

BEFORE THE

**Federal Communications Commission** RECEIVED

WASHINGTON, D.C. 20554

JUN 27 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

|                                |   |                      |
|--------------------------------|---|----------------------|
| In the Matter of               | ) |                      |
|                                | ) |                      |
| Further Forbearance from       | ) |                      |
| Title II Regulation for        | ) | GEN Docket No. 94-33 |
| Certain Types of Commercial    | ) |                      |
| Mobile Radio Service Providers | ) |                      |

**COMMENTS OF  
THE SOUTHERN COMPANY**

The Southern Company ("Southern"), by its attorneys and pursuant to Section 1.415 of the Federal Communication Commission's rules, submits these Comments in response to the Notice of Proposed Rule Making ("Notice") released May 4, 1994 in the above-captioned proceeding.<sup>1/</sup>

**STATEMENT OF INTEREST**

1. Southern is a licensee of numerous Specialized Mobile Radio ("SMR") stations throughout Alabama, Georgia, the panhandle of Florida and southeastern Mississippi.<sup>2/</sup> As

1/ Further Forbearance from Title II Regulation for Certain Types of Commercial Mobile Radio Service Providers, GEN Docket No. 94-33, Notice of Proposed Rule Making, FCC, 94-101 (released May 4, 1994).

2/ Southern is an electric utility holding company which wholly owns the common stock of five electric utility operating companies, Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company,

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a wide-area interconnected SMR licensee, Southern appears to fall within the definition of a Commercial Mobile Radio Service ("CMRS") provider as set forth in the Omnibus Budget Reconciliation Act of 1993 ("Budget Act"). As such, Southern will be affected by the outcome of this proceeding and will be subject to numerous additional Title II regulations which, heretofore, have not applied to the SMR industry. Accordingly, Southern has a keen interest in the outcome of this proceeding, and submits the following Comments for the Commission's consideration.

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2/(...continued)

Savannah Electric and Power Company, and a system service company, Southern Company Services, Inc., which together operate an integrated electric utility system which serves over 11 million consumers in a contiguous area of 122,000 square miles, including most of the State of Alabama, almost all of the State of Georgia, the panhandle of Florida, and 23 counties in southeastern Mississippi. Southern is in the process of improving its mobile radio communications and is implementing a wide-area digitally enhanced 800 MHz system. Southern will sell the excess capacity of its system to state and local government, utilities, industrial and commercial users, and other customers who can use the dispatch, two-way, voice, and data transmission capabilities of Southern's wide-area SMR system. The Southern wide-area SMR system will provide service in rural and urban areas corresponding with its utility system operations.

**COMMENTS**

2. The Budget Act gives the Commission the discretion to forbear from applying specific provisions of Title II to certain CMRS providers if a three-pronged test is met:

- (a) Enforcement of the provision is not necessary to ensure that charges, practices, classifications or regulations for or in connection with this service are just and reasonable and are not unjustly discriminatory;
- (b) Enforcement of the provision is not necessary for the protection of consumers; and
- (c) Forbearance from enforcement of the provision is consistent with the public interest.<sup>3/</sup>

In this proceeding, the Commission proposes to use a cost-benefit analysis for evaluating the last prong of this test.<sup>4/</sup> Southern believes that using the cost-benefit analysis is the best approach to determining whether further

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<sup>3/</sup> Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002(c)(1), 107 Stat. 312, 393-394 (1993).

<sup>4/</sup> Notice at p. 4.

forbearance from Title II regulations is necessary. In cases where the costs of adhering to certain Title II regulations are exorbitant, and the public benefits very little from their enforcement, Southern believes the Commission should forbear from applying these regulations to CMRS providers. On the other hand, Southern believes that imposition on CMRS providers of regulations which have important public benefits is appropriate. Accordingly, Southern supports the Commission's determination that application of certain Title II regulations to CMRS providers will protect consumers and at the same time promote competition in the mobile services marketplace.

3. However, Southern believes that some Title II provisions are particularly applicable to traditional, wireline common carrier services, and do not apply to subscription-based services like Specialized Mobile Radio Services, where mobile services are being provided to specialized subscribers. There are substantial differences between traditional common carrier service and new CMRS services, and it may be unnecessary and quite burdensome for these types of CMRS licensees to adhere to additional Title II regulations. In this regard, Southern urges the Commission not to hastily apply Title II regulations to CMRS

Commission not to hastily apply Title II regulations to CMRS licensees in circumstances where it may not be appropriate.

**APPLICATION OF SPECIFIC TITLE II REGULATIONS**

A. **Section 223: Obscene, Indecent and Harassing Communications**

4. Southern supports continued application of Section 223 to all CMRS providers. Southern agrees that protecting the public from obscene and indecent communications is an important public interest goal. It also believes that requiring CMRS providers who wish to provide certain types of information services to employ blocking mechanisms is not overly burdensome, and is narrowly-tailored to withstand constitutional muster.

B. **Section 225: Telecommunications Relay Services**

5. Southern also believes that providing telecommunications services to the hearing and speech-impaired is an important public interest goal. The Southern SMR system will have the capability to provide telecommunications relay service ("TRS") for hearing and speech-impaired individuals at their request. Southern believes that providing such services is not overly

burdensome for CMRS licensees, especially since provision of TRS can be contracted out to third parties. Accordingly, Southern supports applying Section 225 to CMRS providers.

6. To the extent that CMRS licensees provide interstate service, Southern believes that these providers should also contribute to the TRS fund.

C. Section 226: Operator Services

7. The requirements under this section generally apply to traditional wireline common carrier services, and not to mobile services. CMRS services are subscription-based services, and the general public or transient users cannot simply use CMRS facilities for making interstate calls without first subscribing to the mobile service. Because prior subscription is a necessary element in receiving SMR services, the public interest problems, i.e., "call splashing," are not issues. Therefore, at this time, the Commission should forbear from applying Section 226 to CMRS licensees.

D. Section 227: Unsolicited Telephone Calls and Facsimile Transmissions

8. Southern agrees that unsolicited telephone calls and facsimile transmissions can be a nuisance to the receiving party, especially where, as in mobile services, the receiving party is charged for the incoming call or transmission. Since telemarketing is not typically within the service provided by a CMRS operator, if such a provider chooses to engage in telemarketing, this should include compliance with the consumer protection requirements of the law regarding telemarketing. Therefore, Southern supports the Commission's tentative proposal to apply Section 227 to all CMRS providers who engage in telemarketing.

E. Section 228: Pay-Per-Call Services

9. Southern believes that Section 228 will not apply to most CMRS providers unless they plan to offer 900 pay-per-call services. If a CMRS provider intends to provide 900 pay-per-call services, Southern believes that the requirement to provide a blocking mechanism to prevent access to such 900 services is not too burdensome. Southern believes that the blocking mechanism is essential to protect the public from excess charges. Accordingly, Southern does

not oppose application of this Section 228 on CMRS providers.

F. Measurement Factors

10. The Commission seeks comment on how best to implement its further forbearance procedures. Specifically, it seeks comment on how to identify eligible entities for forbearance and how to deter evasive activities. In this regard, Southern supports the alternative that would require certification on the CMRS application, which states that the CMRS applicant meets the criteria to receive further forbearance from Title II regulations. Southern opposes reliance on the complaint process as a means of determining eligibility for forbearance because this process may encourage frivolous complaints by CMRS competitors rather than bona fide complaints from the general public.

11. Finally, Southern also supports adoption of a case-by-case approach for determining further forbearance eligibility. The burden of proof would rest with the CMRS applicant to demonstrate that further forbearance from Title II regulations is necessary. Southern believes this approach is appropriate because there may be circumstances which arise after the initial licensing that may require a

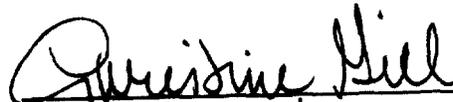
CMRS licensee to seek further forbearance. Employing the case-by-case approach prevents foreclosure of any subsequent ability to seek further forbearance from Title II regulations.

**CONCLUSION**

In light of the foregoing, the Southern Company respectfully requests that the Commission act upon its Notice of Proposed Rule Making in a manner consistent with the views express herein.

Respectfully submitted,

**THE SOUTHERN COMPANY**



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