

such spectrum available to AMTS, a manufacturer would need to decide to produce state of the art equipment for the newly enlarged AMTS service and to bring such production on line. Even in that event, this newly developed equipment could not hope to be deployed in serious quantities in the marketplace during the two-year window that is used in the DOJ Merger Guidelines.

- 108) For all of these reasons, prospects of future changes in the AMTS service do not alter any of our conclusions with respect to dispatch markets today.

## **220 MHz**

- 109) The Commission staff inquired as to whether we had additional information on the actual holders of commercial licenses in the 220 MHz band. This section briefly discusses one holder of 220 MHz spectrum that was not previously discussed.

- 110) The second largest bidder for 220 MHz spectrum, based on net bids, was Sophia Licensee Inc., a subsidiary of Sophia Communications.<sup>87</sup> Sophia provides a wireless data network to support fixed-point monitoring and control applications, and mobile user applications. The company has developed a proprietary “two-way” wireless technology for data transmission. Sophia currently has network coverage in the Chicago area.<sup>88</sup>

- 111) Given Sophia’s focus on developing a data network, Sophia is unlikely to provide any competition in the trunked dispatch market.

## **Cellular/PCS Providers**

### *Mobile-to-Mobile Pricing Plans*

- 112) There is no doubt that cellular and PCS carriers have thus far shown little interest in providing dispatch services even though the FCC removed all restrictions on the provision of common carrier dispatch service by these carriers in March of 1995.

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<sup>87</sup> The top bidder for 220 MHz spectrum was Intek license Acquisition Corp. The status of Intek was discussed in our previous *ex parte* filing.

<sup>88</sup> [www.sophiacomm.com](http://www.sophiacomm.com).

113) Nevertheless, in its August 1999 *Response*, DOJ asserted that cellular and PCS companies have responded to Nextel's success by offering new pricing plans designed to appeal to customers who might otherwise switch to Nextel's *Direct Connect* digital dispatch service. However, as we explain below, the cellular and PCS calling services offered by these carriers are quite distinguishable from *Direct Connect*.

114) Because of the fundamental differences between *Direct Connect* and the mobile-to-mobile pricing plans offered by the cellular/PCS carriers, these plans were seen, even by DOJ, as a short-term strategy at best. DOJ concluded that these plans "will not address important differences in functionality between cellular and PCS services and Nextel's dispatch service".<sup>89</sup>

115) To find out more about the mobile-to-mobile pricing plans that are currently offered by cellular and PCS providers, representatives from Economists Incorporated contacted Verizon Wireless, Sprint PCS, VoiceStream Wireless, Cingular Wireless and AT&T Wireless directly. As noted above, these carriers offer lower monthly fees or more free airtime for mobile-to-mobile calls. However, these mobile-to-mobile calls cannot be made to more than two or three mobile subscribers at the same time. Recall that with Nextel's *Direct Connect*, subscribers can talk from one to 100 other people in a pre-specified group by pressing a single button.<sup>90</sup>

116) For mobile conference calling, the maximum group size permitted by the cellular/PCS carriers was 4 for Verizon Wireless and 3 for Sprint PCS, VoiceStream, AT&T Wireless and Cingular. When asked whether there was a way to have twenty mobile subscribers on the line at once, two of these carriers, Verizon Wireless and VoiceStream Wireless, replied that "only Nextel has that." Contrary to Nextel's claims, unlimited calling plans by cellular/PCS providers do not represent "direct competition with the dispatch services offered by SMR operators."<sup>91</sup>

117) In this context, it is important to recognize that a "work group" in plans such as AT&T's Group Calling plan does not mean that each workgroup member can speak in conference to all other work group members. Workgroups reflect pricing options only. Even in a Group

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<sup>89</sup> *Response*, p. 10.

<sup>90</sup> Cahners Wireless Week, *Nextel Moves Beyond its Niche, Targets White Collar Market*.

<sup>91</sup> See Nextel Public Interest Statement, FCC Form 603, page 7 of 24.

Calling workgroup of 200 members, only three subscribers at most can speak to each other at the same time.

*Changes in Cellular/PCS Functionality*

- 118) In our original affidavit, we cited various instances where security analysts and industry specialists had noted the “unique” dispatch functionality of Nextel’s *Direct Connect* service. Nevertheless, we are also aware that other parties have claimed that changes in cellular/PCS functionality will someday emerge that will permit direct functional competition in dispatch markets between *Direct Connect* and cellular/PCS providers. Based on our research to date however, we are aware of no fully deployed cellular or PCS technology that now permits dispatch functionality in cellular/PCS systems.
- 119) In its August 1999 *Response*, DOJ concluded that functional differences between *Direct Connect* and cellular/PCS would be “narrowed” as cellular and PCS firms deployed new technology that could be used to offer dispatch functionality. In that context, DOJ cited press releases in early 1999 that described the plans of Swedish telephone manufacturer Ericsson to promote a telephone/dispatch handset that allegedly could work over cellular systems.<sup>92</sup> Interestingly, DOJ’s citations to Ericsson in August 1999 were at odds with citations that appeared in DOJ’s earlier Memorandum in opposition to Nextel’s motion to vacate the 1995 Consent Decree. In its February 1999 Memorandum, the Department cited statements by Jeffrey Hines, an analyst at BT Alex Brown who concluded that the Ericsson phone “falls short of being any serious threat to Nextel.”<sup>93</sup>
- 120) In the *Geotek Order*<sup>94</sup> and the *Fifth Report*<sup>95</sup> the Commission also referred to competition from the Ericsson TDMA Pro product and to the then recently announced *Cellular One to One* service. The Commission reported that “Ericsson’s TDMA Pro product overlays dispatch capabilities onto existing mobile voice networks by programming the network’s servers and handsets. ...In September 1999, under the Cellular One brand name, SBC launched *Cellular One to One*, a service employing the Ericsson technology enabling

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<sup>92</sup> *Response*, p. 10.

<sup>93</sup> U.S. Department of Justice, *Memorandum of the United States in Opposition to Nextel’s Motion to Vacate the 1995 Consent Decree*, No. CIV. A. 94-2331 (TFH), February 26, 1999, page 19.

<sup>94</sup> FCC Memorandum Opinion and Order, DA 00-89, *In re: Application of Various Subsidiaries and Affiliates of Geotek Communications, Inc. et.al.* Released January 14, 2000, (*Geotek Order*).

<sup>95</sup> FCC *Fifth Report* In the Matter of Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services. Released August 18, 2000, (*Fifth Report*).

subscribers to make conference calls with up to 30 different parties by dialing pre-programmed group numbers.<sup>96</sup>

121) At this writing, we have found no evidence to suggest that the Ericsson TDMA Pro handset is currently being deployed by any cellular or PCS providers anywhere in the United States. In particular, the phone is not available from SBC.<sup>97</sup> We also contacted Ericsson's headquarters in Sweden asking if the phone was available in the United States. According to Ericsson, the phone is not deployed in the United States since the terminal does not work on the 1900 MHz network.<sup>98</sup>

122) Moreover, we learned that Cingular (formerly Cellular One) no longer offers the *Cellular One to One* service that allows conference calls with up to 30 different parties. Cingular has mobile to mobile features and conference call capability for three people, but nothing to the extent that was indicated in the September 1999 announcement.<sup>99</sup>

123) For these reasons, we conclude that the hoped for dispatch competition based on improvements in cellular and PCS functionality, at least through the deployment of Ericsson equipment, has not and will not come to pass.

124) The Qualcomm "Q-chat" handset represents another technology that has been claimed to offer a potential way in which dispatch functionality could some day be added to cellular/PCS systems.<sup>100</sup> According to Nextel's comments, Q-chat is a button on the side of Qualcomm phones that will connect one user to all of the other users in a particular calling group.<sup>101</sup> Nextel claims that this feature "will likely further intensify competition among Sprint PCS, Nextel, Southern and other CMRS providers."<sup>102</sup>

125) Q-chat is not available at present. Qualcomm is currently working on the software. Q-chat is targeted to become available in 2002-2004, but this is totally dependent upon Verizon (their carrier) updating

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<sup>96</sup> *Geotek Order* at Par. 37. See also *Fifth Report* at p. 71.

<sup>97</sup> Conversations with customer service representatives at AT&T Wireless (800) 888-7600, Bell South Mobility (800) 351-2400, and Cingular Wireless (formerly Cellular One) (800) 331-0500.

<sup>98</sup> Email correspondence from Marie Axelsson at Ericsson, [Marie.Axelsson@era.ericsson.se](mailto:Marie.Axelsson@era.ericsson.se).

<sup>99</sup> Conversation with customer service representative at Cingular, (800) 331-0500.

<sup>100</sup> See for example, Federal Communications Commission, *Reply Comments of Nextel Communications, Inc.*, WT Docket No. 000-193, February 5, 2001, page 20.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

their network with 3G technology.<sup>103</sup> Without the network upgrade by Verizon the push-to-talk feature will not work.

126) Q-chat has been suggested as a software upgrade to Qualcomm's QSec-800 and QSec-800C phones, both of which are secure wireless handsets. The QSec-800 is an encrypted secure phone specifically developed for the federal government, military organizations, state and local law enforcement, public safety agencies, public officials and corporate decision-makers. The QSec-800C is a civilian version that provides secure communications for any business requiring a device of a unique, secure nature.<sup>104</sup>

127) The QSec-800 is being developed with the National Security Agency (NSA). According to NSA, development work on the Q-chat feature has been deferred. It is not a high priority at the moment due to cost considerations.<sup>105</sup>

128) NSA is trying to finish development of the phones and anticipate that by May/June 2001 they will have 350 delivered to them by Qualcomm. NSA hopes that following the testing phase they will reach an agreement with Qualcomm for production. The estimated cost for a QSec-800 phone is \$2,000. The price for the civilian phone is unknown, but if there is no production of the QSec-800 there will be no civilian version.<sup>106</sup>

## Conclusions

129) As set forth in this Supplemental Affidavit, we have attempted to respond to a series of inquiries made by the Commission staff during an *ex parte* meeting on February 8, 2001. Specifically, the staff solicited our comments regarding the 800 MHz Business and I/LT spectrum, the 700 MHz spectrum, the 450 MHz spectrum and the ATMS service in the 217-220 MHz band. Commission staff representatives also inquired as to whether we had additional information on the actual holders of commercial licenses in the 220 MHz band. Finally, we were asked to relate any additional support for our conclusion that Nextel's competitors in interconnected mobile voice service markets did not provide real alternatives to Nextel's *Direct Connect* service in trunked dispatch markets.

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<sup>103</sup> Conversation with the Qualcomm Government Systems department (858-658-4249).

<sup>104</sup> [www.qualcomm.com/govsys](http://www.qualcomm.com/govsys).

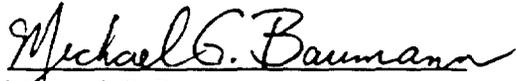
<sup>105</sup> Conversation with Ron Krebs at NSA (410-854-7005).

<sup>106</sup> *Id.*

130) In responding to the staff's inquiries, we gathered, reviewed, and evaluated additional information. Based on this information, it appears that particular frequency bands may one day support limited new entry into trunked dispatch markets in the United States. However, the information also dramatically underscores our original conclusion that no major competitors have or soon will emerge to challenge Nextel in these frequency bands. For this reason, we see no cause to revise either the conclusions or the calculations of market concentration that we presented to the Commission on February 8.

131) Accordingly, we continue to believe that Nextel possesses market power in relevant markets for trunked dispatch services. We also continue to believe that Nextel competes in separate markets for interconnected mobile voice services but that Nextel's competitors in the markets for interconnected voice services provide no real alternative to *Direct Connect* in trunked dispatch markets. For these reasons, we continue to recommend that the Commission deny Nextel's proposed license assignments in this proceeding.

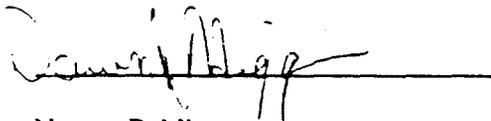
The foregoing statements are true and correct to the best of our knowledge, information and belief.

  
Michael G. Baumann

  
Stephen E. Siwek

Subscribed and sworn to before me, a Notary Public, this 11<sup>th</sup> day of March, 2001.

City Washington, DC

  
Notary Public

**DAWN J. HIGGINS**  
**A NOTARY PUBLIC OF DISTRICT OF COLUMBIA**  
**MY COMMISSION EXPIRES JUNE 30, 2004**



**Operating Service Territories  
of Electric Utilities in the US**

<b>Rank</b>	<b>Operating Company</b>	<b>Area (Sq. Miles)</b>	<b>Contiguous</b>
1	PacifiCorp	156,405	No
2	Montana Power	106,634	Yes
3	Pacific Gas & Electric	69,107	Yes
4	Southwestern Public Service	68,139	Yes
5	Southern California Edison	58,126	Yes
6	Northern States Power	56,561	No
<b>7</b>	<b>Georgia Power</b>	<b>56,501</b>	<b>Yes</b>
8	Otter Tail Power	52,667	Yes
9	Central Power & Light	52,072	Yes
10	West Texas Utilities	51,446	No
11	Texas Utilities Electric	46,102	No
12	Montana Dakota Utilities	45,854	Yes
<b>13</b>	<b>Alabama Power</b>	<b>42,499</b>	<b>Yes</b>
14	Sierra Pacific Power	42,375	No
15	Arizona Public Service	41,791	No
16	Idaho Power	33,902	No
17	Oklahoma Gas & Electric	32,349	Yes
18	CENTEL Electric	32,056	No
19	Arkansas Power & Light	32,037	No
20	Carolina Power & Light	31,523	No
21	Consumers Power	28,125	Yes
22	Duke Power	27,644	Yes
23	PSC of Oklahoma	27,356	No
24	Gulf States Utilities	27,013	No
25	Virginia Electric & Power	26,535	Yes
26	PSC of Colorado	25,540	Yes
27	Kansas Power & Light	25,454	Yes
28	Interstate Power	25,337	Yes
29	Florida Power	25,098	Yes
30	PSC of Indiana	24,542	Yes
31	Central Illinois Public Service	24,425	No
32	Niagara Mohawk Power	24,304	No
33	Minnesota Power & Light	23,992	Yes
34	Mississippi Power & Light	22,300	Yes
35	Union Electric	22,296	No
36	Florida Power & Light	22,189	Yes
37	Appalachian Power	22,174	Yes
38	Kentucky Utilities	19,418	Yes
39	Washington Water Power	19,207	Yes
40	Louisiana Power & Light	18,246	No
41	Southwestern Electric Power	18,171	Yes
42	Iowa Electric Light & Power	18,081	Yes
43	New York State Electric & Gas	17,055	No
44	Northwestern Public Service	16,609	Yes
45	Central Louisiana Electric	16,312	No

### Operating Service Territories of Electric Utilities in the US

Rank	Operating Company	Area (Sq. Miles)	Contiguous
46	Illinois Power	16,229	No
47	Pennsylvania Electric	15,814	No
48	South Carolina Electric & Gas	15,519	Yes
49	Puget Sound Power & Light	15,499	No
50	Wisconsin Power & Light	14,331	No
51	Iowa Power & Light	13,257	No
52	Missouri Public Service	13,175	No
53	West Penn Power	12,386	No
54	Ohio Power	11,885	No
55	Mississippi Power	11,806	Yes
56	Iowa Southern Utilities	11,675	Yes
57	Dayton Power & Light	11,648	Yes
58	Commonwealth Edison	11,568	Yes
59	Monongahela Power	11,123	No
60	Texas-New Mexico Power	10,679	No
61	Wisconsin Electric Power	10,565	No
62	Kansas Gas & Electric	10,410	No
63	Central Maine Power	9,896	Yes
64	Black Hills Power & Light	8,705	Yes
65	Gulf Power	8,483	Yes
66	Delmarva Power & Light	8,283	Yes
67	Wisconsin Public Service	7,993	No
68	Detroit Edison	7,930	Yes
69	Pennsylvania Power & Light	7,900	Yes
70	Potomac Edison	7,766	No
71	Louisville Gas & Electric	7,724	Yes
72	Empire District Electric	7,036	Yes
73	Northern Indiana Public Service	6,939	Yes
74	Maine Public Service	6,039	Yes
75	Ohio Edison	5,937	No
76	Kentucky Power	5,824	Yes
77	Kansas City Power & Light	5,687	No
78	Columbus Southern Power	5,420	No
79	Bangor Hydro-Electric	5,381	Yes
80	St. Joseph Light & Power	5,359	Yes
81	Upper Peninsula Power	5,115	No
82	Central Vermont Public Service	4,800	No
83	Connecticut Light & Power	4,409	Yes
84	Metropolitan Edison	3,867	No
85	Portland General Electric	3,844	Yes
86	Nevada Power	3,817	Yes
87	San Diego Gas & Electric	3,703	Yes
88	Massachusetts Electric	3,600	No
89	PSC of New Hampshire	3,532	No
90	El Paso Electric	3,522	Yes

**Operating Service Territories  
of Electric Utilities in the US**

<b>Rank</b>	<b>Operating Company</b>	<b>Area (Sq. Miles)</b>	<b>Contiguous</b>
91	Indiana Michigan Power	3,493	No
92	Jersey Central Power & Light	3,194	No
93	Iowa-Illinois Gas & Electric	3,008	No
94	Toledo Edison	2,808	Yes
95	Southwestern Electric Service	2,742	No
96	Edison Sault Electric	2,734	Yes
97	Atlantic City Electric	2,585	Yes
98	Rochester Gas & Electric	2,536	No
99	Philadelphia Electric	2,346	Yes
100	Central Illinois Light	2,316	Yes
101	Houston Lighting & Power	2,191	Yes
102	Cleveland Electric Illuminating	2,076	Yes
103	Baltimore Gas & Electric	2,061	Yes
104	Tampa Electric	2,048	Yes
105	UtiliCorp United	1,928	Yes
106	PSC of New Mexico	1,870	No
107	Central Hudson Gas & Electric	1,750	Yes
108	Commonwealth Electric	1,741	Yes
109	Public Service Electric & Gas	1,737	Yes
110	Cincinnati Gas & Electric	1,612	Yes
111	Southern Indiana Gas & Electric	1,416	Yes
112	Pennsylvania Power	1,415	Yes
113	Boston Electric	1,413	Yes
114	Citizens Utilities	1,355	No
115	Green Mountain Power	1,272	No
116	Nantahala Power & Light	1,209	Yes
117	Long Island Lighting	1,200	Yes
<b>118</b>	<b>Savannah Electric &amp; Power</b>	<b>1,178</b>	<b>Yes</b>
119	Western Massachusetts Electric	1,168	Yes
120	Consolidated Edison	1,112	Yes
121	Potomac Electric Power	1,083	Yes
122	Orange & Rockland Utilities	1,072	Yes
123	Narragansett Electric	1,026	Yes
124	Union Electric	1,001	No
125	Superior Water, Light & Power	745	Yes
126	Cheyenne Light, Fuel & Power	699	Yes
127	Conowingo Power	600	Yes
128	Alpena Power	486	Yes
129	New Orleans Public Service	474	Yes
130	Duquesne Light	469	Yes
131	United Illuminating	465	Yes
132	Wheeling Power	456	Yes
133	Florida Public Utilities	452	Yes
134	Granite State Electric	447	No
135	Tucson Electric Power	379	Yes

**Operating Service Territories  
of Electric Utilities in the US**

<b>Rank</b>	<b>Operating Company</b>	<b>Area (Sq. Miles)</b>	<b>Contiguous</b>
136	Madison Gas & Electric	296	Yes
137	Rockland Electric	260	Yes
138	Kingsport Power	204	No
139	Blackstone Valley Electric	136	Yes
140	Holyoke Water Power	105	Yes
141	Fitchburg Gas & Electric Light	79	Yes
142	Cambridge Electric Light	59	Yes
	<b>Total</b>	<b>2,132,151</b>	

Source: Energy Information Administration EIA GIS-NG.

**Indicates Southern Company Holding.**



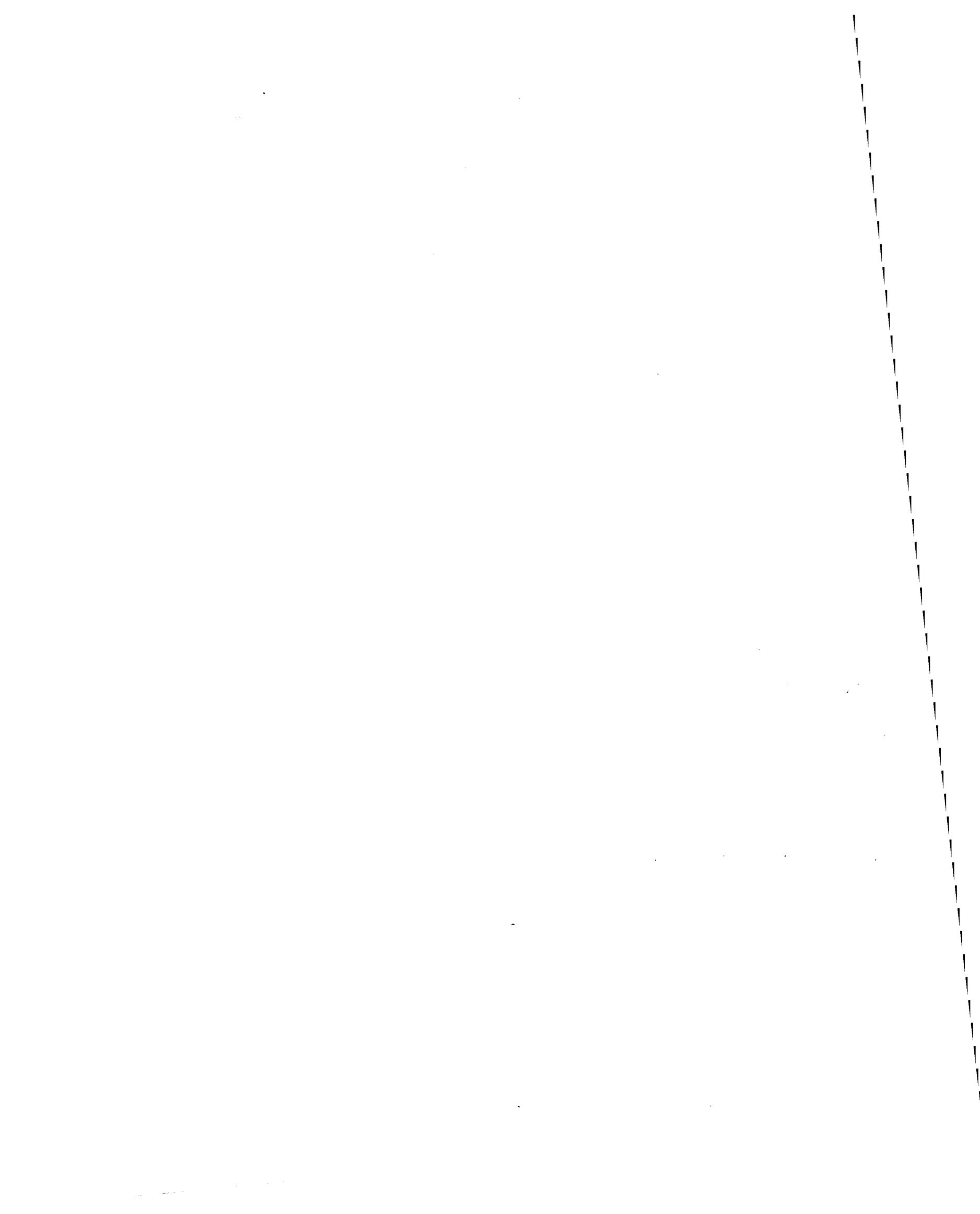
**Operating Service Territories of  
Electric Holding Companies in the US**

<b>Rank</b>	<b>Holding Company</b>	<b>Area (Sq. Miles)</b>	<b>Contiguous</b>
1	American Electric Power Co., Inc.	198,500	No
2	ScottishPower	156,405	No
3	Xcel Energy, Inc.	150,938	No
4	<b>Southern Company</b>	<b>120,468</b>	<b>Yes</b>
5	Montana Power Co.	106,634	Yes
6	Entergy Corp.	100,069	No
7	Alliant Energy Corp.	69,423	No
8	PG&E Corp.	69,107	Yes
9	Edison International	58,126	Yes
10	Otter Tail Power Co.	52,667	Yes
11	UtiliCorp United, Inc.	52,518	No
12	TXU Corp.	48,844	No
13	Ameren Corp.	47,722	No
14	Sierra Pacific Resources	46,192	No
15	MDU Resources Group, Inc.	45,854	Yes
16	Pinnacle West Capital Corp.	41,791	No
17	Western Resources, Inc.	35,863	No
18	IDACORP, Inc.	33,902	No
19	OGE Energy Corp.	32,349	Yes
20	Carolina Power & Light Co.	31,523	No
21	Allegheny Energy, Inc.	31,274	No
22	Duke Energy Corp.	28,853	Yes
23	CMS Energy Corp.	28,125	Yes
24	LG&E Energy Corp.	27,142	Yes
25	Energy East Corp.	26,951	No
26	Dominion Resources, Inc.	26,535	Yes
27	Cinergy Corp.	26,154	Yes
28	Florida Progress Corp.	25,098	Yes
29	ALLETE	24,736	Yes
30	Niagara Mohawk Holdings, Inc.	24,304	No
31	GPU, Inc.	22,875	No
32	FPL Group, Inc.	22,189	Yes
33	Avista Corp.	19,207	Yes
34	NorthWestern Corp.	16,609	Yes
35	Cleco Corp.	16,312	No
36	MidAmerican Energy Holdings Co.	16,265	No
37	Dynegy, Inc.	16,229	No
38	SCANA Corp.	15,519	Yes
39	Puget Sound Energy, Inc.	15,499	No
40	Exelon Corp.	13,914	No
41	Wisconsin Energy Corp.	13,299	No
42	WPS Resources Corp.	13,107	No
43	FirstEnergy Corp.	12,236	No
44	DPL, Inc.	11,648	Yes

**Operating Service Territories of  
Electric Holding Companies in the US**

<b>Rank</b>	<b>Holding Company</b>	<b>Area (Sq. Miles)</b>	<b>Contiguous</b>
45	Conectiv	11,468	Yes
46	TNP Enterprises, Inc.	10,679	No
47	Northeast Utilities	9,215	No
48	Black Hills Corp.	8,705	Yes
49	DTE Energy Co.	7,930	Yes
50	PPL Corp.	7,900	Yes
51	Empire District Electric Co.	7,036	Yes
52	NiSource, Inc.	6,939	Yes
53	Maine Public Service Co.	6,039	Yes
54	Kansas City Power & Light Co.	5,687	No
55	Bangor Hydro-Electric Co.	5,381	Yes
56	National Grid	5,209	No
57	Central Vermont Public Service Corp.	4,800	No
58	Enron Corp.	3,844	Yes
59	Sempra Energy	3,703	Yes
60	El Paso Electric Co.	3,522	Yes
61	Nstar	3,213	Yes
62	RGS Energy Group, Inc.	2,536	No
63	Consolidated Edison, Inc.	2,443	Yes
64	AES Corp.	2,316	Yes
65	Reliant Energy, Inc.	2,191	Yes
66	Constellation Energy Group, Inc.	2,061	Yes
67	TECO Energy, Inc.	2,048	Yes
68	PSC of New Mexico	1,870	No
69	CH Energy Group, Inc.	1,750	Yes
70	Public Service Enterprise Group, Inc.	1,737	Yes
71	Vectren Corp.	1,416	Yes
72	Citizens Communications Co.	1,355	No
73	Green Mountain Power Corp.	1,272	No
74	Long Island Power Authority	1,200	Yes
75	Potomac Electric Power Co.	1,083	Yes
76	Alpena Power Co.	486	Yes
77	DQE, Inc.	469	Yes
78	United Illuminating Co.	465	Yes
79	Florida Public Utilities Co.	452	Yes
80	UniSource Energy Corp.	379	Yes
81	Madison Gas & Electric Co.	296	Yes
82	Unitil Corp.	79	Yes
	<b>Total</b>	<b>2,132,151</b>	

Source: Energy Information Administration ELAGIS-NG, RDI Basecase Database.



## CERTIFICATE OF SERVICE

I, Sandra Hileman, a legal secretary in the law firm of Patton Boggs LLP, hereby certify that on this 20<sup>th</sup> day of March, 2001, I caused to be delivered by Courier (\*) or First Class U.S. Mail a copy of the foregoing "Supplemental Affidavit of Michael G. Baumann and Stephen E. Siwek" to the following individuals:

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(ORIGINAL PLUS ONE COPY)  
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Reston, VA 20191

International Transcription Services, Inc.  
1231 20<sup>th</sup> Street, NW  
Washington, DC 20036



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Sandra Hileman

Dated: March 20, 2001

## CERTIFICATE OF SERVICE

I, Gloria Smith, do hereby certify that on this 21st day of March, 2001, a single copy (unless otherwise noted) of the foregoing "Comments of Southern LINC" was hand-delivered to the following:

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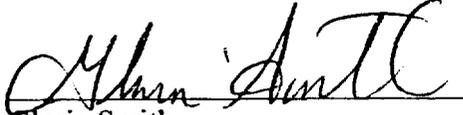
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APR 5 2001

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**Affidavit of**  
**Michael G. Baumann and Stephen E. Siwek**

*Economists Incorporated, Washington DC*

**Introduction and Summary**

1. We have been asked by Southern LINC ("Southern") to review and evaluate the competitive effects of the proposed assignment of fifty-eight 900 MHz Specialized Mobile Radio ("SMR") licenses of Motorola, Inc. and its affiliates (collectively "Motorola") to FCI 900, Inc., a wholly-owned subsidiary of Nextel Communications, Inc. (collectively "Nextel"). Southern is a subsidiary of Southern Company and it currently provides wireless communications services in Georgia, Alabama, southeastern Mississippi and the Florida Panhandle.
2. In connection with our analysis, we have reviewed the applications filed by the parties and the associated exhibits including FCC Form 603, the "Public Interest Statement". We also reviewed comments and reply comments filed by the parties, industry studies, press releases, security analyst reports and FCC decisions in prior cases involving the transfer of SMR licenses. We have also extracted extensive data on license holdings in the 800 MHz, 900 MHz and 220 MHz bands from the FCC.
3. On the basis of our analysis, we conclude that Nextel possesses market power in relevant markets for trunked dispatch services. In addition, we conclude that Nextel competes in separate markets for interconnected mobile voice services. We find however that Nextel's competitors in interconnected mobile voice service markets provide no real alternative to Nextel's *Direct Connect* service in trunked dispatch markets.
4. Because of Nextel's market power in relevant markets for trunked dispatch services, we recommend that the Commission deny the assignment to Nextel of the fifty-eight 900MHz licenses that has been proposed in this proceeding.

5. Michael G. Baumann is a Vice President at Economists Incorporated, a Washington DC-based research and consulting firm. Mr. Baumann's consulting experience includes antitrust matters and mass media regulation. Mr. Baumann has extensive experience in analyzing the radio, broadcast television and cable television industries. He has filed comments in numerous proceedings before the Federal Communications Commission and he has investigated the competitive impact of mergers involving mass media providers. Mr. Baumann previously served as an economist in the Antitrust Division of the U.S. Department of Justice. He holds Bachelor of Science degrees in Economics and Mathematics from the Massachusetts Institute of Technology and a Ph.D. in Economics from Harvard University.
6. Stephen E. Siwek is a Principal at Economists Incorporated. Mr. Siwek's consulting experience includes telecommunications regulatory and litigation matters, media, and the financial analysis of lost profits in a variety of industries. Mr. Siwek has testified as an expert witness in more than forty proceedings before federal and state regulatory authorities. He has extensive background in many telecommunications issues including local telephone cost and rate analysis, cellular telephone economics, directory assistance and directory publishing, and third party telephone billing and collection services. He has also testified as a damage witness in connection with contract disputes and antitrust claims against former Bell operating companies. Mr. Siwek holds a Bachelor of Arts degree in Economics from Boston College and an M.B.A. from the George Washington University.
7. Economists Incorporated is a Washington, D.C. research and consulting firm specializing in microeconomic analysis. The firm has long experience in the analysis of product and geographic markets in connection with the antitrust review of mergers and acquisitions. Economists Incorporated also has had extensive involvement in the telecommunications and mass media industries.

## **Background**

8. In this proceeding, applicants Motorola and Nextel seek to assign fifty-eight 900 MHz SMR licenses from Motorola to

Nextel.<sup>1</sup> Motorola currently uses its 900 MHz SMR facilities to provide analog non-interconnected dispatch service in many of the major urban markets subject to the proposed transaction.<sup>2</sup> Thus, even according to the filing parties, the transaction “involves the merger of two dispatch providers in urban markets...”<sup>3</sup>

9. Dispatch service allows two-way, real-time voice communications between mobile units and fixed units or between two or more mobile units.<sup>4</sup> Typical users of dispatch service include service and delivery companies whose operations require their employees to communicate with each other on a private (one-to-one) or group (one-to-many) basis.
10. Trunked dispatch service allows for the automatic sharing of radio signals.<sup>5</sup> Trunking permits the operator to support more radios per channel. Trunked dispatch markets are inherently local and the FCC has found that “local trunked dispatch markets are generally concentrated.”<sup>6</sup>

#### **Nextel Communications Inc.**

11. Nextel Communications Inc. now operates one of the “largest integrated wireless communications systems utilizing a single transmission technology in the United States. This digital technology, developed by Motorola, Inc. is known as the integrated Digital Enhanced Network or “iDEN”.<sup>7</sup> Nextel’s estimated sales for 2000 are expected to exceed \$5.7 billion.<sup>8</sup>
12. As of September 30, 2000, Nextel provided service to 6,157,000 digital subscriber units in the United States.<sup>9</sup> Nextel provides two main services to its customers – a digital mobile telephone

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<sup>1</sup> Opposition of Nextel Communications Inc. to Southern LINC’s Comments, DA-00-2352, November 20, 2000, page 1.

<sup>2</sup> Exhibit B, Public Interest Statement, FCC Form 603, pages 1-2.

<sup>3</sup> Reply Comments of Motorola, DA-00-2352, November 30, 2000, page 3.

<sup>4</sup> FCC Fifth Report on the state of competition in the commercial radio services marketplace, FCC 00-289, Released August 18, 2000, page 69.

<sup>5</sup> *Id.* fn 529, page 69.

<sup>6</sup> *Id.* at page 70. See also FCC *Geotek Order* at par 33.

<sup>7</sup> Nextel Communications Inc., Form 10-Q, for the quarterly period ended September 30, 2000., page 16.

<sup>8</sup> Global Industry Analysts Inc., *Nextel Communications, Inc. A Competitive Assessment Report*, August 2000, page 4.

<sup>9</sup> Nextel Communications Inc., Form 10-Q, for the quarterly period ended September 30, 2000, page 16.

service and a digital two-way radio dispatch service which is marketed as “Nextel *Direct Connect*.” As of the third quarter of 2000, *Direct Connect* accounted for 44% of Nextel’s total minutes of use.<sup>10</sup>

13. On August 21, 2000, Nextel agreed to acquire substantially all the assets of Chadmoore Wireless Group, Inc., an SMR service provider that markets its service under the “PTT” (Power to Talk) trade name.<sup>11</sup> According to the FCC’s Fifth Report on the state of competition in the commercial radio services marketplace, Chadmoore is a “Major SMR Operator” with 37,475 subscribers in 1999.<sup>12</sup>
14. On October 17, 2000, Nextel agreed to purchase the 800 MHz and 900 MHz spectrum assets owned by Mobex Communications Inc. of San Ramon, Ca.<sup>13</sup> According to the FCC’s Fifth Report on the state of competition in the commercial radio services marketplace, Mobex is the third ranked “Major SMR Operator” in the nation with 65,000 subscribers in 1999.<sup>14</sup>
15. On January 25, 2001, Nextel announced that it will be purchasing SMR spectrum in the 800 and 900 Mhz bands from Arch Wireless Inc. of Westborough, MA for \$175 million.<sup>15</sup> With the addition of these new channels, Nextel reported that it will have approximately 20 MHz of SMR spectrum in the 800 MHz and 900 MHz bands in 52 of the top 100 U.S. markets. By our count, the total spectrum allocated for commercial use in these bands is only 26.5 MHz.<sup>16</sup> Arch Wireless Inc. merged with Paging Network Inc. in November 2000.<sup>17</sup>
16. In announcing its September 2000 Report, “The State of the SMR Industry: Nextel and Dispatch Communications,” The Strategis Group stated “Nextel’s domination of the dispatch and

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<sup>10</sup> Morgan Stanley, (Fleming, Colette M.) *Nextel: Market Jitters Overshadow Strong 3Q Results*, October 30, 2000.

<sup>11</sup> <http://www.chadmoore.com/newsletter/show>.

<sup>12</sup> FCC Fifth report on the state of competition in the commercial radio services marketplace, FCC 00-289, Released August 18, 2000, Appendix D-2.

<sup>13</sup> PR Newswire, *Mobex Receives Agreement of Strategic Investment from Nextel into AMTS Subsidiary*, October 17, 2000.

<sup>14</sup> FCC Fifth report on the state of competition in the commercial radio services marketplace, FCC 00-289, Released August 18, 2000, Appendix D-2.

<sup>15</sup> Communications Daily, *Nextel is buying 900 MHz Specialized Mobile Radio (SMR)*, January 25, 2001.

<sup>16</sup> This total includes 10 MHz in the 800 MHz SMR Upper Band, 7.5 MHz in the 800 MHz General Category, 4 MHz in the 800 MHz SMR Lower Band and 5 MHz in the 900 MHz SMR band.

<sup>17</sup> Dallas Morning News, “Texas-, Massachusetts-Based paging Service Firms Merge,” November 11, 2000.

specialized mobile radio (SMR) industry in the United States continues on a juggernaut pace...<sup>18</sup> (emphasis added)

### **FCC Analyses of Dispatch Markets in *Geotek***

17. In 1999, the Commission dealt with a set of applications seeking to assign 900 MHz licenses held by affiliates and subsidiaries of Geotek Communications, Inc. (“Geotek”) through intermediaries to FCI 900, a subsidiary of Nextel.<sup>19</sup> That case raised issues before the Commission that were similar to certain issues raised in the instant proceeding.
18. In preparing our analysis, we have reviewed the Affidavit of A. Daniel Kelley and Alan J. Boyer that was filed on behalf of the Alliance of Radio Communications (“ARC”) in the *Geotek* case. We have also reviewed the Commission’s findings in that case as reflected in its Memorandum Opinion and Order in DA 00-89 that was released on January 14, 2000.
19. In the *Geotek* proceeding, the Commission defined a relevant product market as “the market for trunked dispatch services including firms offering on a commercial basis both one-to-one and one-to-many calling service on trunked systems employing either analog or digital network architectures.”<sup>20</sup> The Commission also concurred with the Department of Justice that the relevant trunked dispatch markets were “concentrated.”<sup>21</sup>
20. Nevertheless, in *Geotek*, the Commission concluded that Nextel’s acquisition of the *Geotek* licenses would not result in competitive harm in the “non-Consent Decree” markets that were at issue in part because Geotek “is not providing service that competes with Nextel or indeed, any service at all.”<sup>22</sup> By contrast, as noted earlier, the instant transaction “involves the merger of two dispatch providers in urban markets...”<sup>23</sup>

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<sup>18</sup> The Strategis Group, Inc., *Nextel’s Success Attracts Takeover Interest*, Press release, September 18, 2000.

<sup>19</sup> FCC Memorandum Opinion and Order, DA 00-89, *In re: Application of Various Subsidiaries and Affiliates of Geotek Communications, Inc. et.al.* Released January 14, 2000, (hereinafter *Geotek* Order).

<sup>20</sup> See *Geotek* Order, Par. 32.

<sup>21</sup> *Id.* Par. 33.

<sup>22</sup> *Id.* Par. 23.

<sup>23</sup> Reply Comments of Motorola, DA-00-2352, November 30, 2000, page 3.

21. In *Geotek*, the Commission also found that “...in the relatively near future, we believe that additional market entry is likely to ensure that competitive conditions in these markets will improve.” Supposed entrants were to include Cellular/PCs providers, 220MHz providers, private radio and other “dispatch-suitable” spectrum.<sup>24</sup>

### **Market Analysis Under the DOJ/FTC Merger Guidelines**

22. As we understand it, the Commission’s competitive analyses of license assignments is often guided by the procedures established by the Antitrust Division of the U.S. Department of Justice and by the Federal Trade Commission for use in their analyses of mergers. Those procedures are set forth in the 1992 *Merger Guidelines*. Under the *Merger Guidelines*, it is well established that the Agencies will begin “with each product (narrowly defined) produced or sold by each merging firm and ask what would happen if a hypothetical monopolist of that product imposed at least a ‘small but significant and nontransitory’ increase in price but the terms of the sale of all other products remained constant.”<sup>25</sup>
23. In considering the likely reaction of buyers to such a price increase, the agencies then look at evidence that buyers have shifted or have considered shifting purchases between products. At this point, the price increase question is then asked for a hypothetical monopolist controlling the expanded product group. Merger analysis moves from the narrowest possible product market definition to broader product market definitions.<sup>26</sup> For this reason, the FCC’s focus in *Geotek* on “trunked dispatch” markets in this industry was clearly appropriate.
24. In identifying firms that participate in relevant markets, the Agencies look to current producers and sellers. The Agencies also look to other firms, not currently producing or selling the relevant product in the relevant area, as participating in the relevant market if their inclusion would more accurately reflect

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<sup>24</sup> *Geotek* Order, Par. 41.

<sup>25</sup> U.S. Department of Justice and Federal Trade Commission *Horizontal Merger Guidelines*, April 2, 1992 (hereinafter *Merger Guidelines*), § 1.11.

<sup>26</sup> In the *Pittencrieff* Order (Par. 22), the FCC reasserted its authority to narrowly define product markets if it so deems necessary.