in fact more efficient in its use of spectrum. Of course, Nextel has less need to conserve spectrum in light of its overwhelmingly dominant spectrum position in comparison with other SMR providers.

Similarly, Nextel's ability to achieve the mobile telephone industry's highest average revenue per unit per month ("ARPU") is based on its dominant market position, i.e., its overwhelming spectrum advantage, its presence throughout the country and its anti-competitive decisions to withhold roaming opportunities **and to buy out** competitors. Instead of pointing to its high ARPU as a sign of its superiority, Nextel should recognize that these prices are inflated by the anti-competitive business strategy it pursues to acquire all available SMR spectrum, buy out all competitors which manage to acquire enough spectrum to implement a business plan, and slow roast any remaining competitors by denying essential services such as roaming.<sup>8</sup>

Motorola, even though it is a part-owner of Nextel, currently offers traditional, non-interconnected analog dispatch service in competition with Nextel. Thus, Motorola, a Nextel competitor, will be lost to the competitive marketplace upon assignment of the licenses above. The FCC has stated that "in the relatively near future, we believe that additional market entry is likely to ensure that competitive conditions facing consumers in these markets will improve." That is clearly not happening, and it becomes less likely every time Nextel consolidates more SMR spectrum.

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<sup>18</sup> For full discussion of Nextel's denial of FCC-ordered manual roaming services, see Southern's Roaming Comments, WT Docket No. 00-193, attached hereto.

<sup>19</sup> Geotek 15 FCC. Rcd. at 806.

**III. Nextel's assertion that Southern's arguments are not supported by new facts or circumstances to require a different decision than was previously made by the FCC and the United States Department of Justice is erroneous.**

Nextel asserts that Southern's arguments were rejected by the Department of Justice and the FCC, but it fails to recognize that these decisions were rendered on different facts and with an inaccurate and overly optimistic view of potential competition developing in the SMR marketplace. Promised competition to Nextel's SMR offering has not materialized. The market is increasingly concentrated by Nextel's acquisition of licenses by auction and individual purchase as attempted here. Nextel has not provided roaming capability to Southern, its largest competitor, and this has clearly stunted its growth. These matters, taken together, show that trunked dispatch is the relevant market and that this license assignment should not be approved.

Further, the cases cited by Nextel as a rejection of Southern's position involve different facts from the instant proceeding. Frequent reliance on the Commission's decision in *Geotek* is especially misplaced. In approving the transaction in *Geotek*, the FCC approved the assignment of 900 MHz licenses after concluding that "the effect of this transaction is that currently unused spectrum will be put to its highest valued use."<sup>20</sup>

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<sup>20</sup> *Geotek* ¶ 23.

In *Geotek*, the licensee was not providing service and approval of an assignment to Nextel from the bankruptcy trustee brought the licenses back into use. That is not the case here where the assignment by Motorola to Nextel has, in the words of the *Geotek* decision, the “negative implications of a horizontal merger.”<sup>21</sup> Motorola is now offering service under these licenses and will cease to provide service that competes with Nextel once the assignment is approved. This will reduce existing competition in the already highly concentrated trunked dispatch market.<sup>22</sup>

Further, Motorola is requesting assignment of licenses in major metropolitan markets while the *Geotek* decision involved only those licenses in smaller markets not included in the Nextel consent decree. In fact, the *Geotek* decision expressly stated “we emphasize that our analysis here is limited to the non-consent decree markets. These markets are generally smaller than the consent decree markets, which constitute essentially the fifteen largest U.S. metropolitan areas. Thus, the demand for trunked dispatch service should be correspondingly smaller in these markets, and the capacity available from 200 MHz licenses is largely relative to that demand.”<sup>23</sup> The FCC should not be deluded into thinking that 900 MHz band will be used to provide non-dispatch services. In *Geotek*, for example, Nextel stated that it intends to use the licenses it acquires in the provision of bundled services, including mobile voice telephony, work group calling, messaging and data. *Geotek* at 802. Similarly, on page 4 of Nextel’s

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<sup>21</sup> *Geotek* ¶ 23.

<sup>22</sup> *Geotek* ¶ 33.

<sup>23</sup> *Geotek*, 15 FCC. Rcd. 808.



Opposition to Southern Comments, Nextel notes that “Nextel competes in the CMRS marketplace, and it is the marketplace in which the subject 900 MHz SMR licenses will be deployed.” This did not occur with the licenses acquired from Geotek and there does not appear to be plans for Nextel to do that with Motorola’s 900 MHz licenses either. It would appear that Nextel misled the Commission in both *Geotek* and in this proceeding since Nextel has taken no steps to integrate 900 MHz frequencies into an efficient digital network. In fact, Neoworld has had to agree to pay Motorola for research and development costs estimated at \$5 million in an effort to obtain a 900 MHz digital handset. Therefore, the FCC should not presume that Nextel in its public interest analysis plans to make more efficient use of this spectrum than currently made by Motorola.

Finally, the *Geotek* decision is based on a presumption that competition will increase as the Bureau noted in *Geotek*:

Moreover, in the relatively near future, we believe that additional market entry is likely to ensure that competitive conditions facing consumers in these markets will improve. We are confident that entry can be relied upon to prevent competitive harm in this case because barriers to entry are low and numerous firms with qualifications and abilities to enter exist. In particular, we find that cellular and broadband PCS firms will have the ability to enter easily because they hold spectrum licenses, have relevant physical assets in place, have expertise in wireless technologies and markets, are ongoing businesses with recognizable brand names, and have ample capital resources. In addition, certain 220 MHz licenses have some of these attributes, and we find they are likely entrants as well. *Geotek*, 15 FCC. Rcd. at 806.

This competition has not become a reality.

As Southern noted in its comments filed previously in this proceeding, the FCC issued an order in 1997 which concluded that “entry into the dispatch market is not

inherently costly, technically challenging, or unduly time-consuming.”<sup>24</sup> Nextel cited this language as support for its position that its increased holdings of spectrum will not have an adverse impact on the trunked dispatch services marketplace. Southern contends that the language in this Bureau order is merely one more example of the failed expectation that competition will develop in the dispatch market. Southern disagrees about the difficulty of providing a dispatch function, and notes that anticipated competition has clearly not developed. As Southern noted in its comments filed previously in this proceeding, PCS and cellular carrier technology prevent them from readily using SMR dispatch spectrum since their systems are designed to provide interconnected mobile voice service and would need to be retrofitted to provide the very different one-to-many dispatch service. Further, there is no indication that trunked dispatch is part of future PCS and cellular carrier business plans as they have chosen to ignore SMR dispatch spectrum for years.<sup>25</sup>

**IV. The Commission should utilize this proceeding to balance the inequities created by the regulatory treatment of the SMR industry.**

The FCC has established a regulatory scheme for the cellular and broadband PCS services that ensures the existence of competition. For instance, FCC Rule Section

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<sup>24</sup> In re Pittencrieff Communications, Inc., DA 97-2260, released October 24, 1997, at ¶ 54.

<sup>25</sup> Southern also questions the accuracy of the average prices for dispatch cited in *Geotek* and thus, disagrees with the conclusion drawn from this statement of incomplete prices. Southern is confident that Nextel’s prices were not included in the average price for dispatch and that any conclusion based on these numbers is inaccurate. See *Geotek* 15 FCC. Rcd. 808.

22.942 contains a cellular cross-ownership prohibition which generally prevents a party from having an ownership interest in licenses or licensees for both cellular channel blocks in overlapping cellular geographic service areas. Cellular also was developed in a way which dictated at least two competitors with roughly comparable access to spectrum. Even the amount of allocated spectrum, the basic foundation of any mobile service, predisposes cellular to more competition than SMR: the Commission allocated 50 MHz to cellular but only approximately 19 MHz to SMR.<sup>26</sup> Due to those factors, Nextel has been able to accumulate the vast majority of 800 MHz SMR spectrum in most major markets and completely preclude potential competitors from gaining a foothold in the business. Thus, the number of different SMR providers that can obtain enough licenses to effectively compete in any one area is inherently limited significantly.

In contrast to cellular and PCS services, the SMR service does not have such competition-enhancing regulations. Proceedings, such as this one, should be used to instill safeguards approximating regulatory parity. Such action would support provisions in Section 6002(d)(3)(B) of the 1993 Budget Act which directed the FCC to enact “comparable” technical requirements for cellular, PCS, and SMR.<sup>27</sup>

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<sup>26</sup> See, e.g., In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Competition in the Commercial Mobile Radio Services Second Annual Report, 12 FCC. Rcd. 11266, 11309, FCC 97-75 (Mar. 25, 1997).

<sup>27</sup> Section 6002(d)(3)(B), 1993 Budget Act, 107 Stat. 312, 397.

**V. In the event the FCC grants these requests for assignment, Southern asks that finalization of the license grants be delayed until, at a minimum, Nextel successfully provides roaming services to other interested technically-compatible digital SMRs.**

Southern urges the FCC to deny the instant request for assignment of licenses from Motorola and its affiliates to FCI 900, a Nextel affiliate, as anticompetitive and thus contrary to the public interest requirements of Section 310(d) of the Communications Act. If the FCC determines that the assignments should be made, Southern requests that finalization of the assignments be delayed until roaming has been provided to requesting technically-compatible digital SMRs.

Southern has unsuccessfully made numerous requests that Nextel provide it roaming services-manual as required by the FCC or automatic if that is more easily accomplished. Southern strongly believes that the SMR market is not competitive and that the acquisition of more and more licenses by Nextel will hamper competition. The enforcement of roaming rights would clearly serve to help level the competitive playing field despite Nextel's massive concentration of spectrum and assist in mitigating the power acquired by Nextel through concentration of licenses and domination of the SMR market.

The FCC has frequently conditioned mergers based on its examination of the public interest under Section 310(d) and license assignments are subjected to the same analysis.\*\*

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<sup>28</sup> See, Application of GTE Corporation and Bell Atlantic Corporation, Memorandum Opinion and Order, 15 FCC Rcd 14032, CC Docket No. 98-184 (rel. June 16, 2000).

Southern strongly believes that the assignments should be denied but asks that assignment of the above-described licenses be conditioned upon provision of roaming to Southern and other technically compatible digital SMRs if approved.

**CONCLUSION**

WHEREFORE, Southern Communications Services, Inc., d/b/a Southern LINC hereby requests that the Commission 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,

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Dated: January 9, 2001

Attorneys for Southern LINC

**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)**  
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Dated: January 9, 2001.

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**EXHIBIT A**

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

<b>In the Matter of</b>	)	
	)	
<b>Automatic and Manual Roaming</b>	)	<b>WT Docket No. 00-193</b>
<b>Obligations Pertaining To Commercial</b>	)	
<b>Mobile Radio Services</b>	)	

**COMMENTS OF SOUTHERN LINC**

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## **EXECUTIVE SUMMARY**

In this proceeding, the Federal Communications Commission is considering whether to adopt an "automatic" roaming rule for Commercial Mobile Radio Service ("CMRS") systems. Southern Communications Services, Inc., d/b/a Southern LXNC ("Southern"), takes no position on whether such a rule should be adopted for cellular or broadband PCS systems. However, it strongly believes that the Commission must adopt an automatic roaming rule for Specialized Mobile Radio ("SMR") carriers that provide service using wide-area digital systems. This would primarily encompass Nextel Communications ("Nextel"), Nextel Partners, Southern, and Pacific Wireless Technologies, digital SMR carriers which utilize iDEN technology to operate in the 800 MHz band. Along with a roaming requirement, the Commission should also enact a specifically-tailored enforcement scheme through which carriers can file complaints against non-compliant carriers.

Simply stated, an automatic roaming rule for digital SMR carriers is necessitated by Nextel's dominance of the trunked dispatch market. Through that dominance, it has created a nationwide network that cannot be matched by any of its existing or potential competitors; it has amassed so much 800 and 900 MHz spectrum that other companies cannot establish meaningful systems of their own beyond their current regional coverage areas. The state of the U.S. SMR market exacerbates this problem: unlike the cellular and PCS markets, it is consolidating and there are fewer carriers today than ever before. This consolidation has been to the benefit of Nextel, removing any incentive for it to cooperate in any manner with the remaining players. Accordingly, Nextel refuses to enter into automatic roaming agreements with any non-affiliated

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U.S.-based carriers. Likewise, it has **refused** to enter even **manual** roaming agreements despite the Commission's **manual roaming** rule.

Nextel's **rejection** of **any** reasonable roaming agreements is highly detrimental to both consumers individually **and** the **SMR** industry generally. **Most obviously, the hundreds of** thousands of digital SMR customers in the **United** States who do not subscribe to Nextel or its **affiliate, Nextel Partners**, are unable to use their phone outside their carriers' regional coverage areas for critical communications, **whether** it be **emergency, business, or personal**. **Additionally**, any hope of **meaningful competition** in the **SMR** market is **stifled**, as neither **current** nor potential providers can or will be able to **offer** consumers the ability to roam. Toward that **end, far** from simply lawfully promoting a distinguishing feature of its product, **Nextel** is leveraging its **lock** on **the necessary spectrum** to **anticompetitive** advantage.

Also as explained in Southern's Comments, automatic roaming between digital **SMR carriers** is technically **and economically feasible**. **Analysis** on the **part of Southern and** Motorola, the **iDEN** vendor, **confirms** the **lack of any insurmountable technical hurdles**. From an **economic** standpoint, **Nextel's** cost of implementing automatic roaming would be **negligible** and **offset in** any event by revenues **from roaming fees**. **Additionally**, other **reasons for** enacting an automatic roaming **rule** are the need to work towards regulatory parity for SMR carriers (as opposed to cellular and PCS carriers) **and the fact that the remedies** available under existing law are not adequate.

Finally, **Southern takes this opportunity to raise antitrust concerns** evidenced by Nextel's **conglomeration** of **800 and 900 MHz SMR spectrum** and its **corresponding conduct**. **W e** Southern **acknowledges** that **full** pursuit of **such concerns** is appropriate for **another** forum, it **believes** they are pertinent to this **proceeding because** they **further illustrate** Nextel's

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**anticompetitive behavior and**, hence, the need for an automatic **roaming** rule. In short, Southern believes **Nextel** has obtained monopoly power and controls an **essential** facility – 800 and 900 **MHz SMR** spectrum – and that its refusal to enter roaming agreements to allow use of that facility may **constitute unlawful conduct**.

The **Commission** first **sought comment on an** automatic roaming rule over four years ago. In the interim, the **SMR** playing **field** has tipped **further away from** the competitive goals of the Telecommunications Act **of 1996**. The Commission must now take a **step toward** remedying **that** imbalance by adopting the automatic roaming **rule** and ancillary **enforcement** regulations proposed by Southern.



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

**in the Matter of** )  
 )  
**Automatic and Manual Roaming** ) **WT Docket No. 00-193**  
**Obligations Pertaining To Commercial** )  
**Mobile Radio Services** )

**COMMENTS OF SOUTHERN LINC**

Pursuant to Section 1.415 of the Rules of the Federal Communications Commission, Southern Communications Services, Inc., d/b/a Southern LINC ("Southern"), respectfully submits Comments in response to the Notice of Proposed Rulemaking ("NPRM") released November 1, 2000 in the above-captioned matter.<sup>1</sup> In this proceeding, the Federal Communications Commission is considering whether it should adopt an "automatic" roaming rule for Commercial Mobile Radio Service ("CMRS") systems and, if so, whether such a rule should be sunset at some point in the future. It also asks whether it should sunset the "manual" roaming rule that is currently applicable to CMRS systems.

Southern proposes that the Commission adopt an automatic roaming rule for digital Specialized Mobile Radio ("SMR") carriers, pursuant to which carriers with technically compatible systems would be required to enter automatic roaming agreements upon request. Southern also proposes that the Commission retain and not sunset the manual roaming rule unless it adopts an automatic roaming rule. If it adopts an automatic roaming rule, it should not set a sunset date for it. Southern takes no position on whether automatic roaming should be mandated for cellular or broadband PCS systems.

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<sup>1</sup> *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 No. 00-361 (Nov. 1, 2000) ("NPRM").*

As explained herein, the ability to roam is **highly** important to mobile phone customers. **When** outside their carriers' coverage **area**, **an** inability to roam not only prevents them from making **ordinary** business or personal calls, but also **often** prevents them **from making** the life-saving **calls** contemplated by the E-911 initiative or from **taking** advantage of **the** disabled access provisions of the Telecommunications Relay Service ("TRS") **and** TTY **initiatives**. **Unfortunately**, due to market **failure** in the **SMR industry**, Nextel Communications ("Nextel"), the only SMR carrier with **a** nationwide network, has refused to enter roaming agreements with any domestic carriers other than its majority-owned affiliate, **Nextel Partners**. As such, **Nextel** is depriving hundreds of thousands of **SMR** customers of **the** ability to roam.

**Southern** would note that it uses several terms throughout these Comments **as terms** of art. **When referring** to the **SMR service**, Southern is indicating the universe of **all SMR carriers**. **In referring** to the **SMR industry**, Southern is indicating the subset of SMR carriers that provide **trunked** dispatch services. **In referring** to **digital SMR**, **Southern** is **further** narrowing the discussion to wide-area digital **SMR**, which is primarily provided on Motorola's **iDEN** technology platform by Southern, Nextel, **Nextel Partners**, and Pacific Wireless Technologies ("Pacific Wireless"). While the SMR service encompasses **both** analog **and** digital **SMR**, at **this** time **implementation** of **an** automatic roaming **requirement** is of concern mainly to **digital** carriers with extensive service footprints. Unless otherwise indicated, **SMR service**, **SMR industry**, and **digital SMR**, or derivations of them, should **be** given **the** meanings **set forth** in this paragraph.

## **BACKGROUND**

Southern LINC operates **a** state-of-the-art digital wide-area SMR system **covering** 127,000 square miles and serving over 200,000 customers in Georgia, Alabama, the panhandle of Florida, **and** the southeastern third of Mississippi. It provides the most comprehensive

**geographic coverage** of any mobile wireless service in Alabama and Georgia; its system is not limited to major metropolitan areas and highways corridors, but **serves** the **extensive rural** territory within **its** footprint as **well**. In fact, Southern serves areas of **Florida**, Georgia Mississippi, and Alabama that are not served by any other advanced wireless **dispatch provider**. In part **because** of this expansive and reliable **coverage**, its **service** is **widely** used by statewide public safety **agencies**, school districts, rural local governments, public utilities, and emergency **services** such as ambulance companies. It is also utilized by commercial **entities** and other **government entities** in both urban and **rural areas**.

Southern is **considered** a "covered **SMR**" for purposes of **the** roaming rules. Its system operates on the **800 MHz SMR** band using Motorola's **iDEN technology**, which **offers capabilities** including dispatch, interconnected voice, **internet** access, and data transmission. **While** Southern's system provides its **customers with** some of the most **sophisticated** wireless **capability** available, due to **the** current state of technology its customers **can** only roam **with other** carriers using the **800 MHz SMR iDEN** platform. For most of the United **States**, and **certainly** the areas adjacent to its coverage **area**, its only options for roaming partners **are** Nextel and Nextel Partners. In the several markets where **their coverage** overlaps, **Southern** competes vigorously **with** Nextel and Nextel Partners for **customers that want** a service **that provides** both dispatch and interconnected **voicc**.

Nextel has **roaming agreements** with its **close affiliate**, Nextel **Partners**, which commenced operation in January 1999 with the general' goal **of introducing the** Nextel brand to **the** small and mid-size markets where it does not presently **have** coverage. It is approximately 32% **owned** by Nextel, deals in its brand, **contracts** with it for various support **services**, and

shares its switches.” **Nextel Partners claims** its relationship with Nextel is “**an** integral part of our strategy” **and** boasts of an exclusive roaming partnership under which it is **the** sole provider of roaming services to Nextel customers who **travel in its markets.**<sup>3</sup> In **Nextel Partners’** most recent SEC Form **10-Q**, it **admits** that Nextel “has certain **approval** rights that **allow** it to exert significant influence over our **operations.**”<sup>4</sup> Southern submits that for **purposes** of securing voluntary automatic roaming agreements, Nextel and **Nextel Partners are** essentially one and the same. **Certainly**, Nextel Partners would refuse to enter any roaming agreements. without **Nextel’s** approval; at the least, its presumably **Nextel-controlled** Board would direct any **decisions.**

#### **DISCUSSION**

Southern has sought for **years** to obtain an agreement in **which** its customers could roam on **Nextel’s national network.** However, Nextel has steadfastly **refused to permit** Southern’s **customers** to roam on its **system** either **manually** or automatically. With regard to manual roaming, Nextel **essentially** claims that technical issues still need to be worked out. As explained further below, Southern **believes** that any **technical** issues **are easily** resolvable and that **Nextel** is **unreasonably** delaying implementation. This failure to allow Southern’s **customers** to even manually roam on its system is highly illustrative of **the** depth of its **uncooperativeness,** especially in light of **the** FCC’s manual **roaming rule.**

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<sup>2</sup> As stated on Nextel Partners' web site at <http://www.nextelpartners.com>.

<sup>3</sup> *Id.*

<sup>4</sup> Nextel Partners' SEC Form 1 O-Q for the Quarter Period Ended Sept. 30, 2000, p. 33.

I. THE FCC SHOULD ADOPT AN AUTOMATIC ROAMING RULE FOR DIGITAL **SMR CARRIERS**

The *NPRM* marks the Commission's third pass at an automatic roaming rule. It first considered such a rule over four years ago in connection with its adoption of the manual roaming rule.<sup>5</sup> It connection with that same rulemaking, it sought additional comments in December 1997.<sup>6</sup> The rulemaking remained pending until August 2000, when the Commission reiterated its commitment to the manual roaming rule but held that the record had grown too stale to issue a decision with regard to automatic roaming.<sup>7</sup> Nonetheless, Southern had participated vigorously in that rulemaking, submitting pleadings contending that digital SMR carriers needed an automatic roaming requirement to achieve regulatory parity and compete against Nextel, which in 1996 already had a nationwide footprint but was not allowing other carriers to roam on it.<sup>8</sup>

Since 1996. Southern has continued to press its case through numerous *ex parte* presentations.<sup>9</sup> The Commission announced in August 2000 that it needed to refresh the record

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<sup>5</sup> *In the Matter of Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, CC Docket No. 94-54, Second Report and Order and Third Notice of Proposed Rulemaking, 11 FCC Rcd. 9462, FCC No. 96-284 (1996) ("*Second R&O*").

<sup>6</sup> *Commission Seeks Additional Comment on Automatic Roaming Proposals for Cellular, Broadband PCS, and Covered SMR Networks*, CC Docket No. 94-54, Public Notice, DA 97-2558 (Dec. 5, 1997).

<sup>7</sup> *In the Matter of Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, CC Docket No. 94-54, Third Report and Order and Memorandum Opinion and Order On Reconsideration, 15 FCC Rcd. 15975, 15976, FCC No. 00-251, ¶ 3 (2000) ("*Third R&O*").

<sup>8</sup> *In the Matter of Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, CC Docket No. 94-54, Reply Comments Of The Southern Company (Nov. 22, 1996); Supplemental Comments of Southern Company (Jan. 5, 1998).

<sup>9</sup> See, e.g., February 18, 2000 letter from Southern Communications Services to Magalic R. Salas, CC Docket No. 94-54.

due, in part, to "the rapid expansion and development of the CMRS market in the intervening years . . . ." <sup>10</sup> While that may be true in regard to the cellular and PCS segments of the CMRS market, the SMR market has been contracting rapidly and has become more concentrated in Nextel's hands. In fact, Nextel acquired Pittencriff Communications, a major provider, and is set to acquire Chadmoore Wireless Group, another major provider. Additionally, in January 2000 the FCC approved the assignment of Geotek Communications' 191 900 MHz SMR licenses to Nextel (with the exception of licenses in markets covered by a consent decree Nextel entered with the Department of Justice).<sup>11</sup> Consequently, competition among SMR providers has not increased and it is business as usual with regard to Nextel's refusals to enter into roaming agreements. Despite folding several of its significant competitors into its system and still being the only SMR provider with a national footprint, Nextel has yet to allow Southern or any other non-affiliated U.S.-based carrier to roam with it on even a manual basis.

As explained below, an automatic roaming rule is required due to the consolidation of the SMR industry, Nextel's dominance in this market, and its unwillingness to voluntarily allow automatic roaming on its network. The reality of the situation is that the SMR industry is experiencing market failure and there will not be significant competition unless Nextel is required to allow other digital SMR carriers to automatically roam on its system. Such roaming is technically feasible and the public interest benefits would outweigh the costs. Additionally, implementation of a rule would be a significant step toward equalizing the regulatory disparity between the SMR service and the cellular and broadband PCS services. FCC action to address

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<sup>10</sup> *Third R&O*, 15 FCC Rcd. at 15976, ¶ 3.

<sup>11</sup> *In re Applications of Geotek Communications, Memorandum Opinion and Order*, 15 FCC Rcd. 790,806, DA 00-89, ¶ 35 (2000).

unreasonable or discriminatory roaming behavior would serve to correct abuses that marketplace forces cannot.

**A. SMR Providers Constitute A Distinct Industry For Purposes Of This Analysis**

As an initial matter, the Commission should focus only on competition between bunched dispatch SMR providers to determine whether an automatic roaming rule should be implemented for digital SMR carriers. Although Nextel may argue that it competes in the greater interconnected voice market - cellular, PCS, and SMR - the degree to which it attracts the same type of customer as individual consumer oriented providers such as Verizon Wireless and VoiceStream Wireless is irrelevant. What is important is the fact that digital SMR is the only service capable of addressing the needs of customers that demand both advanced, digital dispatch and interconnected voice in the same handset. Because that sizable universe of customers can only look to digital SMR providers for their needs, the FCC must view them as a separate industry for roaming purposes.

Southern would note that the Commission's *Fifth Report on CMRS* competition mentions that several cellular and PCS carriers "attempt to provide" dispatch service by providing group calling features,<sup>12</sup> However, those are marketing-driven pricing plans, not dispatch service; the FCC actually refers to some plans as "family-oriented price plans."<sup>13</sup> The *Fifth Report* mentions only one non-dispatch carrier, SBC, that offers a service that approximates dispatch." Even that,

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<sup>12</sup> *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. 71 (Aug. 3, 2000) ("Fifth Report on Competition").*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

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though, ~~provides only~~ a ~~streamlined~~ conference call service in which ~~simultaneous~~ calls are ~~limited~~ to 30 persons in a ~~pre-programmed~~ group, less than is ~~possible~~ with ~~real dispatch~~.

**B. Manual Roaming Is Not A Viable Substitute For Automatic Roaming**

~~Also~~ as an initial matter, the FCC ~~should~~ not allow the existence of ~~the manual~~ roaming rule to weigh against enactment of ~~an~~ automatic roaming rule. ~~Although~~ Southern believes that the ~~manual roaming~~ rule has its ~~place~~, manual ~~roaming~~ is extremely ~~cumbersome~~, ~~often~~ requiring a customer to ~~wade~~ through a series of voice mail prompts to ~~enter~~ the roaming process or, worse, to place an entirely new call to reach a manual roaming operator. In a transaction that can take over five minutes; ~~the customer~~' must provide the operator with credit card and calling information. Even back in October 1996, ~~in~~ comments filed in this ~~rulemaking's predecessor~~, the ~~Alliance~~ of Independent ~~Wireless~~ Operators ~~characterized manual roaming~~ as a "technological dinosaur" and noted that in its experience, ~~95%~~ of ~~customers prefer~~ not to place ~~calls at all~~ rather than deal with it.<sup>15</sup>

For a public that ~~has~~ become accustomed to ~~the~~ type of ~~seamless connections~~ provided by automatic ~~roaming~~, it is ~~safe~~ to say ~~that the~~ ability to ~~offer manual roaming~~ would not give a carrier ~~the~~ same competitive ~~edge~~. Nor ~~would~~ manual roaming give customers the same ~~degree~~ of ~~convenience and access~~ to safety features. Additionally, from ~~an~~ implementation ~~standpoint~~, it makes no sense to make the technical changes necessary to implement ~~manual~~ roaming ~~when~~ ~~carriers can~~ move to automatic roaming with ~~less~~ effort and expense.

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<sup>15</sup> *In the Matter of Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, CC Docket No. 94-54, Comments of the ~~Alliance~~ of ~~Independent~~ ~~Wireless~~ Operators, p. 8 (Oct. 4, 1996).



**C. The- Consolidated Nature Of The SMR Industry And Nextel's Dominant Position Prevent Market Forces From Ensuring The Widespread Availability Of Roaming Services**

In the *NPRM*, the Commission states that it may **be** in the public interest to **impose** roaming requirements generally if “market forces alone **are** not sufficient to **ensure** the widespread availability of competitive **roaming services, and where roaming** is technically **feasible** without imposing **unreasonable costs** on **CMRS providers.**”<sup>16</sup> With regard to an **automatic roaming requirement specifically**, it states that one should be adopted **only** if “it **is** **clear that providers'** current practices are unreasonably hindering the operation of the **market** to **the detriment of consumers.**”<sup>17</sup> As explained below, there *is* **market failure in the SMR** industry; market forces alone clearly have not been **and** will not be sufficient to **ensure** the **widespread** availability of competitive roaming services. To the detriment of **consumers, Nextel has** taken **advantage** of its dominant position to unreasonably constrain **existing and** potential competitors **from offering roaming.**

The two overriding features of **the** SMR industry - the fact that the number of significant players has **been** greatly consolidated and the fact that **Nextel** dominates it - **serve** to prevent operation of **the types** of competitive forces that **engender** voluntary automatic roaming **agreements.** Simply put, Nextel has little reason to cooperate with other **SMR licensees.** Currently, consumers who need combined dispatch and interconnected **voice functionality in an advanced digital form,** and who also want the ability to **roam** beyond a regional coverage area, simply do not **have** the **range** of options that cellular and PCS customers enjoy.

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<sup>16</sup> *NPRM* at ¶ 16.

<sup>17</sup> *NPRM* at ¶ 18.

**1. . Nextel dominates t h e SMR industry and leverages its dominance to reject proposals for roaming agreements.**

Nextel **clearly** dominates a highly **concentrated** market. The FCC itself acknowledges in the *NPRM* that "[d]igital SMR remains dominated by one provider, Nextel, which in 1999 had **over** 4.5 million subscribers . . . ." <sup>18</sup> At this time it has **over** 6.1 million **subscribers**, <sup>19</sup> **the** only nationwide **network**, **and** it continues to **amass** spectrum. Moreover, its majority-owned **affiliate**, Nextel Partners, is establishing **facilities** and gaining **subscribers** in the smaller and **mid-size** areas of **the country** that Nextel has **not yet reached**. <sup>20</sup> **AL** **the** same lime, **the list** of other significant players, **never** long to start with, is **shrinking**. In its *Fifth Report* on competition, **the** FCC lists just **five** major SMR **carriers**, **and one of those**, Chadmoore Wireless Group, is about to be bought by Nextel. **The actual subscribership numbers** of **the** major carriers set **forth in the Fifth Report shed** even more light on the disparity in the SMR industry. **While** Southern and Nextel Partners each **have** 200,000 subscribers, **the** numbers immediately fall off from **there** to 65,000 for Mobex; 37,475 for Chadmoore Wireless Group; and **1 1,400** for Securicor Wireless. <sup>21</sup>

**Due** to a confluence of several factors, **the** usual incentives that would motivate Nextel to enter into mutually beneficial automatic roaming agreements do not **exist in this instance**. In addition to the fact that it faces **significant** competition in only **a few markets** (for **example**, where Southern LINC operates) **and** has the only nationwide **network**, **the** only other **carriers**

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<sup>18</sup> *NPRM* at ¶ 11.

<sup>19</sup> **As** stated on Nextel's web site at [http://www.nextel.com/information/fact\\_background.shtml](http://www.nextel.com/information/fact_background.shtml).

<sup>20</sup> **As** noted above, Nextel Partners, especially given its presumably Nextel-controlled Board, would **refuse** to enter a roaming agreement without Nextel's approval. **Accordingly**, it and Nextel should be considered one and the **same** for **purposes** of this rulemaking.

<sup>21</sup> *Fifth Report on Competition* at p. D-2.

utilizing **iDEN technology** to **provide advanced, digital SMR service** are **Nextel Partners, Southern, and Pacific Wireless** (whose coverage currently does **not extend beyond a region** of California). Accordingly, given the **current state** of technology, **Southern's and Pacific Wireless'** customers can **roam only on Nextel's or Nextel Partners' networks**. However, because **Nextel and Nextel Partners** compete directly **with Southern and Pacific Wireless** in **markets** where their coverage **overlaps, they** have a **strong** incentive to refuse to enter roaming **agreements**. **Although** they would derive revenues from **such** agreements, **Nextel and Nextel Partners** have a **greater economic** incentive to dampen competition by denying their few competitors **access** to roaming.

Southern's **actual** experience with Nextel unequivocally confirms the foregoing. As noted **above**, for years Nextel has steadfastly refused to **enter** into a roaming agreement with **Southern**. In fact, it has constantly put off entering a **manual roaming agreement**, even **in the face** of the Commission's **mandatory manual** roaming rule, **claiming there are technical difficulties** with implementing manual roaming. As explained below, **Southern** does **not** believe there are insurmountable technical **obstacles** to either **manual** or automatic **roaming**. **Southern cannot** divine any reason for **Nextel's refusal** except for a **deliberate intent** to **put Southern** at a competitive **disadvantage**. For that **matter**, to Southern's knowledge **Nextel** has never **entered** a roaming **agreement** with a **non-affiliated** U.S.-based **SMR** carrier.

**The only** U.S.-based SMR carrier with which **Nextel** has a roaming agreement is **Nextel Partners**, which **as explained above is a** majority-owned **affiliate** of **Nextel** tasked with introducing **the Nextel** brand to the **small and mid-size markets where Nextel does** not presently have **coverage**. As stated **on Nextel Partners'** web site, this roaming agreement is comprehensive: **"Our systems are operationally seamless with** those of Nextel, enabling customers of **both** companies to roam on each other's portion of the **Nextel** digital mobile

network."<sup>22</sup> Nextel Partners **also notes** the importance of this roaming agreement: "*As customers increasingly choose national rate plans, we believe that the ability to offer national coverage is a competitive advantage.*"<sup>23</sup> Southern would **assert** that Nextel's decision to push into smaller and **mid-size markets** and tout **the** benefits of its nationwide network, while **simultaneously** denying *any roaming capability* at **all** to its few remaining digital SMR **competitors** in those very markets, is a clear attempt to eliminate its remaining digital **SMR** competition in the **United States**.

**Nextel's refusal** to **enter roaming agreements** with non-affiliates has not **carried** over to foreign countries which its own network does not **reach**. Nextel has had an automatic roaming agreement with **Clearnet Communications**, a Canadian **iDEN** carrier, since 1997.<sup>24</sup> Also, in **April 2000** it launched a worldwide **calling** service **based** on automatic roaming agreements it entered with carriers in **Africa**, Australia, **Asia**, Europe, **South America**, and the Middle **East**.<sup>25</sup> Although Nextel purportedly has been unable to overcome **the** technical difficulties posed by manual **roaming** with Southern, another digital SMR **iDEN** carrier in the United **States**, it apparently had no problem overcoming the technical **difficulties posed** by automatic roaming with carriers in 75 different **countries**, many of which use a GSM platform rather than **iDEN**.<sup>26</sup> Southern believes that **Nextel's** eagerness to roam with foreign carriers, while **refusing** to **roam** with domestic carriers, again demonstrates **an** undeniable motivation to **eliminate** any digital SMR competition in the United States..

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<sup>22</sup> As stated on **Nextel Partners'** web site at <http://www.nextelpartners.com>.

<sup>23</sup> *Id.* (emphasis added).

<sup>24</sup> As stated in Nextel's SEC Form I O-K for 1999, p. 12.

<sup>25</sup> Nextel Press Release dated Apr. 3, 2000 at [http://www.corporate-ir.net/ireye/ir\\_site.zhtml?ticker=NXTL&script=410&layout=9&item\\_id=83557](http://www.corporate-ir.net/ireye/ir_site.zhtml?ticker=NXTL&script=410&layout=9&item_id=83557).

<sup>26</sup> As stated on **Nextel's** web site at [http://www.nextel.com/products/servicecatalog/worldwide/country\\_list.shtml](http://www.nextel.com/products/servicecatalog/worldwide/country_list.shtml).

Notably, **Nextel's international** roaming agreements were part of a major initiative in which it invited carriers all over **the** world to roam with **it, including** nearly every **iDEN carrier**, but pointedly excluded Southern. Southern became aware that in 1999 **Nextel** began promoting its proposed "**iDEN World**" service, a **gateway** through which carriers utilizing **iDEN technology** could capitalize on **the international automatic** roaming agreements **Nextel was entering**. **Nextel** was **recruiting Clearnet** Communications of Canada and carriers from many **other** countries to participate in **iDEN World**. Southern expressed **interest** in **participating**, but was discouraged **from** doing so because of what was labeled the "**proprietary**" nature of the dialogue among these **carriers**.

**2. Nextel's refusal to enter roaming agreements harms consumers,**

**Nextel's anticompetitive** conduct causes significant **harm** to **consumers**. The most **immediate harm** is to **customers** of Southern and other **iDEN carriers** not **affiliated** with **Nextel** (currently over **200,000**), who **are** prevented **from** utilizing **their** mobile phones outside of their **carrier's** regional coverage areas. In Southern's **case**, it has received an increasing number of **customer** requests to roam. The inability **to** do so is especially problematic for customers located on **the** fringes of a coverage **area**, **for** whom everyday travel may take them beyond **areas where they can** use their **phone**. **Letters** from Harrison County School District and American Medical Response (attached hereto as **Exhibits A and B**), two Southern **SMR customers**, attest to this problem,

Also, Southern serves an **unusually** large number of governmental entities, law **enforcement** agencies, emergency service entities, **and** other public **service** agencies, many of

which rely on its **system** for critical **communications needs**.<sup>27</sup> For these **organizations**, roaming would be a **highly valuable** benefit. In addition to **routine** travel outside of Southern's service footprint, it **is** not uncommon for **public** safety workers such **as** firefighters **and** law enforcement **personnel**, **as well** as power utility crews, to assist with natural disasters and other emergencies in locations **well** outside their usual jurisdictions- Continued access to **their** mobile phones would greatly **assist these** workers by enhancing their ability to communicate amongst themselves and with others.

Additionally, **the** Commission has **made** an enormous effort to ensure that E-911 **services** are available to wireless customers. These efforts have **been** made **pursuant** to the Wireless **Communications** and Public Safety Act of 1999 ("911 Act").<sup>28</sup> As stated by **the** Commission, the **purpose** of the 911 Act is "to enhance **public safety** by **encouraging and facilitating** the prompt **deployment of** a *nationwide, seamless communications infrastructure* for emergency services **that includes** wireless **communications**."<sup>29</sup> Towards that end, the Commission has promulgated regulations **that** on **the most** basic level generally require **wireless** carriers operating compatible systems to "answer" the **911** calls of roaming units- In Phases I and IT of the E-911 initiative, **the** regulations require that making a 911 call **results** in the automatic provision **of** caller location **information** to the **call** recipient (arguably the core **aspect of the** initiative).

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<sup>27</sup> See *In the Matter of Southern Company Request for Waiver of Section 90.629 of the Commission's Rules, Memorandum Opinion and Order*, 14 FCC Rod. 185 1, DA 98-2496 (1,998) (citing **unique** use of Southern's **network** by public **safety** organizations).

<sup>28</sup> 47 USC. § 615 (1999).

<sup>29</sup> *In rho Matter of Revisions of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Fourth Memorandum Opinion and Order*, FCC 00-326, ¶ 6 (Sept. 8, 2000) (emphasis added).

Without **the ability** to roam, **it will** be **extremely difficult** for many **iDEN customers** with handsets **manufactured** before 1999 to make even **basic PI 1** calls outside of their coverage area. Even customers with **handsets manufactured** after 1999 **will not have** the **full** functionality contemplated **by the** Phase I and Phase II rules, without **carrier** to carrier roaming capability in place. Not only does **this** raise **serious** considerations regarding **human** safety, it is directly contrary to **the** Commission's goal of a "nationwide, seamless **communications infrastructure** for **emergency services.**" Given the fact that today's increasingly **wireless** society **relies on** mobile phones for **safety** more and more when **travelling**, it is simply not in the public **interest to allow** carriers to **deny** totting services **when** it is technologically **feasible to** provide **them**.

Likewise, **disabled** persons who do not have roaming capability are unable **to** take advantage of the **FCC's disability** access **initiatives**, including **TRS/TTY** services and 711 dialing **access**. This contravenes **the** spirit of Title IV of **the Americans** with Disabilities Act of 1990,<sup>30</sup> which, as noted by the Commission, **requires** it "to ensure that **TRS is available, to the extent possible and in the most efficient manner**, to individuals with **hearing** and **speech** disabilities in the United **States.**"<sup>31</sup> Automatic **roaming between iDEN carriers** certainly comes within the purview of "to the extent **possible**," and is **the most efficient manner** of providing **nationwide** access to disabled services **for** digital **SMR** customers that do not subscribe to **Nextel**.

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<sup>30</sup> 47 U.S.C. § 225 (1994 & Supp. IV 1998).

<sup>31</sup> *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd. 5140, 5141, FCC 00-56, ¶ 1 (2000) (emphasis added).

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3. - **Nextel's refusal to enter** roaming agreements harms **the SMR industry.**

Nextel's **refusal** to enter domestic roaming agreements **also** harms the **SMR** industry and the large category of consumers who look to **SMR for their** wireless needs but are denied the **benefits of a** competitive **market**. Meaningful future entry by other companies is curtailed **in** large part because Nextel is **likely** to deny roaming **agreements** with **them, preventing them** from **offering** roaming to **potential** customers and **thus** significantly **hindering** their ability to **attract customers in the** first instance. Accordingly, **Nextel** is able to raise **barriers** to entry **for** new SMR competition. **This**, however, is completely contrary **to** the **FCC's expectations** and **goals** for the **SMR** industry.

When the FCC permitted the assignment of **Geotek Communications' 191 900 MHz SMR** licenses to Nextel in January 2000 (with **the exception** of licenses **in** markets covered by a consent **decree** Nextel entered with the Department of Justice), **it** stated that "**in the relatively near future**, we believe that additional market **entry** is **likely** to ensure that competitive conditions facing consumers in **these** markets will improve."<sup>32</sup> That clearly is not happening, **and** it becomes less likely every time Nextel **consolidates** more **SMR** spectrum. And, of course, it has **been** doing that aggressively. Consider that in the August 2000 auction for 800 **MHz** General Category and **Upper Band SMR** licenses (Auction No. 34), Nextel was **awarded 800** of **the** 1,053 licenses offered.<sup>33</sup> Additionally, in the **November** 2000 auction for **800 MHz** Lower 80 **SMR** licenses (Auction No. 36), **Nextel** was the successful bidder on 2,579 of **the** 2,800 **licenses**

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<sup>32</sup> *In re Applications of Geotek Communications, Memorandum Opinion and Order*, 15 FCC Rcd. 790,806, DA 00-89, ¶ 35 (2000).

<sup>33</sup> *Wireless Telecommunications Bureau Grants 800 MHz Specialized Mobile Radio (SMR) Service General Category (851-854 MHz) and Upper Band (861-865 MHz) Auction Licenses, Public Notice*, DA 00-2874 (Rec. 20, 2000).



offered.<sup>34</sup> Further, **Nextel** has a **request pending** with the FCC for approval of **the** assignment of \$9 900 MHz licenses from Motorola and its subsidiaries.”

Given **the** foregoing, it is abundantly clear **that any future** competition is not going to come **from** companies with competitive amounts **of spectrum**.<sup>36</sup> Rather, competition needs to be enabled by narrowly targeted regulatory measures such **as** an automatic roaming requirement

**D. Automatic Roaming Between Digital SMR Carriers Is Technically And Economically Feasible, And The Public Interest Benefits Outweigh The Costs**

**There** are no substantial technical hurdles to enabling automatic roaming **among** digital SMR iDEN providers. In part, this is demonstrated by the fact **that Nextel** has **successfully maintained an** automatic roaming agreement **with Clearnet** Communications, an unrelated Canadian iDEN carrier, since 1997.” More directly, **Southern** has had discussions **with Nextel** regarding **what** Nextel believes are potential **technical** problems. Southern has closely analyzed those **concerns and determined that** they are **either not** problems at all or that **solutions** to **them** can be easily implemented at minimal cost to **Nextel**. Additionally, Southern **has been** advised

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<sup>34</sup> *800 MHz SMR Service Lower 80 Channels Auction Closes, Public Notice, DA 00-2752 (Dec. 7, 2000).*

<sup>35</sup> *Motorola, Inc. and Nextel Communications, Inc. Seek Consent to Assign 900 MHz SMR Licenses, Public Notice, DA 00-2352 (Oct. 19, 2000).*

<sup>36</sup> **As Southern** has **argued in** many proceedings, **Nextel's** ability to dominate **800 MHz spectrum** auctions was due to (1) the **fact** that auctions **were structured in** such a way **that** the holder of the incumbent **800 MHz** licenses had an insurmountable bidding advantage; and (2) **contrary** to what it did in PCS and cellular markets, the Commission decided to place no **restrictions** on one bidder acquiring **all** of the **800 MHz licenses**. **Nextel's** spectrum position at **these** auctions reduced the **value** of the spectrum to parties other than **Nextel**, further discouraging competitive **entry** into the SMR market.

<sup>37</sup> *Clearnet Offers U.S. Roaming With Less Hassle, Land Mobile Radio News, July 25, 1997.*

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by the iDEN vendor, Motorola, that the technical changes needed to enable full automatic roaming can be implemented

Southern would also note that Nextel stands to generate substantial revenue through roaming agreements. In 1994, Nextel earned approximately \$1,000,000 from its roaming agreement with Nextel Partners,\* which at that time had less than 50,000 customers.<sup>39</sup> Given that Southern Company has over 200,000 customers, the roaming revenue from it, in addition to other iDEN carriers, has the potential to be significantly more. Surely, any negligible costs that Nextel incurs in implementing automatic roaming agreements will be more than made up for by the revenue it will gain from them.

In sum, there are tremendous public interest benefits to enacting an automatic roaming rule, including the restoration of competition in the SMR industry, enabling hundreds of thousands of customers to use their phones beyond their carriers' coverage areas, and facilitating E-911 and TRS/TTY capability. On the other hand, the costs of such a rule would be negligible for the roamed-on carriers. Thus, in this matter the benefits clearly outweigh the costs.

**E. An Automatic Roaming Requirement For Digital SMR Carriers Is Necessitated By The Need For Regulatory Parity**

The Commission has established a regulatory scheme for the cellular and PCS services that ensures the existence of competition. For instance, FCC Rule Section 22.942 contains a cellular cross-ownership prohibition which generally prevents a party from having an ownership interest in licenses or licensees for both cellular channel blocks in overlapping cellular geographic service areas.

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<sup>38</sup> As stated in Nextel's SEC Form 10-K for 1999, p. F-36.

<sup>39</sup> Nextel Partner's Press Release dated July 11, 2000 at <http://www.nextelpartners.com>.

The SMR service, in contrast; does not have such **competition-enhancing** regulations, despite the **fact that** Section **6002(d)(3)(B)** of the 1993 **Budget Act** directed **the FCC** to enact "**comparable**" technical requirements for **cellular**, PCS, and **SMR**.<sup>40</sup> Even **the** amount of allocated **spectrum**, the basic foundation of any mobile **service**, predisposes cellular to **more competition than SMR**; **the** Commission allocated **50 MHz** to **cellular** but **only** approximately 19 **MHz to SMR**.<sup>41</sup> As such, the number of different SMR providers that can obtain enough licenses to effectively **compete** in any one **area** is inherently significantly **limited**. Due to those factors, **Nextel** has **been able to** accumulate **the vast majority** of 800 **MHz SMR spectrum** in most major markets **and preclude** potential competitors from gaining even a foothold.

The enactment of **an automatic** roaming **requirement** for digital **SMR** is a necessary step toward **offsetting** the FCC's failure **to provide** a **comparable** regulatory scheme. The **FCC** **recognized** the **correlation** between competition and **regulatory parity** when it brought SMR under the manual roaming rule in 1996, stating, "**We are applying the manual roaming rule to [broadband PCS and covered SMR] licensees in order to ensure regulatory parity and to promote competition in the wireless market by enhancing all such carriers abilities to compete.**"<sup>42</sup> Now, the **passage** of time, advances in technology, and refined consumer expectations have shown that the **manual** roaming rule is not enough. Although **Southern** believes **the** Commission's 1996 policy position continues to be **relevant** to the **SMR** industry, the Commission must **update** it

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<sup>40</sup> Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 6002(d)(3)(B), 107 stat. 3 12,397 (1993).

<sup>41</sup> *See, e.g., 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 Radio Services, Second Report, 12 FCC Rcd. 11266.11309, FCC 97-75 (I 997).*

<sup>42</sup> Second *R&O*, 11 FCC Rcd. at 9470-71, ¶ 13,

through the **implementation** of an **automatic** roaming **rule** for **technically** compatible **SMR** carriers.

**F. The Remedies Available Under Existing Law Do Not Constitute Feasible Alternatives To An Automatic Roaming Requirement**

In the *NPRM*, the FCC asked whether there are adequate remedies under existing law to address **CMRS** providers which **engage in** unreasonable or **discriminatory** behavior by **refusing** to enter automatic roaming **agreements**.<sup>43</sup> As noted in the *NPRM*, such remedies would stem from a complaint **filed** pursuant to Section 208 of the **Communications Act** of 1934 (“the Communications Act”), which **empowers** parties to **file** complaints and **generally outlines** the FCC’s procedure for handling **them**.<sup>44</sup> Such a complaint would **reference either** Section 201 of the Communications Act (prohibition of unjust or **unreasonable** behavior), Section 202 (prohibition of **discrimination**), or Section 253 (interconnection requirements)- **While** Southern agrees that **those** provisions apply to roaming services provided by **CMRS carriers**, it does not believe any of **them provide a** good alternative to an automatic roaming requirement.

In general, pursuing a complaint under Section 208 is **cumbersome** and **unpredictable**. The opportunity to **conduct meaningful discovery** is limited and the **overall** complaint process is time consuming; even **under** the FCC’s **expedited docket** it can **take** months, to say nothing of preliminary negotiations and potential appeals. **Further, the** outcome is uncertain given the **limited precedent** for fully litigated **roaming** matters. **The** sum of **these** problems is of significant concern in the **roaming context**, in which **carriers** seeking to avoid agreements **will be** encouraged to delay as **long as** possible to disadvantage **competitors** seeking agreements-

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<sup>43</sup> *NPRM* at ¶ 26.

<sup>44</sup> *NPRM* at ¶ 26.

In addition to the foregoing problems with Section 208, there are problems with Sections 201, 202, and 251 individually. With regard to Section 201, which would involve allegations that a failure to enter a roaming agreement is “unjust or unreasonable,” specific direction from the Commission would be helpful in clarifying when such failure rises to the level of being unjust or unreasonable. Given the numerous variables involved in roaming, pursuit of this option to obtain a roaming agreement is unduly difficult and uncertain.

In terms of filing a complaint under Section 202, which would involve allegations that a carrier is unlawfully discriminating by failing to enter a roaming agreement, a petitioner must show that it is “similarly situated” with the companies the carrier is favoring.<sup>45</sup> This gives carriers substantial room to allege differences between their chosen roamers and the petitioner, again raising the potential problem of unduly protracted, complicated, and uncertain litigation. Moreover, a carrier could potentially completely avoid discrimination charges by simply not engaging in automatic roaming agreements with any other providers at all. In that scenario, a carrier with an extensive network could maintain a virtual lock on the ability to offer roaming by simply denying it to all potential competitors. Such a possibility is at odds with the Telecommunications Act of 1996.

With regard to Section 251, which requires interconnection under certain circumstances, the Commission recently rejected the theory that Section 251 should encompass CMRS to CMRS interconnection.<sup>46</sup> That decision, in fact, was an affirmation of a previous ruling

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<sup>45</sup> *In the Matter of the OTC v. South Central Bell Telephone Company and AT&T, Memorandum Opinion and Order*, 2 FCC Rcd. 4546, 4552, DA 87-974, ¶ 32 (1987).

<sup>46</sup> *In the Matter of Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, CC Docket No. 94-54, *Fourth Report and Order*, 15 FCC Rcd. 13523, 13534, FCC 00-253, ¶ 28 (2000).

contained in the *Local Competition First Report and Order*.<sup>47</sup> While those holdings would seem to preclude the possibility of successfully bringing a **roaming claim** through the **interconnection obligations**, Southern would additionally note that in a **previous rulemaking** 'several **carriers** raised **arguments** that Section 251 **cannot** be utilized to require **CMRS** carriers to **accept interconnection** requests until **CMRS** becomes a substitute for **local** exchange **carriers** for a substantial number of **people**.<sup>48</sup>

c. **The FCC Should Adopt An Automatic Roaming Enforcement Mechanism**

In addition to promulgating an automatic roaming requirement, Southern submits that a specifically tailored **enforcement** mechanism should also be enacted. It should be designed to facilitate good faith negotiations and the **need** for rapid adjudication. The FCC has employed specific **enforcement** mechanisms in other contexts, such as pole attachments." Below are **parameters** which Southern believes should be encompassed in such **regulations**.

If a **carrier refuses** to enter into an agreement with another **carrier**, within 15 days of the **request** to **roam** the **refusing** carrier should be required to provide a written statement of the reasons for its **refusal**. It should then be required to negotiate in good faith with the carrier **seeking** the **agreement** within 20 days of a **request** to do so, in order to **attempt** to resolve the issues on which the **refusal** to **roam** is based. If the **carrier** wishing to roam is not satisfied with the **outcome** of **those** negotiations, it may file a complaint containing a complete **statement** of the

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<sup>47</sup> *Id.*

<sup>48</sup> *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, *First Report and Order*, 11 FCC Rcd. 15499, 15994-95, FCC 96-325, ¶ 1002 (1996).

<sup>49</sup> 47 C.F.R. §§ 1.1401 - 1.1418 (1999).

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facts in support of its claim, along with any supporting affidavits or other documentation. Within 30 days, the carrier against whom the complaint was filed must file a response containing a complete statement of the facts in support of its defense, along with any supporting affidavits or other documentation. The complainant will then have 20 days to file a reply to the response. Thereafter, the Commission will conduct settlement negotiations within 20 days, unless both parties certify that such negotiations would be fruitless. If the settlement negotiations are not successful, within 30 days of their conclusion the Commission will issue a decision based on the merits of the written pleadings.

## II. ALTERNATIVELY, THE FCC SHOULD ADOPT AN AUTOMATIC ROAMING NON-DISCRIMINATION REQUIREMENT FOR DIGITAL SMR CARRIERS

Southern believes that the facts of this matter as set forth above compel the Commission to enact an automatic roaming rule for digital SMR. However, should the Commission feel such a rule is inappropriate, Southern requests that it at least implement a specific roaming non-discrimination requirement for digital SMR. Toward that end, Southern would endorse the Commission's suggestion in the *NPRM* that such a rule "could require, as a condition of license, that covered providers that enter into roaming agreements with other such providers make like agreements available to similarly situated providers, where technically compatible handsets are being used, under non-discriminatory rates, terms, and conditions."<sup>50</sup>

A non-discrimination requirement would not be a significant change from a regulatory standpoint because Section 202 of the Communications Act already prohibits discrimination generally. The principle of prohibiting discrimination has been a fundamental tenet of communications law since 1934, when Section 202 was passed with the original version of the

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<sup>50</sup> *NPRM* at ¶ 21.

Communications Act. The courts have emphatically endorsed the importance of prohibiting discrimination in telecommunications, with the D.C. Circuit Court of Appeals characterizing Section 202's mandate as "flat and unqualified" and "a matter of public interest and policy."<sup>51</sup> The FCC has also found that the provision of roaming is subject to the requirements of Section 202."

Although, as explained in the preceding section, there are numerous practical disadvantages to utilizing Section 202 alone to target discriminatory roaming practices, several of those disadvantages would be largely precluded by a roaming-specific non-discrimination rule. For example, in most circumstances a rule should eliminate the need to file a complaint and go through cumbersome litigation under Section 208. At a minimum, it would provide a definitive standard and allow petitioners to proceed with greater certainty.

In fashioning a nondiscrimination requirement, the FCC asks for comments on how it should define "similarly situated providers."<sup>53</sup> Southern submits that in the roaming context, carriers should not be distinguished beyond identifiable market segments such as digital SMR, cellular, and PCS. All carriers interested in entering roaming agreements within these discrete segments (i.e., SMR to SMR, cellular to cellular, and PCS to PCS) are likely to benefit from them and thus enhance competition; it does not matter how many subscribers a carrier has, how large its coverage area is, how its corporate organization is structured, or what type of customer it primarily serves. All that is important is that a carrier's equipment is technically compatible with the roamed-on carrier's equipment, or can be made compatible. For example, in the digital

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<sup>51</sup> *American Trucking Associations v. FCC*, 377 F.2d 121, 130 (D.C. Cir. 1966), cert. denied, 386 U.S. 943 (1967).

<sup>52</sup> *NPRM* at ¶ 15.

<sup>53</sup> *NPRM* at ¶ 21.



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SMR market **segment**, if a **carrier** has a **roaming** agreement with **one** or **more** other carriers, **and another** carrier's technology is compatible or can be made **compatible**, **that carrier** should be **deemed similarly situated** and its customers allowed to roam on the system.

**Southern** would **also** contend that domestic and foreign carriers should be **deemed** similarly situated. It would **be** antithetical to the Telecommunications Act of **1996's** goal of increasing domestic competition for a carrier to be able to enter roaming agreements with foreign **carriers** and give their customers **the** benefit of roaming while in the **United** States, but not be required **to enter** agreements that would similarly **benefit** United States citizens, The need for **this** provision is evidenced by the fact that **Nextel** has roaming agreements with carriers in 75 foreign **countries**.<sup>54</sup>

Additionally, if a **carrier** enters a roaming agreement with an **affiliate** or otherwise **related** company, it should have to make like **agreements available to** other **carriers** under non-discriminatory rates, terms, and conditions. The need for this provision is evidenced by the **fact that** Nextel has a roaming **agreement** in place **with** its **majority-owned affiliate** Nextel Partners but **refuses** to enter agreements with any other U.S.-based carriers. Without an affiliate provision, a **non-discrimination** provision **could** fail to reach such agreements **and**, thus, be ineffectual.

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<sup>54</sup> As **stated on** Nextel's web site at [http://www.nextel.com/products/servicecatalog/worldwide/country\\_list.shtml](http://www.nextel.com/products/servicecatalog/worldwide/country_list.shtml).

**III. THE MANUAL ROAMING RULE SHOULD NOT BE ELIMINATED NOR SUNSET UNLESS THE FCC ADOPTS AN AUTOMATIC ROAMING RULE FOR DIGITAL SMR CARRIERS**

In the *NPRM*, the FCC seeks comment on whether the manual roaming rule should be eliminated, and if not, whether it should be sunset.<sup>55</sup> It also seeks comment on whether any automatic roaming requirements it adapts should be sunset.<sup>56</sup> Southern submits that the manual roaming rule should not be eliminated nor sunset unless the FCC adopts an automatic roaming rule for digital SMR. It also contends that if the FCC adopts an automatic roaming rule, it should not set a sunset date at that time.

One of the FCC's stated reasons for possibly eliminating or sunsetting the manual roaming rule is that it may no longer be relevant given the current state of technology.<sup>57</sup> Southern acknowledges that manual roaming is not an ideal option. Nonetheless, for customers that do not have access to automatic roaming, it is better than not being able to use their phone at all outside their carrier's coverage area. As explained above, at least in regard to digital SMR service, some customers do not have access to automatic roaming and the only carriers that could provide it to them will not do so voluntarily. In light of those facts, unless the FCC adopts an automatic roaming rule, it would be wrong to eliminate the manual roaming rule.

Another of the FCC's possible reasons for eliminating or sunsetting the manual roaming rule is its concern that it may no longer be necessary given the current state of competition.<sup>58</sup> In that regard, the FCC renews the tentative conclusion it made in 1996 in the *Third Notice of*

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<sup>55</sup> *NPRM* at ¶¶ 31-32.

<sup>56</sup> *NPRM* at ¶ 32.

<sup>57</sup> *NPRM* at ¶¶ 31-32.

<sup>58</sup> *NPRM* at ¶¶ 31-32.

*Proposed Rulemaking* in CC Docket No. 94-54, the predecessor to this docket.<sup>59</sup> That conclusion was as follows:

We believe that once broadband PCS providers' buildout periods are completed, sufficient wireless capacity will be available in the market [to preclude] either the incentive or the ability to unreasonably deny manual roaming to an individual subscriber, or to unreasonably refuse to enter into an automatic roaming agreement with another CMRS provider, because some other carrier in its service area would be willing to do so. We anticipate . . . that the market for cellular, broadband PCS and covered SMR services will be substantially competitive within five years after we complete the initial round of licensing broadband PCS provider; . . . therefore . . . any action taken concerning [manual or] automatic roaming should sunset five years after we award the last group of initial licenses for currently allocated broadband PCS spectrum.<sup>60</sup>

The preceding sections of these Comments make clear that with regard to SMR, the FCC's predictions completely missed the mark. The SMR industry has consolidated, not expanded, leading the FCC to proclaim in the *NPRM*, "Digital SMR remains dominated by one provider, Nextel . . ." <sup>61</sup> Commensurate with Nextel's hold on the market, sufficient 800 MHz capacity is not available to preclude it from unreasonably refusing to enter manual roaming agreements. As it stands, Southern and Pacific Wireless can roam only with Nextel, Nextel Partners, or each other (which is of little practical benefit due their regional coverage areas and distance from each other). Nextel's past conduct with Southern of refusing to enter an automatic roaming agreement and interminably delaying a manual roaming agreement demonstrate its propensity to refuse to enter a manual roaming agreement unless forced to do so by rule. Therefore, unless the FCC adopts an automatic roaming rule, a manual roaming rule is still necessary for digital SMR.

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<sup>59</sup> *NPRM* at ¶ 32.

<sup>60</sup> *Second R&O*. 11 FCC Rcd. at 9479, ¶ 32.

<sup>61</sup> *NPRM* at ¶ 11.

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As an additional reason for not eliminating or sunseting the manual roaming rule, Southern would reiterate that it has been trying to get Nextel to enter a manual roaming agreement for approximately four years. Nextel has delayed doing so with the excuse that it is still working out the technical problems such an agreement would engender. Again, Southern submits that Nextel's position is without merit. In any event, at this time it would almost certainly refuse to work any further toward an agreement if the FCC takes away its obligation to do so. Thus, eliminating or sunseting the manual roaming rule would reward Nextel's delay, something the FCC should not do. Southern also believes that it would be arbitrary and capricious for the FCC to sunset the manual roaming rule since regulatory uncertainty encouraged delay in effecting roaming agreements.<sup>62</sup>

In terms of sunseting an automatic roaming rule adopted for digital SMR, Southern believes that doing so would be a mistake. As the state of competition in the SMR industry currently stands, Nextel has an incentive to simply "pull the plug" on automatic roaming agreements with its competitors upon the expiration date of a rule. To be sure, its present conduct does nothing to alleviate that concern. Therefore, if the FCC adopts an automatic roaming rule, it should not set a sunset date for it at this time. Southern does believe, however, that the Commission should revisit the issue when market conditions have changed to the point where government intervention may no longer be necessary.

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<sup>62</sup> For example, Nextel's Petition for Reconsideration of the manual roaming requirement, in which it took the position that it was not required to enter into manual roaming agreements, was on file for nearly four years before the FCC addressed it.

**IV. NEXTEL'S UNREASONABLE REFUSAL TO ENTER INTO AUTOMATIC ROAMING AGREEMENTS WITH ITS COMPETITORS RAISES SERIOUS CONCERNS REGARDING UNLAWFUL MONOPOLIZATION J-N VIOLATION OF THE SHERMAN ACT**

Although the Commission's jurisdiction does not extend to enforcing the antitrust laws, Southern believes that the FCC should consider the pro-competitive underpinnings of the antitrust laws in considering the issue of automatic roaming. Specifically, it should consider Nextel's dominance of the 800 and 900 MHz SMR spectrum that enables it to squash competition in the trunked dispatch segment of the SMR market. This competitive distortion can be remedied in part if the FCC institutes the proposed automatic roaming rule.

The Sherman Act<sup>63</sup> was promulgated to protect trade and commerce against unlawful restraints and monopolies. Specifically, Section 2 of the Sherman Act makes it unlawful for a company to "monopolize" or "attempt to monopolize," trade or commerce.<sup>64</sup> As the law has been interpreted, it is not necessarily illegal for a company to have a monopoly. The law is only violated when a company tries to maintain or acquire a monopoly position through tactics that either unreasonably exclude competitors from the market or significantly impair their ability to compete.

Under certain conditions, a refusal to deal with competitors may constitute a predatory and monopolistic act. One such instance arises when a company has obtained monopoly power and controls an essential facility. When a monopolist controls an essential facility, the courts

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<sup>63</sup> 15 U.S.C. §§ 1-7 (1994).

<sup>64</sup> 15 U.S.C. § 2.

have imposed **an affirmative duty on the monopolist to make the** essential facility available to its competitors if it can **be** technically and feasibly **accomplished**.<sup>65</sup>

**The Commission should be guided in** its consideration of the **automatic** roaming rule by one of the seminal essential facilities cases, *MCI Communications Corp. v. AT&T*.<sup>66</sup> In that case, MCI argued that AT&T improperly refused to **let** it interconnect with **AT&T's** nationwide telephone network and that doing so was **essential** for MCI to compete against AT&T in the long distance **market**. In analyzing MCI's claim, the court **considered the following four elements: (1)** control of the **essential** facility by a monopolist; **(2) a competitor's inability practically or** reasonably to **duplicate** the essential facility; **(3) denial of the use of the facility to a competitor;** and **(4) the feasibility of providing the facility**.<sup>67</sup>

The Seventh Circuit, applying **the** essential facilities doctrine, held that **AT&T's** nationwide network could not be **reasonably duplicated** by MCI. The Seventh Circuit also found that "it was technically and economically **feasible** for AT&T to have **provided** the requested interconnection, and that **AT&T's refusal** to do so constituted an act of **monopolization**."<sup>68</sup> As a **result**, the court ordered AT&T to provide the **interconnection to** MCI.

As discussed below, Southern believes that **Nextel** has **obtained** monopoly power **in** the SMR **market**, controls the essential facility necessary for SMR operators to provide **services** -- a

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<sup>65</sup> *Otter Tail Power Co. v. United States*, 410 U.S. 366 (1973) (upholding liability of a wholesale supplier of electricity **that refused** to supply power to a **power system that** competed with it for **retail** customers where other power companies had no other **source** of supply).

<sup>66</sup> 708 F.2d 1081 (7th Cir.), *cert. denied*, 464 U.S. 891 (1983).

<sup>67</sup> Id at 1133.

<sup>68</sup> Id at 1132.

national network of 800 and 900 MHz SMR spectrum -- and refuses to make it available to its competitors by denying access to its networks through roaming agreements even though it is technically feasible to do so.

**A. The Trunked Dispatch Market Is The Relevant Product Market For Analyzing The Monopolization Of 800 And 900 MHz Spectrum**

The relevant market for analyzing the necessity of automatic roaming in the antitrust context is the trunked dispatch segment of the SMR market. There are only two sets of frequencies available for trunked dispatch SMR operations: 800 and 900 MHz spectrum. A total of approximately 19 MHz is available for use by SMRs, 14 in the 800 MHz band and 5 in the 900 MHz band. While existing equipment places limitations on the interchangeability of 800 and 900 MHz SMR spectrum,<sup>69</sup> Motorola is conducting research with regard to the development of an iDEN handset that will incorporate both bands.” In any event, 800 and 900 MHz SMR spectrum are the only bands used to provide trunked dispatch SMR services.

The availability of 800 and 900 MHz spectrum is crucial to the competitive viability of SMR providers currently in the market and to companies interested in entering the SMR market. Because of technological constraints, SMR providers committed to a particular technology cannot move freely to other spectrum bands that may be available for other CMRS services. Thus, for example, an SMR provider using iDEN technology cannot incorporate cellular or PCS spectrum into its system, even if it were readily available, for roaming or any other purpose.

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<sup>69</sup> See Specialized Mobile Radio Service, Wireless Telecommunications Bureau at <http://www.fcc.gov/wtb/smrs>.

<sup>70</sup> The availability of 900 MHz frequencies in sufficiently large blocks will be essential to a competitor's ability to expand its service because there is virtually no more 800 MHz spectrum available.

In anticipation of an argument regarding the availability of 220 MHz spectrum, Southern would note at this time that the 220 MHz band is not a reasonable alternative to 800 and 900 MHz SMR spectrum. While the Commission has made 220 MHz spectrum available for development in the SMR market as a possible alternative to 800 and 900 MHz SMR spectrum, it has not proved to be a viable substitute. Potential users of this spectrum are already discovering that it subjects adjoining systems to interference and cross talk. To use it to successfully compete, an SMR provider would have to undertake a significant investment to develop the necessary infrastructure to address these significant technical difficulties and reach economies of scale.

Additionally, no major SMR manufacturer provides equipment compatible with 220 MHz spectrum. SEA and Intek Global are the only manufacturers offering equipment that supports 220 MHz spectrum. The equipment manufacturers who dominate the 806 and 900 MHz SMR spectrum markets, Motorola, Kenwood, Ericsson, Uniden, etc., are notably absent from the 220 MHz equipment market. Further, the failure of the Commission to sell a substantial number of licenses in the first 220 MHz auction, and the low prices the Commission had to settle for when it held a follow-up auction, demonstrate that SMR providers do not consider 220 MHz spectrum a competitively viable alternative.<sup>71</sup>

Additionally, a market definition limited to 800 and 900 MHz SMR spectrum is supported by prior Department of Justice and Commission decisions. In analyzing the relevant product market for the acquisition of 800 and 900 MHz SMR spectrum for use in dispatch services, the Department of Justice determined that the trunked dispatch market is the relevant

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<sup>71</sup> See *FCC Closes 220 MHz Auctions; Raises \$21.6M*, Network Briefing, Oct. 27, 1998; *FCC's Retraction of 220 MHz Licenses Draws to a Close*, Wireless Today, June 30, 1999.



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market for purposes of analyzing Nextel's acquisition of this spectrum.<sup>72</sup> Likewise, the Commission's detailed analysis of this market in its 1997 *Pittencrieff* decision concluded that for purposes of merger analysis, the Commission should not look at the entire CMRS market but the distinct market segment for dispatch services within the CMRS market.<sup>73</sup>

There simply is no competitive substitute for 800 and 900 MHz spectrum once an SMR provider has developed its infrastructure to support this type of spectrum. Moreover, even for new entrants, for the reasons stated above the 220 MHz band does not provide a sufficient competitive alternative.

**B. Nextel Has Market Power In The Relevant Market And Is Continuing To Grow Its Market Power Through Acquisition Of Both 800 MHz And 900 MHz Spectrum**

Nextel's network has coverage in more than 400 cities, including 178 of the top 200 markets in the United States.<sup>74</sup> It has over 6.1 million subscribers.<sup>75</sup> As of June 1999, Nextel had launched its iDEN-based services in at least 187 BTAs, which contained 76% of the U.S.

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<sup>72</sup> U.S. v. *Motorola, Inc. and Nextel Communications, Inc.*, CIV. A.94-2331 (TFH), Memorandum of the U.S. in Opposition to Nextel's Motion to Vacate the 1995 Consent Decree (Feb. 2, 1999).

<sup>73</sup> See in re: *Applications of Pittencrieff Communications, Inc., Transferor, and Nextel Communications, Inc., Transferee, For Consent to Transfer Control of Pittencrieff Communications, Inc. and its Subsidiaries*, CWD No. W-22, Memorandum and Opinion and Order, 13 FCC Rcd. 8935, 8948-51, DA 97-22600, ¶¶ 30-35 (1997).

<sup>74</sup> *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, Fourth Report*, 14 FCC Rcd. 10145, 10176, FCC 99-136 (1999) ("*Fourth Report on Competition*"); Nextel Press Release dated November 20, 2000 at [http://www.corporate-ir.net/ireye/ir\\_site.shtml?ticker=NXTL&script=410&layout=9&item\\_id=134033](http://www.corporate-ir.net/ireye/ir_site.shtml?ticker=NXTL&script=410&layout=9&item_id=134033).

<sup>75</sup> As stated on Nextel's web site at [http://www.nextel.com/information/fact\\_background.shtml](http://www.nextel.com/information/fact_background.shtml).

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population.<sup>76</sup> A July 1999 Herfindahl-Hirschman Index ("HHI") study conducted by HAI Consulting for the Alliance for Radio Competition ("ARC") indicated that Nextel had an approximately 90% market share of the SMR dispatch market at that time." In contrast, its next closest competitor in the trunked dispatch segment of the SMR market, Southern, has approximately 200,000 subscribers using its iDEN-based services in Alabama, Georgia, the Florida panhandle, and the southeastern third of Mississippi. Courts have routinely held that a market share of 70% or more of the relevant market constitutes a monopoly.<sup>78</sup>

Nextel's monopoly power in the SMR market is likely to increase. It is set to acquire Chadmoore Wireless Group, one of the few remaining large players in the industry.<sup>79</sup> According to industry reports, Chadmoore holds nearly five thousand 800 MHz SMR licenses covering 55 million POPs in 180 markets throughout the United States.<sup>80</sup> Additionally, Nextel has a request pending with the FCC for approval of the assignment of fifty-nine 900 MHz licenses from Motorola and its subsidiaries.<sup>81</sup> The consolidation of the market does not end there.

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<sup>76</sup> *Fourth Report on Competition*, 14 FCC Rcd. at 10171.

<sup>77</sup> *In the Matter of Geotek Communications, Inc. Seeks FCC Consent to Assign 900 MHz SMR Licenses*, DA 99-1027, Exhibits to the Alliance for Radio Competition's Response to the Opposition of Nextel Communications, Inc. to Petitions to Deny, p. 12.

<sup>78</sup> See *United States v. E.I. du Pont de Nemours & Co.*, 351 U.S. 377, 399 (1956) (market share of 75% constitutes monopoly power); *Morgenstern v. Wilson*, 29 F.3d 1291, 12% n.3 (8th Cir, 1994) (80% market share sufficient).

<sup>79</sup> Nextel Acquires Chadmoore, Mobile Radio Technology, Oct. 2000; Nextel's Warm Handshake; Suitor Makes Offer Chadmoore Cannot Refuse, Wireless Week, Aug. 28, 2000 at 1.

<sup>80</sup> *Id.*

<sup>81</sup> *Motorola, Inc. and Nextel Communications, Inc. Seek Consent to Assign 900 MHz SMR Licenses*, Public Notice, DA 00-2352 (Oct. 19, 2000).

In the August 2000 auction for 800 MHz General Category and Upper Band SMR licenses (Auction No. 34), Nextel was awarded 800 of the 1,053 licenses offered.<sup>82</sup> Additionally, in the November 2000 auction for 800 MHz Lower 80 SMR licenses (Auction No. 36), it was the successful bidder on 2,579 of the 2,800 licenses offered.<sup>83</sup> Nextel's success in these auctions is directly related to its dominance in the major markets. It has amassed a vast number of 800 MHz licenses throughout the country. Because it controls so many of the underlying licenses, it is able to dominate the 800 MHz "overlay" auctions, bidders without an existing foothold in the 800 MHz band simply cannot bid on an equal basis with Nextel.

With its national spectrum holdings at the 800 MHz and 900 MHz level, Nextel has near complete control over the 800 and 900 MHz spectrum that is required by Southern, Pacific Wireless, Mobex, and any potential new entrant to the market. This spectrum is essential for Southern and other SMR providers to provide their services and develop new product lines.

In essence, because Nextel dominates the 800 and 900 MHz spectrum in the SMR market, it controls the national network necessary to maintain a competitive SMR market and has the ability to raise prices and exclude competitors and potential new entrants from the market. The record is abundantly clear that it has strategic dominance in the SMR market by virtue of its acquisition of so much of the 800 and 900 MHz SMR spectrum. As noted above, the July 1999 HHI study conducted by HAI Consulting indicated that it had an approximately 90%

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<sup>82</sup> *Wireless Telecommunications Bureau Grants 800 MHz Specialized Mobile Radio (SMR) Service General Category (851-854 MHz) and Upper Band (861-865 MHz) Auction Licenses, Public Notice, DA 00-2874 (Dec. 20, 2000).*

<sup>83</sup> *800 MHz SMR Service Lower 80 Channels Auction Closes, Public Notice, DA 00-2752 (Dec. 7, 2000).*

market share of the SMR dispatch market.<sup>84</sup> As noted by ARC, six locales were studied and the HHI indicated market dominance by Nextel in every one.<sup>85</sup> This dominance in the trunked dispatch segment of the SMR market not only provides Nextel with a nationwide network, but also significantly hinders its competitors by limiting them to small geographic areas.

**C. Southern LINC's Interest In The SMR Market**

As discussed above, Southern is the second largest trunked dispatch provider and operates an advanced digital communications system that, like Nextel, uses iDEN technology. In areas where Southern and Nextel's trunked dispatch services overlap, the two compete vigorously. However, competition in the overlapping market (i.e., the Southeastern U.S.) is reduced because of Nextel's ability to promote the only available nationwide network capable of supporting 800 and 900 MHz spectrum.

**D. A Nationwide 800 MHz And 900 MHz Footprint Is The Essential Facility Needed By SMR Providers To Compete In The SMR Market**

The facility in question -- Nextel's nationwide network of 800 and 900 MHz SMR spectrum -- meets the criteria of an essential facility in that it is necessary to be a meaningful competitor in local market areas and Nextel's competitors cannot technically duplicate the network on their own.

Nextel's nationwide network is clearly an essential facility. Southern and other SMR providers need access to it to meaningfully compete against Nextel; they must be able to offer customers the ability to use their equipment when they travel outside their carriers' service

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<sup>84</sup> *In the Matter of Geotek Communications, Inc. Seeks FCC Consent to Assign 900 MHz SMR Licenses*, DA 99-1027, Exhibits to the Alliance for Radio Competition's Response to the Opposition of Nextel Communications, Inc. to Petitions to Deny, p. 12.

<sup>85</sup> *In the Matter of Geotek Communications, Inc. Seeks FCC Consent to Assign 900 MHz SMR Licenses*, DA 99-1 027, ARC Petition to Deny, ¶ 17 (June 28, 1999).

territories. **Without automatic** roaming capacity, **SMR** providers are inhibited in competing within their **existing** geographic markets.

**Nextel's** national network of **800** and **900 MHz SMR** spectrum cannot be duplicated. **It** has **effectively** obtained almost all of the **spectrum available** for **SMR**. **There** simply is not enough **available** spectrum to recreate its **network**.<sup>86</sup> **However**, automatic roaming agreements are **an** available proxy for duplicating **Nextel's** facilities. Without access to its network **through roaming agreements**, it will be very **difficult** for **SMR providers** to **compete with Nextel**.

**E. Nextel's Refusal To Roam With Its Competitors Is Indicative Of An Attempt To Monopolize The SMR Market**

Under **the antitrust** laws, when a monopolist **refuses** to **deal** with its competitors and **controls** a facility that is essential for those competitors to compete, it is **required** to make the essential facility available to **its** competitors. Nextel by far has **amassed** more **800 and 900 MHz** spectrum than any of its competitors **and** has used that spectrum to **create** a nationwide network. **It faces** competition in only a few **regional** markets, including against Southern in the **Southeastern United States**. However, **Nextel** is using its nationwide network to the detriment of **its** regional **competitors (and** potential new entrants) by **refusing** to enter into roaming agreements. By its actions, **Nextel** is attempting to maintain and expand its dominance **in** the **trunked dispatch market**.

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<sup>86</sup> It has been suggested **that** mobile systems can be developed to provide dispatch **services on 220 MHz spectrum** as a **substitute** for **800 and 900 MHz SMR spectrum**. As previously discussed, **this** is not a workable solution. The experience of users of **225 MHz** spectrum demonstrates it is neither technically nor **economically feasible** for **an** **SMR provider** to attempt to duplicate **Nextel's** nationwide network using **220 MHz spectrum**.

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It is **clearly** feasible for **Nextel** to permit at least Southern to roam on its network. As discussed in a preceding section of these Comments, there **are** no legitimate business or technical **reasons** for it to avoid entering an automatic roaming agreement with Southern, and that is probably **also true of other** digital **SMR providers**. Technical **solutions** permit roaming **between iDEN systems**; in **fact**, **Nextel** initiated **a** global **effort** to **establish** roaming with virtually every **iDEN carrier** *in* the world (both **affiliated** and non-affiliated) **with** the **exception of Southern**. It is **counterintuitive** for a **profit-seeking SMR provider** to turn away the revenues that would be generated by a roaming **agreement** unless **that** provider's motives are predatory. Here, **Nextel** is simply taking advantage of its monopoly to **unreasonably** constrain its **existing** and potential competitors **from** offering competitive roaming **services**.

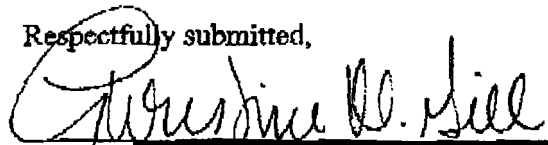
In sum, Southern firmly **believes** that **Nextel** has monopoly power in the **trunked** dispatch market, **that** it dominates and controls the essential facility **necessary** to **meaningfully compete** in this **market** -- a national **network** of 800 and 900 MHz **SMR** spectrum -- and is expanding and maintaining its monopoly power in a **manner** that raises serious **concerns** regarding the antitrust laws.

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**CONCLUSION**

WHEREFORE, **THE** PREMISES CONSIDERED, Southern LINC respectfully requests the Commission to act in the public interest in accordance with the proposals set forth herein.

Respectfully submitted,



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Dated: January 5, 2001

EXHIBIT A



## Harrison County School District

**HENRY A. ARLEDGE**  
Superintendent of Education

11072 Highway 49  
Gulfport, Mississippi 39503  
(228) 539-6500  
(228) 539-6507

**E. MITCHELL KING**  
Assistant Superintendent

November 2, 1999

NOV 8

Robert G. Dawson  
Chief Executive Officer  
Southern LINC  
5555 Glenridge Connector, Suite 500  
Atlanta, GA 30328

Dear Mr. Dawson:

The Harrison County School District is one of the oldest Southern LINC users on the Mississippi Gulf Coast. We appreciate the reliability of Southern LINC, but we are disappointed that Southern LINC has not been able to make arrangements to allow us to roam into the Jackson, Mississippi (the state capital) and the New Orleans, Louisiana areas.

The Harrison County School District needs radio and telephone service in the Jackson, Mississippi area, for many of our key personnel have to travel in the Jackson and New Orleans areas often. With the concerns that public education and the parents that we serve have for safety, it is of utmost importance that our supervisory staff has the ability to stay in contact with the district when traveling in the Jackson and New Orleans area.

As a school district we use the Southern LINC system for all of our radio and cellular service for the schools and the key personnel. It is a great disadvantage for us to lose contact with the district when we travel to the Jackson area.

The Superintendent of Education is the most frequent traveler to the Jackson area. Needless to say, he needs to be able to be reached at a moments notice. We are able to do that at any time other than when he travels to Jackson. It is also imperative that he can call back to the district.

We urge that Southern LINC establish roaming arrangements with Nextel Communications, which operates an iDEN system in the New Orleans area and hopefully the Jackson area as well. The Jackson, Mississippi area is our first choice for roaming services.

Sincerely,



Henry Arledge  
Superintendent

# **EXHIBIT B**



Robert G. Dawson  
Chief Executive Officer  
Southern LINC  
3535 Glenridge Connector  
Suite 500  
Atlanta, GA 30342

Dear Bob,

American Medical Response ("AMR") is the nation's largest private provider of medical transportation. As you know, AMR - a loyal Southern LINC customer - provides this critical public safety service in Mississippi and Louisiana. Currently we can only communicate via Southern LINC to the Meric, Mississippi area. We have operating units in the St. Tammany, Orleans and Jefferson parishes in Louisiana. If we were able to communicate with our South Louisiana operating units, it would greatly enhance our efficiencies. Right now we must maintain three separate communications systems in order to provide total area-wide communications. We would greatly benefit by having roaming capability.

On behalf of AMR Gulf Coast, please consider this our formal request for roaming, and please present this request to Nextel Communications on our behalf.

Sincerely,  
  
Steve Delhomme  
Director of Operations

Comments of Southern LINC  
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**CERTIFICATE OF SERVICE**

I, **Gloria Smith**, do hereby certify that on this 5th day of **January, 2001**, a single copy (unless otherwise noted) of the foregoing "Comments of Southern LINC" was hand-delivered to the following!

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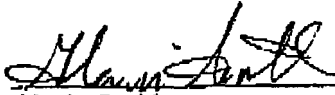
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