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Nextel Communications, Inc.
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NEXTEL

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie R. Salas, Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-B204
Washington, D.C. 20554

EX PARTE OR LATE FILED

RE: ***Ex Parte* Presentation**

In the Matter of Motorola, Inc.; Motorola SMR, Inc.; Motorola Communications and Electronics, Inc., Application for Consent to Assign 900 MHz SMR Licenses to FCI 900, Inc., DA 00-2352

In the Matter of Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Services, WT Docket No. 00-193

In the Matter of Revision of the Commission's Rules To Ensure Compatibility With Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102

Dear Ms. Salas:

On February 9, 2001, Southern Communications Services, Inc. ("Southern") filed a written *ex parte* presentation in the above-referenced proceeding, DA 00-2352, concerning 58 pending applications to assign 900 MHz Specialized Mobile Radio ("SMR") licenses from Motorola, Inc. ("Motorola") and certain of its subsidiaries to FCI 900, Inc., a wholly-owned subsidiary of Nextel Communications, Inc. (hereinafter collectively referred to as "Nextel"). This *ex parte* letter and attached documents respond to Southern's February 9 presentation (hereinafter the "Southern Presentation"), and demonstrate that the Commercial Mobile Radio Services ("CMRS") marketplace is the relevant marketplace for analyzing Nextel's acquisition of SMR licenses for use in its iDEN digital network.[1]

Introduction

In its presentation, Southern urges the Federal Communications Commission ("Commission") to deny the subject pending assignments, or to condition them on

[1] Many of the issues discussed herein also address arguments Southern has raised with respect to the ongoing rulemaking in WT Docket No. 00-193 concerning automatic roaming in the CMRS industry as well as Nextel's pending waiver request in CC Docket No. 94-102 concerning implementing Phase II Enhanced 911 ("E911") services. Pursuant to Section 1.1206 of the Rules of the Federal Communications Commission, Nextel is filing this *ex parte* presentation and two copies in each of the above-referenced proceedings.

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requiring Nextel to provide nationwide roaming for Southern's "cellular" customers.[2] Southern incorrectly asserts that the relevant market for evaluating the competitive impact of the proposed assignments is a narrowly defined trunked dispatch market. It argues that 800 MHz and 900 MHz SMR spectrum is the only spectrum capable of supporting the provision of trunked dispatch services, and that an SMR licensee would have to make a "sizeable investment" to use other CMRS spectrum to provide such services.

Southern's position ignores the Commission's current spectrum policies and regulatory framework for commercial wireless communications services. Although SMR spectrum initially was used primarily to provide two-way analog dispatch services, the Commission's rules neither require that it continue to be used for dispatch-only service, nor do they preclude the use of more than 200 MHz of other CMRS spectrum for providing dispatch services – either alone or in combination with other wireless communications services. In fact, the Commission's current CMRS regulatory framework, which is designed to create broad-based wireless competition, encourages all CMRS carriers to deploy competitive wireless services – whether dispatch or interconnected voice, short messaging or data – that put the spectrum to its highest and best use. By assigning CMRS licenses via competitive bidding, the Commission has assured that such licensees will put the commercial spectrum to its highest and best use, thereby eliminating the need to impose regulatory limitations on the services auction winners can provide.[3]

As a result, the Commission has encouraged CMRS licensees to expand their service offerings, make flexible use of the spectrum in response to consumer needs and put the spectrum to new and advanced uses -- not necessarily the "highest and best *dispatch* use" or the "highest and best *interconnected* cellular use" or even the "highest and best *data* use." Rather, licensees are encouraged to put the spectrum to its highest and best commercial wireless use – whatever the marketplace determines that use or uses to be – regardless of the services previously provided on that spectrum. There is no public interest benefit in the Commission preserving any specific market or service at the expense of the greater economic good created

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[2] Southern uses Motorola's 6:1 iDEN technology, which is similar to Nextel's 3:1 iDEN technology. Southern provides its subscribers an integrated package of "cellular", dispatch (both one-to-one and group call), short messaging, and data communications services all on a single handset. Southern, like Nextel, competes with cellular and Personal Communications Services ("PCS") providers in the larger CMRS marketplace. *See* www.southernco.com/annualreports/ar99, where Southern lists as its main competition "Specialized mobile radio providers, personal communications system and cellular carriers, and paging companies."

[3] Using competitive bidding to assign spectrum licenses is predicated on the proposition that winning bidders will, by dint of the competitive bidding process, put the spectrum to its highest and best use in order to earn a return on their investment in the spectrum. That use varies case-by-case depending on the cost of the spectrum resource, technology choices, competitive offerings and customer demand.

by increasing broad-based CMRS competition.[4] Thus, Southern's attempt to restrict the Commission's marketplace analysis based on narrow historical spectrum uses – particularly when Southern itself has enhanced its own use of "SMR dispatch" spectrum to broaden its consumer appeal and compete with cellular and PCS offerings -- distorts the Commission's spectrum policy goals and ignores the reality of the robustly competitive CMRS marketplace that has been created as a result of the Commission's insightful CMRS spectrum management policies.

Additionally, Southern's narrow marketplace analysis creates a regulatory disparity by treating certain CMRS spectrum transactions differently from others, based on nothing more than the location of the frequencies in the CMRS spectrum bands. The mere fact that Nextel provides its competitive CMRS services on 800 MHz and 900 MHz SMR spectrum should not, under today's CMRS regulatory scheme (which includes a 45 MHz CMRS spectrum cap), result in Nextel's acquisition of spectrum being treated differently (and more rigorously) than an acquisition by Sprint PCS or AT&T Wireless ("AT&T"). While Verizon Wireless ("Verizon"), for example, has used mergers and acquisitions to obtain 10, 20 or even 30 MHz blocks of CMRS spectrum in various markets with little more than a comparison of its spectrum position to the overall spectrum cap, Nextel continues to encounter significant scrutiny – such as that applied to this transaction – when acquiring an additional .25 MHz to 1 MHz of non-contiguous spectrum in various markets. Such disparate treatment creates an uneven playing field and injects the very regulatory disparity that is prohibited by the Omnibus Budget Reconciliation Act of 1993 ("1993 Budget Act").[5]

In support of its narrow marketplace analysis, Southern offers an affidavit prepared by economists Michael G. Bauman and Stephen E. Siwek of the Washington D.C.-based consulting firm Economists Incorporated ("EI") (hereinafter the "EI Presentation"). In the following pages, Nextel rebuts Southern's assertions,[6] and provides an economic analysis of the proposed assignments prepared by Dr. Gregory L. Rosston, Deputy Director of the Stanford Institute for Economic Policy Research at Stanford University (hereinafter "Rosston Report" at Attachment 1). Dr. Rosston responds directly to the assertions made in the EI Presentation pointing out numerous factual inaccuracies and analytical missteps contained therein. Dr. Rosston concludes that the only relevant market for competitive analysis of the

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[4] *In re Applications of Pittencrieff Communications, Inc. and Nextel Communications, Inc. For Consent to Transfer Control of Pittencrieff Communications, Inc. and its Subsidiaries,* Memorandum Opinion and Order, 13 FCC Rcd 8935 (1997)("PCI Order") at ¶ 76 ("[The Commission] will not preserve markets for their own sake, without regard to the considerations in other markets and overall economic efficiency.")

[5] Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 312 (1993). Pursuant to the 1993 Budget Act, the Commission is required to treat all similarly situated CMRS carriers in a similar manner.

[6] Nextel cannot cite to pages in the Southern Presentation because it was not paginated.

proposed transactions is the overall CMRS market; that the CMRS market is intensively competitive; that Nextel's past and ongoing spectrum acquisitions enable it to become more efficient, to achieve economies of scale, and to introduce unprecedented competitive innovations in the CMRS marketplace stimulating far-reaching competitive responses from other CMRS carriers in a virtuous cycle of lower prices and expanded services for wireless consumers.[7]

Dr. Rosston points out that Nextel controls only a fraction of the total 209.1 MHz of spectrum available for CMRS and CMRS-like services and has the fifth most spectrum in many markets behind Verizon Wireless ("Verizon"), Sprint PCS, AT&T and Cingular Wireless ("Cingular"), and in some markets has less spectrum than Voicestream Wireless ("Voicestream") as well. Despite this, Southern's competitive analysis would allow all of these CMRS competitors (assuming spectrum cap compliance) to acquire the subject Motorola licenses and use them to provide exactly the same services Nextel intends to offer – even though each of them has much more spectrum than Nextel. As Dr. Rosston concludes, spectrum restrictions on the fifth or sixth largest competitor in a market that do not apply to any of the top four or five providers are unheard of in competition policy.[8]

Additionally, the Wireless Telecommunications Bureau ("Bureau") should be aware at the outset that the conclusions in the EI Presentation regarding the relevant market for evaluating the proposed transactions herein are largely inconsistent with conclusions EI previously submitted to the Commission. In an analysis prepared by its President, Bruce W. Owen, formerly the Chief Economist of the Antitrust Division of the Department of Justice, and Mark W. Frankena, a Principal at the firm, EI promoted outright repeal of the 45 MHz CMRS spectrum cap, recommending instead that the Commission adopt a "safe harbor" for all CMRS spectrum transactions under 45 MHz.[9] Therein, EI recommended – in sharp contrast to its position in this proceeding -- that the Commission review on a case-by-case basis only those transactions that would result in an entity having more

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[7] As Dr. Rosston notes, Nextel's increased efficiency may be one reason for Southern's opposition to the subject transaction. To the extent Nextel becomes more efficient, its competitors must work harder to compete against a lower cost, higher value offering. Antitrust authorities generally are skeptical of opposition to acquisitions lodged by horizontal competitors because any exercise of market power by the acquirer in the form of increased prices creates a market opportunity benefiting the complaining competitor. Moreover, as Dr. Rosston explains, the proposed acquisitions would still leave Nextel well behind the spectrum positions of its CMRS competitors offering integrated voice, messaging and data communications services. *See* Rosston Report at pp. 6, 13.

[8] *Id.* at pp. 2, 4.

[9] *See* "An Economic Evaluation of the Federal Communications Commission's Commercial Mobile Radio Services Spectrum Cap," attached to the January 25, 1999 comments of AT&T Wireless Services in WT Docket 98-205.

than 45 MHz of CMRS spectrum in a particular market. For example, in supporting the AT&T filing, EI stated:

> "As a general matter, consumers are not made worse off when one firm is larger or more efficient than others. Indeed, the reverse often is true. Firms with lower costs tend to charge lower prices. The Supreme Court has made it clear that the purpose of the antitrust laws is to protect competition, not competitors. Competition policy seeks a level playing field, not equal-sized players." (Page 13)
>
> "Some companies are more efficient than others. They have lower costs and offer services that cater better to consumers' preferences. For example, they may offer innovative services and integrated bundles of services, attractive pricing plans, and responsive customer service. Consumers benefit from allowing these more efficient companies to acquire assets that would otherwise be used by less efficient companies." (Page 17)

Given that the instant assignments would give Nextel from 0.25 MHz to 1 MHz of additional spectrum in approximately 20 of the Major Trading Areas in the US, with its total spectrum position in any one of them remaining below 25 MHz – at least 20 MHz below the current CMRS spectrum cap -- EI's economic analysis in support of eliminating the CMRS spectrum cap cannot be reconciled with its opposition to the proposed transactions in this proceeding.

Furthermore, as a threshold matter herein, the disconnect between Southern's substantive arguments and the relief it requests warrants dismissal of Southern's opposition. Southern argues that the subject transactions should be denied because approving them would give Nextel a more dominant position in the *trunked dispatch market*. Yet in the same breath, Southern proposes that the assignments be *approved* only on the condition that Nextel provide *cellular roaming – not dispatch roaming* – to Southern's customers, even though it is competition in the *narrow trunked dispatch market* that Southern alleges would be harmed by permitting the assignments. In other words, even though Southern's anti-assignment competitive argument alleges a negative competitive impact on the *dispatch market,* it would happily abandon that position in return for Commission-mandated nationwide *cellular roaming* for its customers – perhaps because Southern's self-proclaimed "main competition" includes "personal communications system and cellular carriers."[10]

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[10] www.southernco.com/annualreports/ar99.

Southern's dispatch market arguments are a "red herring" intended to mislead the Commission into conditioning the proposed assignments on requiring Nextel to give nationwide cellular roaming access to Southern's cellular subscribers. The bottom line: Southern is desperately trying to achieve in the instant proceeding what it apparently fears it cannot achieve "on the merits" in the Commission's ongoing rulemaking in WT Docket No. 00-193 concerning whether to impose automatic roaming obligations on CMRS licensees. That is the proceeding in which Southern's roaming concerns and its associated competitive allegations should be addressed. Accordingly, the Commission should dismiss Southern's opposition herein and expeditiously grant the pending assignment applications.

Southern's Affirmative Case Regarding the Relevant Marketplace is Meritless

As demonstrated herein and in the attached analysis of Dr. Rosston, Southern's entire case is based on an arbitrary, artificial and erroneous definition of the relevant marketplace for evaluating the potential competitive impact of the subject assignments.

1. CMRS Operators Provide Trunked Dispatch Services

Southern asserts that "trunked dispatch is not assimilated into interconnected mobile voice market," that SMR is the only service capable of dispatch and interconnected voice service in the same handset, that CMRS providers don't offer trunked dispatch service, and finally, that iDEN is not interoperable with CMRS services and that their functions are not comparable. These alleged "facts" ignore both Commission findings and marketplace reality.

First, trunked dispatch service is simply one component of the integrated services offered by Nextel, Southern, and Pacific Wireless as well as a functionality increasingly offered by other CMRS providers. Nextel's Direct Connect® dispatch feature not only differentiates its particular CMRS service offering but is being copied and emulated as wireless customers demand its "assimilation" in interconnected CMRS offerings. Evidence of this assimilation is the fact that 85% of all new Nextel subscribers are former cellular users, and just under one-half of all Nextel airtime is attributable to Direct Connect® – *i.e.,* dispatch – minutes.[11] Moreover, 27% of all analog dispatch churn would not be attributable to "competition from Cellular/PCS/Nextel" if dispatch users were not substituting interconnected mobile service (or a package of interconnected mobile service and dispatch service) for stand-alone dispatch service.[12] Additionally, the Commission has concluded that dispatch and interconnected services are "assimilated" in

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[11] *See* State of the SMR Industry: Nextel and Dispatch Communications, The Strategis Group, September 2000 (hereinafter "September 2000 Strategis Group Report") at p. 49.

[12] *Id.* at page 28 (only ten percent of analog dispatch churn is generated by competition from other SMR services).

today's wireless communications marketplace, finding that "Nextel's Direct Connect services option itself may be seen as providing more than trunked dispatch, because to some degree ***it is a substitute for mobile voice features such as speed dialing and conference calling***."[13]

Second, it is simply untrue that SMR is the only service capable of dispatch and interconnected voice in the same handset. As the Commission has recognized on numerous occasions, there is no legal hurdle to CMRS carriers' introduction of dispatch and interconnected voice services in the same handset.[14] All CMRS carriers, whether cellular, PCS or SMR, have the legal authority to deploy dispatch services on their licensed spectrum,[15] and from a technology standpoint there is nothing unique to the 800 or 900 MHz SMR spectrum that makes it the "only service capable of dispatch and interconnected voice in the same handset."[16] If Southern's position were accurate, Motorola could not have developed and sold a 1.5 GHz iDEN product in Japan.[17]

In fact, OmniExpress, a joint venture between Qualcomm (the inventor of and a leading vendor of CDMA wireless technology) and Descartes Systems Group offers an integrated wireless dispatch and route optimization solution that includes mobile terminals within the vehicle, a communications network to connect drivers to dispatchers and dispatch and route optimization that promotes the efficient use of fleet assets.[18] In July 1999 Sprint PCS purchased OmniExpress for $400

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[13] 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*, 15 FCC Rcd 17660, at p. 70 (2000) ("Fifth Report on Competition")(emphasis added).

[14] *See, e.g.,* PCI Order at ¶ 54; *In re Various Subsidiaries and Affiliates of Geotek Communications, Inc. Debtor-in-Possession, and Wilmington Trust Company or Hughes Electronics Corporation, and In re Applications of Wilmington Trust Company or Hughes Electronics Corporation, and FCI 900, Inc. For Consent to Assignment of 900 MHz Specialized Mobile Radio Licenses*, Memorandum Opinion and Order, DA 00-89, released January 14, 2000 ("Geotek Order") at ¶¶ 35-36.

[15] *In re Eligibility for the Specialized Mobile Radio Services and Radio Services in the 220-222 MHz Land Mobile Band and Use of Radio Dispatch Communications,* Report and Order, 10 FCC Rcd 6280 (1995).

[16] *See* Rosston Report at p. 16; *see also* PCI Order; Geotek Order.

[17] *See, e.g.,* Press Release, "Motorola Announces Commercial Availability of iDEN Enhancement," June 17, 1996, www.motorola.com.

[18] Press Release, Qualcomm, *Solution by Descartes and Qualcomm Improves Communication and Smoothes Logistics for Private Fleets, Less-Than –Truckload Carriers and Metropolitan Fleets* (June 15, 2000); www.qualcomm.com.

million,[19] and Qualcomm has already obtained the trademark rights to "QChat." QChat is the button located on the side of Qualcomm phones that will connect one user to all of the other users in a particular calling group.[20] Qualcomm CDMA mobile units are used extensively by PCS subscribers operating on 1.9 GHz PCS frequencies today. The QChat capability, therefore, will be available to PCS subscribers and will likely be offered in CDMA networks regardless of whether they are denominated as PCS, cellular or SMR by dint of their original spectrum position.[21]

Southern is mistaken when it asserts that "CMRS providers don't offer trunked dispatch service." As the Commission first made clear in 1994, any SMR licensee interconnected to the Public Switched Telephone Network is a CMRS provider; thus, there are CMRS providers offering trunked dispatch services.[22] Not only does Southern ignore that it and Nextel are just two such CMRS providers currently offering trunked dispatch services, it also ignores the potential for additional CMRS providers to offer dispatch services. In assessing the competitive impact of the proposed assignments on the relevant marketplace, the Commission must consider not only current service providers, but also any and all potential new providers of such services.[23] As discussed above, additional CMRS providers are

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[19] Press Release, Qualcomm, *Sprint Signs Agreement Valued at Approximately $400 Million with Qualcomm for the Purchase of CDMA Digital Handsets* (July 20, 1999); www.qualcomm.com.

[20] Press Release, Qualcomm, *Secure Wireless Handsets for Civilian Use* (January 2001); www.qualcomm.com.

[21] Southern's assertions about the limitations of technology ignore the technological developments that are defining today's wireless marketplace. Had Fleet Call, Inc. (Nextel's forerunner) had the same beliefs in 1989 that Southern has now, there might be no competitive integrated wireless mobile telephone and dispatch CMRS alternative in the 800 MHz SMR band. When Fleet Call began its quest to provide a competitive alternative to cellular, there was no equipment available for the provision of a cellular-like service, and there was no widespread interest in providing it on the 800 MHz SMR channels. Southern's narrow view of the wireless marketplace ignores the fact that Motorola has already developed and sold an iDEN product that operates on 1.5 GHz spectrum in Japan. *See, e.g.,* Press Release, "Motorola Announces Commercial Availability of iDEN Enhancement," June 17, 1996, www.motorola.com. If 1.5 GHz iDEN, why not 1.9 GHz iDEN? Or if 800/900 MHz iDEN, why not 800 MHz/1.9 GHz dual band iDEN? Or a dual band, dual mode product? Southern has many competitive alternatives; it simply wants one that gets it a nationwide footprint virtually for free.

[22] *In re Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services,* Second Report and Order, 9 FCC Rcd 1411 (1994)("[SMR] licensees who provide interconnected service will be classified as CMRS providers, while those who do not will be classified as PMRS providers.")

[23] *See, e.g.,* PCI Order at ¶ 13 ("Second, we identify current and potential participants in each relevant market. . .").

likely to begin offering trunked dispatch as QChat is launched in various PCS networks. The Commission cannot discount the potential for additional dispatch offerings by other cellular and PCS providers as well as the likelihood that other handset and network vendors will follow the leads of Motorola and Qualcomm in developing integrated mobile handsets providing a suite of wireless services including both dispatch and interconnected service.

Southern further discounts the current provision of CMRS services that are tailored to compete directly with the trunked dispatch services of Nextel and Southern, *e.g.,* free mobile-to-mobile calling plans. A number of CMRS competitors are now offering free or low-rate mobile-to-mobile calling plans in an effort to recreate the "fleet" calling capabilities of dispatch services.[24] By lowering (or eliminating) the fee for interconnected phone calls among mobile users on their systems, these providers are attempting to capture the customer previously interested in the lower-cost dispatch service Nextel and Southern offer on their iDEN networks. These plans already are providing significant additional competition to the dispatch services offered by Nextel.[25]

Given all of the above, Southern's statements that iDEN is not "interoperable with CMRS services" and that its "functions are not comparable" are baseless. The iDEN technology supports CMRS services; *i.e.,* interconnected , for-profit services offered to the public, and it uses a cellular-like network architecture (multiple low-power sites offering frequency reuse) just like other CMRS systems whether licensed initially on PCS or cellular frequencies. IDEN is not a "trunked dispatch service;" it is much more. In fact, Motorola describes its iDEN technology as follows:

> "iDEN (Integrated Digital Enhanced Network) is **a fully-digital integrated wireless system for the 800 megahertz frequency band (and 1.5 gigahertz band in Japan) that integrates full-duplex telephone interconnect,** instant conferencing for group and private calling, alphanumeric paging with guaranteed message delivery and one-touch call back, and data/fax communications services for mobile workgroup applications. iDEN technology is based on a variety of time-proven RF technologies developed by Motorola to provide a fully integrated wireless digital network."[26]

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[24] *See* the advertisements of Cingular, Verizon, AT&T, Voicestream and Nextel at Attachment 2.

[25] *See* Rosston Report at p. 11.

[26] http://www.motorola.com/LMPS/iDEN/press/release09.htm (emphasis added)

The reality is that iDEN was designed as a CMRS technology platform enabling providers without contiguous, exclusive-use spectrum to provide services such as digital cellular, text and numeric messaging, Caller ID, voicemail, one-touch dialing, three-way calling and dispatch services in direct competition with other CMRS providers. The iDEN functionality is not only "comparable" to CMRS services using other technology platforms such as CDMA, TDMA or GSM, in many cases it is identical, *e.g.,* voicemail, call waiting, interconnected voice service. The fact that iDEN offers an additional service to the typical CMRS integrated service offering does not in any way take it out of the CMRS marketplace. On the contrary, iDEN has significantly improved and enhanced the CMRS market, as the Commission's CMRS policies were intended.

Southern's assertion that iDEN is "not interoperable with CMRS services" is further contradicted by the fact that Motorola offers an iDEN/GSM dual mode phone that Nextel supplies its customers today, permitting seamless roaming between Nextel's 800 MHz U.S. network and 900 MHz GSM networks in dozens of countries worldwide. Nothing prevents Southern from offering this same service; indeed, nothing prevents Southern from developing with Motorola a dual band 800 MHz/1.9 GHz handset and network infrastructure,[27] just as Nextel and Motorola are today developing dual band 800 MHz/900 MHz iDEN infrastructure to enable Nextel to integrate this spectrum to provide additional capacity and bandwidth for future advanced services and customer demands.[28] Southern's arguments that iDEN and other CMRS services are not compatible ignores technical reality in an effort by Southern to obtain additional coverage without making any significant investment in spectrum or infrastructure/network development.

2. *Nextel Competes With CMRS Carriers Offering Cellular, Dispatch and Data Services*

To deploy its CMRS iDEN service, Nextel has assembled over the past decade a nationwide commercial wireless iDEN network regulated by the Commission as a CMRS service and recognized by the public, its competitors and communications experts as part of the competitive mix that includes Verizon, AT&T, Cingular, Sprint PCS, Voicestream and other smaller local providers of substitutable commercial services.[29] Nextel's recent acquisition of the chain of "Let's Talk Cellular" stores to enhance its retail distribution and service network is

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[27] This is one of the paths Nextel would have pursued had it obtained 1.9 GHz licenses in the recent C and F Block PCS reauction.

[28] Nextel intends to begin rolling out its 800/900 MHz iDEN product in the summer of 2002 as described in its Petition for Waiver in DA 01-121.

[29] *See, e.g.,* Fifth Report on Competition; Lynette Luna, Group Calling is Weapon in Wireless Wars, Radio Comm. Rept., June 28, 1999, at p.20.

further evidence of Nextel's position as a CMRS competitor.[30] The competitive impact of the subject acquisition must be evaluated in the context of its impact on competition in the overall CMRS marketplace – the marketplace within which Nextel is aggressively competing.

Nextel has aggregated through acquisitions, mergers, channel swaps and Commission auctions an average of 20 MHz of non-contiguous spectrum throughout the Nation providing coverage to 178 of the top 200 markets where nearly 200 million people live or work. [31] Since 1987, Nextel (then Fleet Call) has been acquiring this spectrum to enable it to launch a competitive CMRS service that, as The Strategis Group concluded, "evoked a profound response from AT&T Wireless and other cellular operators."[32] These carriers introduced no-roaming and free long distance rate packages in response to Nextel's market entry.[33] As a result, wireless consumers are, in many cases, no longer paying the roaming and long distance fees that "had generated considerable revenue since the inception of the wireless industry."[34] Even though Nextel holds less spectrum than many of its competitors, it has consistently introduced vigorous competition fostering additional digital wireless choices in the marketplace, lower prices, increased service quality, and responsive competitors who have reacted to Nextel's entry with pro-competitive pricing and service options of their own.

Nextel serves a subscriber base of approximately seven million units. To put this in competitive perspective, Verizon has 27.5 million subscribers on its nationwide wireless system,[35] Cingular just signed up its 20 millionth subscriber on its nationwide network,[36] AT&T has approximately 15 million subscribers on its nationwide network,[37] Sprint PCS has approximately 10 million subscribers,[38] and Voicestream had nearly 4 million subscribers at year-end 2000.[39]

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[30] Press Release, "Let's Talk Cellular & Wireless Announces Deal With Nextel," February 6, 2001.

[31] This includes pending assignments before the Commission.

[32] September 2000 Strategis Report at p. 54.

[33] *Id.*

[34] *Id.*

[35] Press Release, "Verizon Communications Posts Strong Results For Fourth Quarter and 2000," February 1, 2001, at www.verizonwireless.com.

[36] Press Release, "CINGULAR WIRELESS TOPS 20 MILLION WIRELESS VOICE CUSTOMERS," February 21, 2001, at www.cingular.com.

[37] Press Release, "AT&T Wireless Completes Purchase of Dobson Communications Preferred Stock," February 9, 2001, at www.att.com.

[38] *See* http://www3.sprint.com/sprint/ir/ai/kos.html.

Thus, Nextel has deployed its network to compete not only with Southern, but also to compete aggressively with CMRS providers operating in the cellular and PCS bands – just as Southern is doing. As demonstrated in Table I of Dr. Rosston's analysis, these CMRS carriers have significantly more spectrum than Nextel in most of the major markets.[40] For example, in New York City, AT&T and Verizon each hold 45 MHz while Nextel holds 19.9 MHz.[41] The proposed transaction will add in most markets less than 1 MHz of additional spectrum to Nextel's spectrum position – a competitively insignificant addition in the context of Verizon's, AT&T's and the others major CMRS carriers' spectrum holdings. Even if Nextel were to acquire all of the available non-contiguous commercial 800 and 900 MHz spectrum, its holdings would still fall short of the 45 MHz CMRS spectrum cap, as well as the holdings of most of its competitors in the major high demand markets. In short, Nextel's acquisition of Motorola's 900 MHz spectrum will not inhibit competition; on the contrary, it will enable Nextel to more successfully compete with its CMRS competitors, thereby benefiting consumers.[42]

3. Southern Has Had Numerous Opportunities to Acquire Additional Spectrum

In its Presentation, Southern implies that Nextel has had an unfair advantage in the 800 MHz SMR auctions due to its acquisition of 800 MHz spectrum in the secondary marketplace prior to the auctions. Southern conveniently fails to mention, however, that every channel Nextel acquired prior to the auctions – dating back as far as April 1987 (the date on which Fleet Call, Inc. was incorporated) – was equally available to Southern. Had Southern been interested in constructing and deploying a wide-area digital SMR network beyond the footprint of its utility companies' coverage areas, it could have taken advantage of the very same marketplace opportunities (as well as opportunities presented in Commission spectrum auctions).

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[39] Press Release, "VoiceStream Wireless Announces 2000 Financial Results," February 14, 2001, at www.voicestream.com.

[40] Rosston Report at Table I.

[41] Nextel's 19.9 MHz of spectrum, moreover, is non-contiguous while Verizon and AT&T each holds blocks of contiguous spectrum within their 45 MHz holdings.

[42] Southern asserts that Nextel's achievement of industry's highest average revenue per unit ("ARPU") is not a sign of service superiority, but the result of some improper competitive behavior. Southern's assertion is belied by the fact that Nextel's ARPU is the CMRS industry's highest, thus surpassing the ARPU of companies such as AT&T and Verizon, both of which have, in some cases, twice the spectrum and subscribers as Nextel. Nextel's ARPU is the result of its aggressive competitive position in the market, its advanced features and functionalities and its business user-oriented customer base that uses a larger number of minutes each month than a typical consumer-oriented user.

Southern continues to disagree that its limited spectrum position is, in part, a result of its own business decision to rely on its advantaged public utility status to acquire at no cost 800 MHz spectrum then-set aside by the Commission for internal private communications systems and convert it to for-profit commercial use status (even while this spectrum was not available to competing commercial providers). In its defense, Southern claims it recently spent $50 million dollars in Auction No. 34 for 800 MHz General Category channels "and has made numerous efforts to acquire more [spectrum]."

First, according to Southern's own admission, 95% of its 800 MHz spectrum is made up of licenses in the 800 MHz Business and Industrial/Land Transportation ("B/ILT") pools – licenses that were not available to Nextel and other commercial entities after 1995 (and are still not available to them for initial commercial licensing).[43] After May of 1997, for example, two years after the prohibition on licensing B/ILT frequencies to commercial entities, Southern was granted 2,388 Business frequencies and 6,582 ILT frequencies for use in its commercial iDEN system.[44]

Second, Nextel does not dispute that Southern spent more than $50 million in the General Category auction. However, for a carrier saying it needs to offer expanded geographic coverage, Southern's outlay is less than one-fifth Nextel's investment of over $230 million to acquire 1,053 licenses (as compared to Southern's 89 licenses) in the same auction. Similarly, in the lower 80 SMR auction, Southern spent just $817,000 to acquire 90 licenses, while Nextel spent over $27 million to acquire just over 2,500 licenses. More importantly, this limited investment in auctioned spectrum has been focused primarily within its existing footprint. In the three 800 MHz SMR auctions, Southern bid for and obtained licenses in only two areas outside the Southeastern United States – Indianapolis and Oklahoma City.

As it did in these Commission spectrum auctions, Southern appears to have squandered opportunities in the secondary spectrum marketplace. Southern contends that it actively sought to buy Chadmoore's licenses, as well as Geotek's

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[43] Prior to April 1995, the Commission permitted 800 MHz eligibles to access channels outside their respective pools under certain specified conditions. For example, an SMR applicant could access available spectrum in the ILT pool if the SMR applicant could establish that its system was fully loaded, and no SMR channels were available in the area. *See* 90.621(e). 47 C.F.R. Section 90.621(e)(1994). In April 1995, however, the Bureau froze all intercategory sharing applications, pending the outcome of the Commission's proceeding establishing new licensing rules for the 800 MHz SMR service. *See* Order, DA 95-741, 10 FCC Rcd 7350 (1995)("Freeze Order"); *affirmed* Memorandum Opinion and Order, DA 95-1669, 11 FCC Rcd 1452 (1995)("Freeze Memorandum Opinion and Order").

[44] *See* Reply Comments of Nextel Communications, Inc., submitted December 11, 1998, in DA 00-2206.

licenses from the Geotek bankruptcy trustee, and that it expressed interest in the subject 900 MHz Motorola licenses, thus implying that it cannot compete with Nextel to acquire spectrum. Similar to the Commission's auction process, a competitive secondary marketplace typically ensures that assets are sold to the "highest bidder," *i.e.,* the competitor that places the highest value on the licenses. These particular secondary market transactions were open to all potential buyers. Although Nextel has no knowledge of the details of Southern's alleged interest in pursuing these transactions, Nextel's offers appear to have been more attractive and economically beneficial to each seller than Southern's "expressed interest" and "attempts" to buy spectrum. Nextel has been bested by other buyers in various spectrum transactions over the years, and in light of Southern's economic position, its decision not to outbid Nextel for spectrum is solely a strategic one. Thus, Southern's position has no regulatory value.

Finally, Southern makes no attempt to defend its failure to participate in the 1.9 GHz PCS C and F Block reauction. Southern is a wholly owned subsidiary of one of the world's leading electric utilities enjoying a guaranteed rate of return in its exclusive service areas.[45] If Southern truly needs a larger geographic footprint for its utility personnel, as it has claimed, and for its commercial customers, there was no reason that Southern could not have and should not have bid for that spectrum. In fact, if Southern had participated and obtained a near nationwide footprint, rather than the spectrum going to Verizon, AT&T and other incumbents, consumers could be better off because Southern would be an additional facilities-based provider offering a competing nationwide suite of wireless communications services. Southern's disinterest in the C and F Block auction, and its very limited interest in the 700 MHz Guard Band auction, demonstrates that while it is willing to seek competitive advantage through regulatory disparity, it has no stomach for taking the investment risks necessary in today's intensely competitive commercial wireless marketplace.

4. Ample Opportunities Exist for the Provision of Dispatch Services

Assuming *arguendo* that Southern is correct and there is a "trunked dispatch market" that is relevant to the analysis of the proposed assignments, approval is warranted. There is ample spectrum available for the provision of dispatch services, to the extent consumers demand them, whether provided on 220 MHz, 450-470 MHz, 800 and 900 MHz, the cellular and PCS allocations, and prospectively the 700 MHz Guard Band and commercial allocations. As Nextel showed in its February 22, 2001 *ex parte* letter to Ms. Lauren Kravetz of the Wireless Telecommunications Bureau,[46] 220 MHz operators are currently providing dispatch

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[45] Press Release, "Allen Franklin to become CEO; A.W. 'Bill' Dahlberg announces retirement," www.southernco.com ("Southern Company is . . . one of the largest producers of electricity in the United States and one of the world's largest independent power producers.")

[46] Letter to Lauren Kravetz from Laura Holloway, dated February 22, 2001, in DA 00-2352.

services. There are hundreds of licensees on the 450-470 MHz spectrum authorized to provide commercial dispatch services either directly or via community repeaters. Dispatch services are likely to emerge on the recently auctioned 700 MHz Guard Band spectrum, and on cellular and PCS spectrum. Qualcomm's QChat product, as well as the mobile-to-mobile rate plans currently offered by any number of CMRS carriers, will continue to provide significant competition to dispatch services. This is more fully addressed in Dr. Rosston's Declaration.

Southern's assertions about technology and the provision of dispatch services assume a technological status quo, ignoring that there are significant technological improvements occurring every day, provided a carrier is willing to pay for them. The Commission's marketplace analysis cannot assume a static technological landscape. The competitiveness of the industry, as detailed in the Commission's Fifth Report on Competition and in Nextel's February 5, 2001 filing in WT Docket No. 00-193, also submitted in this proceeding, forces carriers to consider expanding their products and services regardless of the spectrum on which they provide service. All CMRS carriers now must offer not just mobile telephone or just trunked dispatch service, but a full menu of mobile telephone, group calling and advanced data capabilities in order to remain competitive in the CMRS marketplace. This is a fact of today's marketplace – as Congress intended in the 1993 Budget Act -- whether the provider is on 800 or 900 MHz SMR spectrum, 800 or 900 MHz Business or Industrial/Land Transportation spectrum, 800 MHz cellular spectrum, or 1.9 GHz PCS spectrum.

Conditioning Approval of the Motorola Assignments on Providing Roaming to Southern's Customers Is Not Warranted

Nextel has fully addressed Southern's assertions regarding roaming on the Nextel system in WT Docket No. 00-193, and Nextel has included its roaming reply comments in this proceeding. As explained by Dr. Rosston, whether or not Southern has a roaming agreement in place with Nextel is wholly irrelevant to the competitive analysis of the proposed transaction.[47] Mandating a roaming obligation on Nextel – while all other CMRS carriers are free to choose to enter into only those roaming agreements that make economic sense for their operations and their customers – would not address any of the concerns alleged by Southern in this proceeding. On the contrary, it would hinder a single CMRS competitor that otherwise has injected significant competition into the CMRS marketplace.

Nextel and Southern currently are in the midst of discussions regarding manual and automatic roaming on iDEN networks. Nextel continues to believe, based on discussions with Motorola, that manual roaming (as Nextel understands manual roaming and as it historically has been accomplished on AMPS cellular systems) is not possible on iDEN networks. Thus, Nextel and Southern are

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[47] Rosston Report at pp. 18-20.

discussing whether a mutually beneficial roaming arrangement can be accomplished without negatively impacting customers on either system. Nextel is awaiting a mutually beneficial, technically achievable roaming proposal from Southern that includes concrete financial arrangements.

As explained by Dr. Rosston, imposing a roaming obligation as a condition to granting the proposed assignments would do nothing to address any of Southern's alleged problems.[48] The request for a roaming condition is nothing more than an attempt to gain a commercial advantage in the CMRS marketplace through the regulatory process. Additionally, while imposing a roaming mandate would do nothing to address the alleged "competitive" issues raised by Southern, it could have an adverse impact on overall CMRS competition as Southern would be disincented to invest in new infrastructure and service buildout, and Nextel's ability to upgrade its own services could be adversely impacted.[49] Thus, while the Commission has in the past placed conditions on mergers and license assignments, those conditions are intended to enhance competition; not adversely affect competition. Southern's proposed condition (*i.e.,* an automatic roaming mandate on only Nextel) seeks to protect its own operations from competition at the expense of overall competition in the CMRS marketplace.

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[48] *Id.* at p.20.

[49] *Id.* at pp. 19-20.

Conclusion

For the reasons discussed herein and in the attached Declaration of Dr. Rosston, Nextel respectfully requests that the Commission conclude that Nextel competes in the CMRS marketplace, that its acquisition of SMR spectrum must be considered in light of the positive competitive impacts the overall CMRS will result in that marketplace, and assignments of Motorola's 900 MHz licenses be expeditiously approved.

Sincerely

Robert S. Foosaner
Senior Vice President, Government Affairs

cc: Thomas J. Sugrue
James D. Schlichting
Robert Pepper
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Dan Grosh
Monica Desai
Susan Singer
John Branscomb
Michael Rosenthal, Southern Communications Services (via U.S. Mail)
Mary Brooner, Motorola, Inc.

ATTACHMENT 1

Report of Gregory L. Rosston

March 7, 2001

Report of Gregory L. Rosston

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I. Introduction

My name is Gregory L. Rosston. I am Deputy Director of the Stanford Institute for Economic Policy Research at Stanford University. I am also a Lecturer in the Economics Department at Stanford University. I received my Ph.D. and M.A. in economics from Stanford University, and my A.B. with honors in economics from the University of California, Berkeley. My specialties in economics are industrial organization and regulation with an emphasis on telecommunications. I served at the Federal Communications Commission ("Commission" or "FCC") for three and one-half years as the Deputy Chief Economist of the Commission, as the Acting Chief Economist of the Common Carrier Bureau and as a senior economist in the Office of Plans and Policy. In these positions, I had significant involvement with the Commission's spectrum policy and auction-related issues. I have been the author or co-author of a number of articles relating to telecommunications competition policy and spectrum policy, including an FCC staff working paper on spectrum policy.[1] My Ph.D. dissertation studied the effects of FCC policy on the land mobile radio industry. I have also co-edited two books on telecommunications. A copy of my vita is attached as Exhibit A.

I have been asked by Nextel Communications, Inc. ("Nextel") to examine whether its proposed acquisition of 900 MHz spectrum licenses from Motorola is in the public interest and to evaluate the arguments raised by Southern Communications Services, Inc. ("Southern Linc") in opposition to this transaction.

A. Summary of Opinions

Denying the acquisition would harm the public interest by reducing the efficiency of a competitor in the marketplace, thereby harming consumers. A denial would represent a step backwards in spectrum policy and would be a narrow and misguided implementation of competition policy. The Commission should approve the transaction, thereby allowing spectrum to be used where it can provide the highest benefits to the public.

Southern Linc opposes the proposed acquisition using a narrowly defined trunked dispatch market. However, a wide variety of evidence demonstrates that dispatch is not a separate and distinct market, but rather one service that can be and is offered by Commercial Mobile Radio Services ("CMRS") providers. Nextel competes in a broad CMRS market with cellular, PCS, SMR providers and other radio providers. Any CMRS or private provider can provide dispatch services, such as Nextel's Direct Connect®, whether it operates in the cellular, PCS, SMR or other bands. Nextel's proposed acquisition of the Motorola licenses will allow it to better compete in the CMRS market and enhance competition in the delivery of wireless services.

In reaching this conclusion, I found the following to be useful:

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[1] G.L. Rosston and J. Steinberg "Using Market-Based Spectrum Policy to Promote the Public Interest," http://www.fcc.gov/Bureaus/Wireless/OPP/econ.html subsequently published in 50 Fed. Comm. L.J. 1 (1997).

- Southern Linc's opposition to the acquisition would essentially have the Commission mandate the spectrum in question be used for dispatch service only. This is not in the public interest. On the contrary, the public interest is maximized when spectrum policy recognizes that spectrum is fungible and that different services can be provided using many different bands.

- Nextel competes in a broad CMRS market. Southern Linc's arguments would preclude Nextel, the fifth or sixth largest CMRS provider, from acquiring the Motorola spectrum, but would allow any of Nextel's larger CMRS competitors to acquire the Motorola spectrum. There is no basis in antitrust economics for such a prohibition on the fifth largest firm in a market.

- Nextel will use the spectrum to provide more highly valued services than its current use, analog dispatch. Nextel's main product is an integrated mobile voice and data offering that includes dispatch functionality through the Direct Connect® feature. Cellular and PCS providers are offering consumers similar integrated communications packages that include dispatch-like features and are implementing technology to further enhance such offerings.

- Nextel's efficiency may be an important reason why Southern Linc objects to this transaction. To the extent that Nextel becomes a more efficient competitor, it forces all competitors (including Southern Linc) to compete more vigorously.

- Nextel typically has less spectrum than its cellular and PCS competitors. Nextel's acquisition of spectrum is an attempt to achieve some of the same economies of operation as its competitors, and should lead to increased competition in the CMRS market. Denying the proposed transaction would handicap Nextel's ability to compete with its cellular and PCS competitors.

- Many of Southern Linc's arguments that the acquisition is contrary to the public interest have been raised in opposition to prior Nextel spectrum acquisitions. Restricting output is a hallmark of anticompetitive behavior However, Nextel's use of spectrum from these acquisitions shows that it has significantly increased the efficient use of "SMR" spectrum and expanded output.

- Integrated services offered by Nextel and other CMRS providers prevent the exercise of market power in the "stand-alone dispatch" market defined by Southern Linc. In addition, consumers have numerous alternatives available for stand-alone dispatch services.

- Notwithstanding its arguments that the transaction would restrict competition, Southern Linc proposes approval for the transaction on the condition of giving it mandated roaming on Nextel's system. The roaming condition is unrelated to any of the alleged competitive issues Southern Linc raises and is therefore irrelevant

to a public interest determination on the proposed transaction. Furthermore, mandated roaming could create other inefficiencies.

The remainder of this declaration is organized as follows: Section II looks at the spectrum policy implications of the proposed acquisition; Section III examines the public interest benefits from the acquisition; Section IV analyzes the competitive effects of the acquisition on the CMRS market; Section V analyzes the competitive effects of the acquisition on stand-alone dispatch service; and Section VI evaluates Southern Linc's roaming proposal.

II. Spectrum Policy Implications

A. Southern Linc's Objections to the Proposed Acquisition

Southern Linc objects to Nextel's proposed acquisition of the Motorola licenses on the grounds that Nextel allegedly has the majority of spectrum that has historically been used for commercial dispatch provision. Southern Linc's analysis is flawed in two important ways. First, the 800 MHz SMR and 900 MHz SMR spectrum highlighted by Southern Linc is being used by Nextel to compete in the CMRS market. Second, dispatch service, such as Nextel's Direct Connect®, can be provided by any CMRS or private provider, and is not restricted to the 800 MHz SMR and 900 MHz SMR bands. Southern Linc ignores other spectrum allocations that are being used or could be used for the provision of dispatch service.

Southern Linc's arguments in opposition to Nextel's acquisition of the Motorola spectrum are essentially arguments that the Commission should mandate that the spectrum in question be used for dispatch service only. To assess this argument, I evaluate the public interest in such restrictions.

B. Benefits of a Flexible Spectrum Policy

In evaluating spectrum policy, the Commission is charged with maximizing the public interest. Over the past 10 years, the Commission has moved more toward a flexible approach to spectrum policy. This better allows licensees to meet the demands of consumers. This flexible approach is reflected in the broad service scope for PCS licensees and in other procedures like the removal of the dispatch prohibition on cellular licensees.[2] The Commission has stated that it is important to continue this method of spectrum management to, among other things, "create new opportunities for increasing the communications capacity and efficiency of spectrum use by licensees."[3]

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[2] In re Eligibility for the Specialized Mobile Radio Services and Radio Services in the 220-222 MHz Land Mobile Band and Use of Radio Dispatch Communications, Report and Order, 10 FCC Rcd. 6280 (1995)

[3] In re Principles for Promoting the Efficient Use of Spectrum by Encouraging the Development of Secondary Markets, Policy Statement, FCC 000-401, rel. Dec. 1, 2000 ("Secondary Markets Policy Statement") at para. 2.

Without this flexible approach to spectrum management, this proceeding would not be necessary because the SMR spectrum would be relegated to providing inefficient analog trunked and non-trunked dispatch services. In response to Nextel's (then Fleet Call) request to enhance the technology and service provided using its SMR licenses, the Commission issued a waiver that allowed Nextel, Southern Linc and others to provide higher quality service to the public.[4]

Recently, a group of 37 economists concerned with spectrum policy (including me) submitted comments to the Commission in the secondary market proceeding to encourage the Commission to adopt a more market-based approach to spectrum policy than it has done to date.[5] Among the restrictions we urged the Commission to relax were those restricting the ability of a licensee to choose what service to provide. Restrictions on service provision can have harm consumers because they prevent the low-cost, competitive provision of different services.

Many providers have changed the services they provide on given spectrum to respond to consumer demand. For example, MMDS providers originally provided one-way multi-channel video services, but some are now providing two-way high-speed Internet access. Cellular spectrum was originally used for analog voice conversations and it is now being used for a family of digital voice, messaging and data communications services unforeseen when spectrum was initially allocated for cellular use. The Commission originally contemplated that the SMR spectrum would be used for a high-power, limited capacity, dispatch oriented service, but permitted providers to incorporate technological advances and respond to customer demand, so that now the SMR spectrum is used for high-capacity, low power digital voice and data services in competition with cellular and PCS providers.

Southern Linc argues that Nextel should not be allowed to purchase the Motorola spectrum and use it to provide higher value services because Nextel has a large share of SMR spectrum. A significant flaw in Southern Linc's logic is that simply because Sprint PCS has PCS spectrum, not SMR spectrum, it would be allowed to purchase the Motorola spectrum without any corresponding competition problems even though it has about 50% more usable spectrum than Nextel. This is true even though Sprint PCS provides services in the same relevant market, CMRS, as does Nextel. While there may be circumstances where the public interest is served by prohibiting a dominant firm from acquiring a resource, it is nearly impossible to imagine circumstances where the public interest is served by prohibiting the fifth or sixth largest firm (by capacity or subscribers) in a market from acquiring a resource, while allowing any of the top four firms to acquire the same resource and use it for the same purposes.

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[4] See Fleet Call, Inc., 6 FCC Rcd 1533 (1991)

[5] "Comments of 37 Concerned Economists," In the Matter of Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, Feb. 7, 2001.

III. Public Interest Benefits from the Proposed Acquisition

A. Nextel's Use of 800 MHz and 900 MHz Spectrum

Motorola currently uses the 900 MHz spectrum at issue to provide analog dispatch service to nearly 43,000 mobile units. Nextel's acquisition of the licenses will allow the spectrum to provide more highly valued integrated services.

Nextel has put together its wireless system by spending more than $5.5 billion over some 15 years of spectrum acquisitions and $7 billion investment in network infrastructure. The vast majority of these acquisitions have been in the 800 MHz band. Over time, Nextel took conventional and trunked SMR analog dispatch systems and re-deployed the spectrum in its digital iDEN system. Through the conversion to digital technology and the use of a frequency-reuse cellular network architecture rather than inefficient, high-site analog systems, it has been able to increase capacity on these systems significantly.

While the Motorola licenses are in the 900 MHz band, they can benefit Nextel's system in at least two ways. First, Nextel has announced that it is working with Motorola to develop an integrated dual-band iDEN system that will span both the 800 MHz and 900 MHz frequencies. According to Nextel, this technology will be available for initial deployment in mid-2002. With this technology, a user will be able to transparently access frequencies across both bands in a single radio. Second, Nextel can use these channels to relocate other users from 800 MHz channels so that the other users have equivalent service capabilities and Nextel has the benefit of contiguous channels. Either of these solutions will allow Nextel to make efficient use of the spectrum by increasing capacity and by deploying the spectrum to its highest value use.

It is likely that Nextel will be able to use the Motorola spectrum more efficiently than other firms, thereby maximizing the public interest benefits of permitting the transaction. If there are economies of scope in the provision of wireless services,[6] then it is more efficient for a single firm to produce these services, even if different consumers purchase the different services. This might occur because of the need to construct towers, install radios, engage in marketing and customer acquisition, etc. On the demand side, if consumers prefer bundles of services, then it also may be beneficial to allow a single firm to put the package together for consumers. For example, some customers may want wireless voice and data from the same provider so they can use a single wireless device for their mobile communications or so they only have a single point of contact. Both supply and demand side economies of scope can be important sources of efficiency.

Nextel's efficiency may be an important reason why Southern Linc objects to this transaction. To the extent that Nextel becomes more efficient, it becomes more difficult for all competitors (including Southern Linc) to attract customers. They have to compete against a lower cost, higher value service offering. Generally antitrust authorities are

[6] Economies of scope mean that it costs less for provision of two services by a single firm than provision of the two services separately by two different firms. Formally, $C(A,B) < C(A) + C(B)$ for A and B in the relevant range.