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April 16, 2003

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: *Ex Parte* Communication: Petition for Reconsideration or Clarification on Exemption of State and Local Governments from Universal Service Contribution Base; CC Dockets No. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170 and NSD File No. L-00-72

Dear Ms. Dortch:

Southern Communications Services, Inc., d/b/a Southern LINC ("Southern LINC") submits this letter in support of the recent pleadings that advocate the exemption of federal, state, and local governments from the universal service contribution base.¹ Southern LINC experiences the same problems as Sprint and Nextel regarding the recovery of revenues from governmental subscribers and agrees that market forces have not adequately addressed this issue. Because FCC intervention is necessary to remedy this situation, Southern LINC recommends that the FCC extend the existing universal service contribution exemption for telecommunications carriers that provide service exclusively to public safety and governmental entities to all carriers to the extent they offer service to such entities.²

¹ Petition for Reconsideration or Clarification of Nextel Communications, Inc. (Jan. 29, 2003) [hereinafter *Nextel Petition*]; Comments of Sprint on Petitions for Reconsideration (Feb. 27, 2003) [hereinafter *Sprint Comments*]; Comments of the Cellular Telecommunications & Internet Association in Support of Nextel and Verizon Wireless Petitions for Reconsideration (Feb. 27, 2003); Nextel Communications, Inc. Reply to Oppositions to Petitions for Reconsideration (Mar. 10, 2003) [*Nextel Reply*].

² As used in this letter, the term "public safety and governmental entities" is intended to reference the same entities as "federal, state, and local governments" referenced by Nextel, Sprint, and other commenters. Southern LINC uses this term to better explain the different public services performed by various governmental subscribers.

Southern LINC operates a digital 800 MHz SMR system that uses Motorola's proprietary Integrated Digital Enhanced Network technology to provide dispatch and interconnected wireless services with the same handset. Southern LINC's service territory covers 127,000 square miles in Georgia, Alabama, the southeastern quarter of Mississippi, and the panhandle of Florida. It offers the most comprehensive geographic coverage of any mobile wireless service in Alabama and Georgia, serving the extensive rural territory within its footprint as well as major metropolitan areas and highway corridors. Furthermore, Southern LINC serves many areas of Florida and Mississippi that are not served by any other advanced wireless dispatch provider.

In part because of this expansive and reliable coverage, Southern LINC provides mobile communications service to approximately 3,000 public safety entities (for a total of over 30,000 public safety subscribers), including local, state, and federal law enforcement and emergency management agencies. In addition to these public safety entities, Southern LINC also serves a substantial number of state and local governmental agencies. While Southern LINC does not offer service exclusively to these public safety and governmental entities, these customers depend on Southern LINC's reliable and comprehensive communications system to perform their important public safety and welfare functions.

Some of these public safety and governmental subscribers have refused to pay the federal universal service charges passed through by Southern LINC simply because of their belief that, as governmental agencies, they are not required to pay USF fees. Sprint and Nextel also reported difficulty recovering their universal service contributions from federal, state, and local entities and "believe[] that this problem is sufficiently widespread that explicit Commission action is necessary."³ Southern LINC agrees that market forces have not resolved this problem adequately and asks the FCC to exempt revenues derived from the provision of interstate telecommunications service to public safety and governmental entities from the universal service contribution base.

The FCC should exempt all public safety and governmental subscribers from the universal service contribution base. The existing universal service rules and policies provide a sufficient public policy basis for excluding these revenues. Alternatives suggested by the FCC, such as contract renegotiation, are not feasible for CMRS providers that offer service to public safety and governmental subscribers. In addition, carriers would suffer a revenue shortfall because of this inability to recover their contributions, which could lead to an increase in rates for all customers, including those that pay the USF fees. Finally, this exemption would not harm competition but would actually level the playing field for all competitors.

The existing rules already accord public safety and governmental entities special universal service treatment for public policy reasons. While the universal service contribution

³ *Sprint Comments* at 6; *Nextel Reply* at 7.

base generally includes end-user telecommunications revenues derived from non-contributors, such as public safety and governmental entities,⁴ the FCC has exempted carriers that "exclusively provide[] interstate telecommunications to public safety or government entities and do[] not offer services to others"⁵ This exemption for third-party carriers could not possibly result from the internal use of these services because the carrier provides the services to unaffiliated entities. Accordingly, the exemption must reflect the public interest in encouraging the provision of service to public safety and governmental entities.

However, these entities perform "important public safety and welfare functions" regardless of whether the underlying provider serves them exclusively or also offers service to other subscribers. Public safety and governmental entities should not have to contribute to the universal service fund for taking service from a non-exclusive provider when they would not have to contribute for taking the same service from an exclusive provider. In addition, the public interest would not benefit from forcing these entities to contribute *indirectly* to the universal service fund when they do not have to contribute directly. Thus, the public interest demands that the FCC extend this exemption for carriers that provide service exclusively to public safety and governmental entities to all carriers to the extent they offer service to such entities.

Several other public policy rationales support the exemption of public safety and governmental entities from the universal service contribution base. For example, the principle of competitive neutrality dictates that the FCC should not discriminate between carriers that offer the same service. The FCC has previously concluded that it "do[es] not want contribution obligations to shape business decisions[] and . . . do[es] not want to discourage carriers from

⁴ Governmental entities do not have to contribute directly to the universal service fund if they purchase telecommunications service for internal use. In re Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Report and Order*, 12 F.C.C.R. 8776, 9199 ¶ 800 (1997) [hereinafter *Universal Service Report and Order*]; Instructions to the Telecommunications Reporting Worksheet, Form 499-A at 7. The FCC also exempts public safety and local governmental entities operating private internal land mobile systems from direct universal service contributions in part "because of the important public safety and welfare functions for which these services are used." *Universal Service Report and Order* 12 F.C.C.R. at 9199 ¶ 800.

⁵ *Id.*; see also In re Matter of 1998 Biennial Regulatory Review -- Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, CC Docket No. 98-171, *Report and Order*, 14 F.C.C.R. 16602, 16629 ¶ 57 n.127 (2000) (citing this exemption as an example of end user telecommunications not including revenues from non-contributors).

continuing to offer their common carrier services."⁶ As discussed above, carriers that provide service exclusively to public safety and governmental entities offer the same service as carriers that serve these entities as well as other subscribers. By exempting only exclusive carriers from universal service contributions, the FCC allows contribution obligations to affect the manner in which carriers choose to provide service. The absence of an exemption for non-exclusive carriers that serve public safety and governmental entities effectively "discourages" them from offering service on a common carrier basis.

In addition to impacting carrier behavior, the current distinction between exclusive and non-exclusive carriers also adversely affects public safety and governmental entities. This policy artificially influences the selection of a carrier by public safety and governmental entities by giving them an incentive to take service from an exclusive carrier and thereby avoid the universal service pass-through charge altogether. While this artificial incentive would necessarily reduce a public safety or governmental entity's choice of provider, an exemption would ensure the continued availability of a diverse selection of service providers.⁷

If the FCC continues to include revenues derived from public safety and governmental entities in the universal service contribution base, Southern LINC and other carriers will suffer a substantial revenue shortfall.⁸ While carriers would have to contribute to the universal service fund based on these revenues, they could not recover their payments from these subscribers as a practical matter. Nextel correctly predicts that carriers could pass through their universal service contributions to public safety and governmental subscribers but would have to "write-off any subsequent non-payment as bad debt."⁹ Because the FCC bars the recovery of the revenue shortfall through a universal service line item assessed on other subscribers, carriers would either have to raise the rates for all of their subscribers or absorb the cost.¹⁰ The FCC should not force carriers to lose revenue because of an inconsistent universal

⁶ *Universal Service Report and Order*, 12 F.C.C.R. at 9183 ¶ 795. The FCC's analysis focused on distinction between common carriers and private carriers. The same corollary applies to exclusive and non-exclusive carriers in this situation because exclusive carriers are likely to offer service on a private carrier basis, while non-exclusive carriers frequently offer service as common carriers.

⁷ If carriers knew that they would have difficulty recovering their universal service contributions from public safety and governmental entities, and would ultimately lose revenue, fewer carriers would offer service to these entities.

⁸ *Sprint Comments* at 6; *Nextel Petition* at 21; *Nextel Reply* at 8.

⁹ *Nextel Petition* at 21 n.40.

¹⁰ The inability to collect universal service costs from public safety and governmental entities could foreclose the pass through of any contribution amounts. Section 202(a) of the Communications Act prohibits carriers from making or giving "any undue or

service policy but should exempt public safety and governmental subscribers from the contribution base.

Despite the assertions of the FCC and WorldCom, Southern LINC could not recover this revenue shortfall by renegotiating its existing contracts with public safety and governmental subscribers. In the December 2002 *Report and Order*, the FCC suggested that "contributors should be afforded a fresh look at existing contracts and may be permitted to renegotiate contractual terms that prohibit the pass through of universal service recovery charges."¹¹ While some carriers undoubtedly could revisit contracts with certain entities, renegotiation is not a realistic alternative for carriers that serve public safety and governmental subscribers. As Nextel explained in its Petition, "[i]ndividual wireless carriers do not possess the market power to require that state and local governments reopen their procurement processes."¹² Finally, it is highly doubtful that governmental entities would permit the renegotiation of their contracts in order for the carrier to increase its rates or otherwise recover higher universal service charges.

The exemption of public safety and governmental subscribers from the universal service contribution base would also not harm competition. While WorldCom and the National Association of State Utility Consumer Advocates argue that granting this exemption would somehow give a competitive advantage to carriers that serve these entities,¹³ the exemption of

unreasonable preference or advantage to any particular person, class of persons, or locality" 47 U.S.C. § 202(a) (2002). If public safety and governmental entities may evade payment of the pass-through amounts, they could constitute a "class of persons" that receives an undue preference in violation of section 202(a). Although the public interest would arguably provide a "reasonable" reason to discriminate on behalf of public safety and governmental entities, carriers should not have to risk enforcement of this provision. To remedy this problem, the FCC should simply exempt public safety and governmental entities from the universal service contribution base.

¹¹ In re Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Report and Order and Second Further Notice of Proposed Rulemaking*, 17 F.C.C.R. 24952, 24981 ¶ 59 (2002); see WorldCom, Inc. Comments on Petitions for Reconsideration 4-5 (Feb. 27, 2003) [hereinafter *WorldCom Comments*].

¹² *Nextel Petition* at 21.

¹³ *WorldCom Comments* at 4-6; NASUCA's Reply to Oppositions to Petitions for Reconsideration 2 (Mar. 10, 2003). Despite the claims of these commenters, Southern LINC is unaware of any carrier that asked for an exemption of governmental entities in order to average its universal service contributions across its remaining subscribers. The averaging of contributions is a completely separate issue because exempt revenues would not even generate a contribution obligation.

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these revenues from the contribution base would merely ensure that no telecommunications carrier would have to contribute to the universal service fund without the ability to recover its payments through a pass-through mechanism. By guaranteeing that no competitor would have to absorb the cost of its universal service contributions, this exemption actually levels the playing field for all competitors.

Thus, for the reasons stated above, Southern LINC requests that the FCC extend the current universal service contribution exemption for telecommunications carriers that provide service exclusively to public safety and governmental entities to all carriers to the extent they offer service to such entities.

Respectfully submitted,

/s/ Christine M. Gill

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