Sprint

Together with NEXTEL

Sprint Nextel
2001 Edmund Halley Drive
Reston, VA 20191
Office: (703) 433-4143
Fax: (703) 433-4142

Laura Holloway Carter
Vice President
Government Affairs-Federal Regulatory
laura.carter@sprint.com

March 16, 2007

Via Electronic Submission

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-A325
Washington, D.C. 20554

Re: Written Ex Parte Communication
Intercarrier Roaming, WT Docket No. 05-265
Response to SouthernLINC Ex Parte Submission

Dear Ms. Dortch:

Sprint Nextel Corporation ("Sprint Nextel") below responds to a 17-page, single-spaced letter that SouthernLINC Wireless ("Southern") submitted in this proceeding on October 3, 2006.[1] As it has done in numerous filings in this and other FCC dockets,[2] Southern devotes numerous pages and extensive resources to what seems to be its only strategy for expanding its business: convincing the Commission that it should interfere in a robustly competitive market by beginning to regulate roaming prices between competitors.

Southern's missive is nothing more than a series of factual distortions. Indeed, Southern's filing is so dense and full of inaccuracies that Sprint Nextel is compelled to address them in a separate attachment, in order to avoid burdening the Commission with a lengthy rebuttal of Southern's numerous claims. For purposes of this letter, however, four points are sufficient to respond to Southern.

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1 *See* Letter from Christine M. Gill, McDermott Will & Emery, to Chairman Kevin J. Martin, FCC Chairman (Oct. 3, 2006)("Southern Letter"). On March 7, 2007, Southern filed another ex parte letter addressing a different subject: the Section 208 complaint process as applied to intercarrier roaming disputes. Sprint Nextel will respond to this issue separately.

2 Southern pleadings in other dockets that largely repeat the complaints made in this proceeding include: Written Ex Parte, CC Docket No. 94-54 (Feb. 18, 2000); Comments, WT Docket No. 00-193 (Jan. 5, 2001); Reply Comments, WT Docket No. 00-193 (Feb. 5, 2001); Written Ex Parte, WT Docket No. 00-193 (April 5, 2001); Reply Comments, WT Docket No. 05-71 (April 12, 2005); Comments, WT Docket No. 05-63 (March 30, 2005); Reply Comments, WT Docket No. 05-63 (April 18, 2005); Written Ex Parte, WT Docket No. 05-63 (July 18, 2005); Petition to Condition, File No. 0002444650 (March 29, 2006).

1. Southern fails to mention the recent expansion of the parties' roaming agreement to include Nextel Partners markets. As the Commission is well aware, Southern had repeatedly complained about its inability to reach a roaming agreement with Nextel Partners.[3] One of the first things Sprint Nextel did upon acquiring Nextel Partners was to expand the scope of its existing roaming agreement with Southern to include all Nextel Partners' markets.[4]

One would think Southern would consider this to be a major development, especially given that the former Nextel Partners network served an area nearly three times larger than Southern's own network.[5] Yet, nowhere in its 17-page letter does Southern even mention this development – although Southern continues to accuse Sprint Nextel of engaging in "anticompetitive behavior."[6]

2. Southern continues to avoid discussion of consumer welfare. Completely absent in Southern's lengthy letter is any discussion of a market failure that is harming *consumers*. This omission is not surprising given the Commission's recent conclusion that "consumers continue to benefit from robust competition in the CMRS marketplace":

> [C]ompetitive pressure continues to drive carriers to introduce innovative pricing plans and service offerings, and to match the pricing and service innovations introduced by rival carriers. * * * Consumers continue to pressure carriers to compete on price and other terms and conditions of service by freely switching providers in response to differences in the cost and quality of service.[7]

More specifically, consumers in Southern's service area can generally choose from up to four or more facilities-based carriers *and* several MVNOs.[8] Consumers further enjoy a rich array of choice in service plans, including pre- and post-paid plans; local plans with no coverage outside the local calling area; local and regional plans with roaming as an option; and national plans with no extra charges for roaming "off net." Moreover, the prices for these plans have fallen by over 80 percent over the past 11 years.[9] And, prices for roaming, to the extent consumers must even roam "off net," have fallen by over 90 percent over the same period.[10]

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3 *See id.*

4 Sprint Nextel acquired Nextel Partners on June 26, 2006, and it begin offering intercarrier roaming to Southern in these new markets less than ten weeks later, on September 1, 2006.

5 According to Southern, its network covers 128,000 square miles. *See* www.southernlinc.com/aboutus.asp (visited March 9, 2007).

6 Southern Letter at 16.

7 *Eleventh Annual CMRS Competition Report*, 21 FCC Rcd 10947 at ¶¶ 3, 4 and 213 (2006) ("*Eleventh Report*").

8 *See id.* at ¶¶ 28, 41 and 86. It is Sprint Nextel's understanding that numerous MVNOs, including Amp'd, Boost, TracFone and Virgin Mobile, operate in Southern's service area.

9 *See id.* at ¶ 154 ("RPM [revenue per minute] fell 22 percent between December 2004 and December 2005. In the eleven years since 1994, RPM has fallen from $0.47 in December 1994 to $0.07 in December 2005, a decline of 86 percent.").

10 *See* Gregory L. Rosston, *An Economic Analysis of How Competition Has Reduced High Roaming Charges*, at ¶ 16 and Figure 2 (Nov. 2005), *appended to* Sprint Comments (Nov. 28, 2005).

Southern does not contest the fact that consumers have benefited enormously from the Commission's reliance on market forces – namely, (a) consumers today need to roam off net less often because of continued network build-out, and (b) when they do roam, they pay only a fraction of what they paid only years ago – or in the case of some plans, pay nothing extra to roam.[11] There simply is no evidence of any market failure harming consumers.[12]

3. <u>If Southern believes that Sprint Nextel has engaged in anticompetitive conduct, existing FCC processes allow it to seek redress</u>. The Commission has specifically reminded Southern of its option to file a complaint if it believes that "Sprint Nextel is charging unreasonable roaming rates."[13] Instead, Southern generates hundreds of pages of unsupported allegations about Sprint Nextel's roaming practices in order to convince the FCC that it needs to adopt new national rules that regulate the roaming rates charged by all carriers.

4. <u>Southern is wrong in asserting that the "key consumer issue at stake in this proceeding . . . is consumers' need for ready access to automatic roaming services at reasonable prices</u>."[14] Southern's real complaint in this proceeding is that it cannot offer national coverage at the prices offered by its competitors with national networks, complaining it is "hamper[ed]" by its inability to "provide retail customers with a competitive one-rate bucket plan."[15] But why would Southern reasonably expect that it should be able to offer similar plans, when its network covers only 3.5 percent of the country?[16] Simply put, if Southern really wants to offer plans and prices comparable to national carriers, it needs to invest in a manner similar to the national carriers or other regional carriers like Leap and MetroPCS, which participated in the recent AWS auction.[17]

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11 *See Eleventh Report* at ¶¶ 90 and 126. *See also* Sprint Comments at 3-5.

12 Southern further complains that the benefits of CMRS competition are "not flowing to the non-nationwide carriers." Letter at 4. This is not surprising. The benefits of competition do not flow to *competitors* but to the consuming public.

13 *Sprint/Nextel Merger Order*, 20 FCC Rcd 13967, 14013 ¶ 127 (2005). In the past, Southern has complained that the Section 208 process is "cumbersome," "time consuming," and further, "the outcome is uncertain." Southern Comments, WT Docket No. 00-193, at 20 (Jan. 5, 2001). It is difficult to understand how Southern can criticize the complaint process as "cumbersome" and "time consuming" when it has <u>*never*</u> invoked the procedure. Southern's additional assertion that the outcome of complaint proceeding is "uncertain" simply confirms that Southern itself questions the strength of its case.

14 Southern Letter at 1.

15 Southern Letter at 11.

16 Southern states that its network covers 128,000 square miles, which is 3.5% of our country's land mass. *See* www.southerlinc.com/aboutus.asp.

17 *See, e.g.*, RCR WIRELESS NEWS, *Auction Reflections*, at 10 (Sept. 25, 2006)("Leap Wireless International, Inc. and MetroPCS Communications Inc . . . together now own at least 10 megahertz of spectrum in nearly all of the top 50 markets."); RCR WIRELESS NEWS, *Leap, MetroPCS Break into Major Markets with AWS Spectrum*, at 1 (Sept. 25, 2006)("Andrew Lipman, partner at Bingham McCutchen, said the big spend by MetroPCS means the company is 'trying to break out of the ranks of a midsize player and become more national . . . They are clearly to position themselves as a major player.'"); COMMUNICATIONS DAILY (Sept. 15, 2006)("Mobile Global Advisors said small carriers Leap and MetroPCS made 'the most impressive land grab' so far in the AWS auction.").

Sprint Nextel over the past five years has invested billions of dollars in expanding the coverage of its networks by over 50 million POPs, and in deploying 3G and 4G technologies. Southern, in contrast, appears to have done little or nothing over the same period. Its network coverage is still limited to two States (and small portions of two more States). Southern has not, to Sprint Nextel's knowledge, invested in any next generation technologies, nor has it invested in new spectrum to supplement its network. At the same time, however, Southern's parent has distributed billions of dollars in dividends over this period – including over $1.5 billion in 2006 alone.[18] Southern's "problems" are not about the FCC's roaming policies; rather, they stem from its own business priorities and decisions.[19]

Southern certainly should not – and, as a matter of law, cannot – expect the Commission to "equalize competition" because of the investment decisions it has made. The FCC's "statutory duty is to protect efficient competition, not competitors,"[20] and the Commission has specifically advised Southern that in analyzing roaming, it will examine the "harm to consumers of mobile telephone services, rather than to mobile telephony providers."[21] In this regard, the Commission has recognized that it is "not at liberty to subordinate the public interest to the interest of equalizing competition among competitors":[22]

> As we have said on many occasions, it is not this Commission's obligation to equalize competitive differences between licensees in the same market.[23]

Southern's complaints are simply in error – both factually and legally. For these reasons, the Commission should reject Southern's arguments and, instead, continue to rely on the robust competition of the wireless marketplace and the continued daily investments being made by wireless carriers of all sizes. It is this continued investment, and the resulting innovative services, that benefit consumers – not price regulation of a competitive market, as Southern demands.

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18 *See* Southern News Release, *2006 Southern Company Earnings Bolstered by Strong Economy, Customer Growth* (Jan. 25, 2007)("Southern Company today reported full-year 2006 earnings of $1.57 billion. . . . Reported earnings for 2005 were $1.59 billion.").

19 *See Eleventh Report* at ¶ 158. According to FCC data, Southern had 260,000 customers at the end of 2005 (*id.* at Table 4), the same number of customers it had at the end of 2002. *See Ninth Competition Report,* 19 FCC Rcd 20597, 20719 Table 4 (2004).

20 *Bell Atlantic Mobile/NYNEX Mobile Merger Order*, 12 FCC Rcd 22280, 22288 ¶ 16 (1997).

21 *Nextel Partners/Sprint Nextel Merger Order*, 21 FCC Rcd 7358, 7364 ¶ 15 (2006). *See also 2005 Roaming NPRM,* 20 FCC Rcd 15047, 15058 ¶ 27 (2005)("We are interested in the effects that the existing roaming environment has on U.S. consumers.").

22 *800 MHz Rebanding Reconsideration Order*, 20 FCC Rcd 16015, 16048 ¶ 73 (2005), *quoting SBC* v. *FCC,* 56 F.3d 1484, 1491 (D.C. Cir. 1995).

23 *ICS Communications*, File No. 23865-CD-P-(2)-83, at ¶ 6 (Sept. 5, 1985). *See also McCaw/ AT&T Transfer Reconsideration Order,* 10 FCC Rcd 11786, 11792-93 ¶ 9 (1996)("[T]he Communications Act requires us to focus on competition that benefits the public interest, not on equalizing competition among competitors.").

Respectfully submitted,

Laura H. Carter

Laura H. Carter
Vice President, Government Affairs
Sprint Nextel Corporation

Attachment A: A Response to the Inaccuracies Contained in SouthernLINC's October 3, 2006, Ex Parte Letter

Sprint Nextel Corporation
WT Docket No. 05-265
March 16, 2007

Attachment A

A RESPONSE TO SOUTHERNLINC'S OCTOBER 3, 2006, EX PARTE LETTER

Sprint Nextel Corporation below responds to the arguments contained in an ex parte letter SouthernLINC Wireless ("Southern") submitted on October 3, 2006.[1]

A. "Off Net" Roaming Is Not the Relevant Market

Southern states that the "key issue at stake in this proceeding [is] ready access for all consumers to automatic roaming services at reasonable prices."[2] While Southern is correct that consumers are the proper focus, Southern is wrong in suggesting that roaming is the relevant market and that as a result, the issue is "access . . . to automatic roaming services at reasonable prices." Roaming is not a market, but rather simply one way to provide coverage, as the FCC has previously recognized:

> A carrier's coverage includes locations where the service is available either on the carrier's own network, or on the network of one of its roaming partners.[3]

Wireless is a local service, as consumers buy the service for use where they live and work.[4] Some consumers value coverage outside their home area for the times they travel; other consumers do not place much value on this capability, which explains why carriers have developed a wide diversity of service plans with different coverage options.

Consumers, to the extent they are interested in service outside their local calling area, are interested in expanded service, or coverage, and not roaming *per se*. Thus, the key issue in this proceeding is not whether consumers have access to roaming because there is no pressing consumer demand for "roaming." The relevant question is whether those consumers interested in service outside their local area can obtain the coverage they desire at reasonable prices – whether their carrier provides this expanded coverage "on net" or *via* an "off net" roaming service. Here, there is no record evidence that any consumer cannot obtain the coverage he or

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1 *See* Letter from Christine M. Gill, McDermott Will & Emery, to Chairman Kevin J. Martin, FCC Chairman (Oct. 3, 2006)("Southern Letter").

2 Southern Letter at 12. *See also id.* at 1.

3 *Sprint/Nextel Merger Order,* 20 FCC Rcd 13967, 14002 n.205 (2005).

4 CMRS is a local service both in law and in economics. *See, e.g., First Local Competition Order,* 11 FCC Rcd 15499, 15996 ¶ 1004 (1996)(Under the Act, CMRS is a local exchange service but CMRS providers are not classified as LECs); *AT&T Wireless/Cingular Merger Order*, 19 FCC Rcd 21522, 21562 ¶ 89 (2004)("[T]he proper geographic market [for CMRS] is a local one.").

she desires at reasonable prices (although the preferred coverage option for any given consumer may not be available from all competitors in a market).

B. "Off Net" Roaming Is Not a "Critical Input" to the Provision of Wireless Services

Southern asserts that intercarrier roaming is a "critical input" for wireless service: "[A]ccess to wholesale roaming service is a critical input to retail services and to competition in the retail market."[5] Southern is wrong, and it is not surprising that Southern makes no attempt to explain why it thinks intercarrier roaming is a "critical input."[6]

Providing national coverage is neither necessary to provide wireless services to consumers nor to compete in the wireless business that, at bottom, is a local service.[7] For example, until last year, MetroPCS did not offer its customers any roaming service when they traveled outside their local calling area.[8] Nevertheless, even without a roaming option, MetroPCS quickly became "one of the fastest growing wireless service providers in the nation," and in one of its markets, acquired the "second-largest customer base within three years."[9] Leap has similarly seen its stock price increase by 58 percent in 2006 alone even though it offers its customers only limited roaming options, with Leap's CEO stating: "We're not all things to all people."[10]

C. The Roaming Prices Southern Pays to Sprint Nextel Are Not "Well Above Market"

As the Commission is well aware, Southern has "access to wholesale intercarrier roaming services" from Sprint Nextel. Southern's real complaint is it does not like the price it pays for those service, asserting it pays Sprint Nextel "well above market rates."[11] It is understandable

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5 Southern Letter at 1 and 14.

6 Southern is also wrong in claiming that Sprint Nextel "acknowledges . . . [that] all CMRS carriers need to roam." *Id.* at 13. *See* Sprint Declaration at ¶ 6.

7 *See* note 4 *supra.*

8 MetroPCS did not introduce a roaming option for its customers until April, 2006. *See* MetroPCS Press Release, *MetroPCS Expands Service Options with the Introduction of TravelTalk* (April 18, 2006), *available at* www.metropcs.com/releases/2006/20060418B.pdf. Despite this new option, MetroPCS states that its "product is still designed for those who live, work and play in our service areas." *Id.*

9 MetroPCS Comments at 2 and 3.

10 THE WALL STREET JOURNAL, *'Cricket' Still Clears Bar for Leap,* at C1 (Dec. 26, 2006). Notably, Leap's stock trades "about 11 times estimated 2007 earnings before interest, taxes, depreciation and amortization . . . well above the figure of about 6 for Sprint Nextel Corp." *Id.* One analyst projects Leap to "increase service revenue an average of about 30% annually" while "large U.S. carriers are expected to see revenue grow at closer to 5%." *Id.*

11 Southern Letter at 11. *See also id.* at 12 (Sprint Nextel allegedly charges "non-market wholesale rates.").

that Southern would prefer to pay lower prices. After all, it is human nature to want to pay as little as possible for something – and preferably, nothing at all.[12]

Southern further complains that it has not seen any reduction in rates since it agreed to them:

> [C]ompetitive market forces must not apply with respect to iDEN roaming. Otherwise, why would Sprint Nextel's rates for iDEN roaming remain unchanged for over five years?[13]

But why would Southern reasonably expect a price reduction, particularly to the levels Sprint Nextel offers its retail customers? The parties reached an agreement five years ago, and Southern now wants changes to that deal based solely on the fact that time has passed. Southern has not demonstrated any new benefit for Sprint Nextel that would justify changes to the agreement. Moreover, as noted earlier, Southern has failed to recognize the benefits it recently enjoyed as a result of expanding the roaming agreement to Nextel Partner territories. Thus, as Sprint Nextel's intercarrier roaming expert has explained:

> Until SouthernLINC offers Sprint Nextel a significant coverage benefit or another desired capability, it is unclear to me why Sprint Nextel should be forced to provide SouthernLINC a preferred rate, one better than what Sprint Nextel pays out to competitors in similar circumstances.[14]

To date, Southern has been unwilling to bring anything new to the negotiating table to justify lower rates.

Southern should not be surprised that the roaming rates between other carriers have fallen, because other carriers have continued to invest. For example, Sprint's affiliates and Strategic Roaming Partners are investing in the latest technology to provide the full range of wireless services in their highly rural areas, investment that benefits both consumers residing in these rural areas and the Sprint Nextel customers who travel to these areas.[15] Sprint recently negotiated a long-term agreement with Alltel because Alltel was willing to invest in the same EV-DO versions as Sprint Nextel, thereby enabling Sprint Nextel customers to enjoy their data services while traveling in Alltel's territory.[16]

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12 This point is made evident by Southern's economist: "SouthernLINC Wireless would greatly prefer the rates Sprint/Nextel offers individual retail customers over what it currently has to pay." McAfee Paper at 8, *appended to* Southern's Comments.

13 Southern Letter at 5.

14 Sprint Declaration at ¶ 27.

15 The FCC needs to ask: Why would firms like these affiliates and SRA Partners be willing to undertake the risk of building new, advanced networks in very rural areas if their incumbent rivals were eligible for the same intercarrier roaming rates from Sprint Nextel?

16 *See Eleventh Annual CMRS Competition Report*, 21 FCC Rcd 10947 at ¶ 127 (2006) ("*Eleventh Report*").

In stark contrast, Southern has done little to nothing over the past five years since executing its roaming agreement with Nextel. Southern has not increased the size of its iDEN network, and Southern has not, to Sprint Nextel's knowledge, invested in new 3G technologies – or even announced plans to do so. In short, through the business decisions it has made, Southern, unlike many other carriers that have invested in their networks, brings nothing new to the negotiating table that would justify a change in the existing roaming agreement.

D. Southern Has Choices If It Does Not Like the Rates It Agreed to Pay Sprint Nextel

Southern claims that Sprint Nextel wields "market power" relative to intercarrier roaming, "at least in its iDEN dealings."[17] This is because, Southern continues, it has "no alternative sources for roaming":

> An iDEN carrier seeking to provide its customers with access to roaming has no option but to enter into an agreement with another iDEN carrier – it cannot substitute the services of a CDMA or GSM carrier.[18]

Southern would, however, have choices *if* it was willing to invest in its own services. Given that Southern's parent generates annual profits of $1.5 billion,[19] Southern clearly has the resources to invest – *if* it wanted to – and Southern clearly has had the opportunity to do so (*e.g.*, AWS auction).

A former FCC economist has explained that carriers like Southern have numerous options if they do not like the prices they agreed to in their current roaming agreements:

> [T]hey can expand their own networks through investment; they can form roaming consortia/joint ventures with other carriers; they can focus on local coverage and landline substitution; they have opportunities within each technology; they can change technologies; they can provide their customers with multi-mode handsets like Sprint and other carriers did to increase the number of potential roaming partners and facilitate roaming for their customers.[20]

Southern's economist, however, summarily dismisses some of the alternatives. For example, Dr. McAfee states that it would be too expensive for Southern, with annual profits of $1.5 billion, to acquire additional spectrum and expand the coverage of its network.[21] Yet two other regional carriers, Leap and MetroPCS, which do not have the immense financial resources

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17 Southern Letter at 7.

18 *Id.* at 10.

19 *See* Southern News Release, *2006 Southern Company Earnings Bolstered by Strong Economy, Customer Growth* (Jan. 25, 2007)("Southern Company today reported full-year 2006 earnings of $1.57 billion. . . . Reported earnings for 2005 were $1.59 billion.").

20 Rosston Response at ¶ 15, *appended to* Sprint Nextel's Reply Comments.

21 *See* McAfee Response at 7-8, *appended to* Southern's Reply Comments.

available to Southern, recently acquired massive amounts of AWS spectrum in order to expand significantly the size of their networks.

Dr. McAfee similarly dismisses multi-mode handsets because of his belief -- not supported by any evidence -- that such handsets are "not widely used."[22] This is inaccurate. The overwhelming majority of Sprint Nextel's CDMA handsets are dual mode. Regional carriers other than Southern, such as Leap and MetroPCS, sell multi-mode handsets to facilitate the provision of roaming to their customers.[23] Sprint Nextel has also sold for some time dual mode phones (CDMA/GSM and iDEN/GSM) to facilitate the ability of those customers who want to roam while traveling overseas. Sprint Nextel recently introduced a dual mode phone capable of operating domestically on either its CDMA or iDEN networks.[24] T-Mobile is reported to be selling a dual mode GSM/Wi-Fi phone.[25] Southern's "problem" with dual-mode phones, therefore, is not their lack of existence but Southern's lack of interest in investing and developing them.

But there is a more fundamental flaw with Southern's position. Although Southern acknowledges that consumers are the focus of this proceeding,[26] neither Southern nor its economist ever address the ability of consumers to substitute, by changing service providers and technology.[27] The FCC recently confirmed that consumers exercise this choice freely and frequently.[28] If consumers have the ability to substitute among several competing carriers, it is irrelevant whether certain individual service providers have the ability to substitute.

In summary, Southern is wrong in asserting that Sprint Nextel is the "<u>only</u> source" for roaming.[29] The only reason Sprint Nextel is the "only source" for coverage outside of

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22 *Id.* at 6. Dr. McAfee also not surprisingly provides no factual support for his statement that the "share of dual mode handsets sold each year is rapidly declining." McAfee Paper at 7 n.9, *appended to* Southern's Comments.

23 In fact, Leap offers its roaming service option only if its customer owns a phone that is "dual and tri-mode." *See* http://www.mycricket.com/cricketsupport/faqs/detail?id=110&fromsearch=0.

24 *See, e.g.*, RCR WIRELESS NEWS, *Sprint Nextel Release CDMA/iDEN Phone*, at 14 (Nov. 27, 2006).

25 *See, e.g.*, THE NEW YORK TIMES, *T-Mobile Tests Dual Wi-Fi and Cell Service* (Oct. 24, 2006) ("T-Mobile became the first major mobile phone carrier in the United States to begin selling service that allows a single handset to communicate over both cellular networks and Wi-Fi hot spots."); THE WALL STREET JOURNAL, *T-Mobile Readies New Web Phones*, at B1 (Sept. 26, 2006)(The new phones will enable customers to "roam onto wireless Internet connections at home and in T-Mobile's thousands of Wi-Fi hot spots.").

26 *See* Southern Letter at 17 ("[U]ltimately, this proceeding is about consumers and their ability to access their wireless service wherever they may go, and to do so at reasonable rates.").

27 *See* Rosston Response at ¶ 16.

28 *Eleventh Report* at ¶ 4 ("Consumers continue to pressure carriers to compete on price and other terms and conditions of service by freely switching providers in response to differences in the cost of quality of service. Monthly churn rates averaged by 1.5 to 3.0 percent per month in the past year.").

29 Southern Letter at 15 (underscoring in original).

Southern's small service area is because Southern – unlike most other competitive wireless carriers -- has chosen not to invest in either networks or handsets.

E. Sprint Nextel's Position Is Not, as Southern Claims, "Contradictory"

Southern asserts repeatedly that the position Sprint Nextel is taking in this roaming docket is "completely contradictory" to the position it has taken relative to incumbent LEC special access services.[30] Southern is wrong, because it fails to acknowledge the fundamental differences between intercarrier roaming and special access.

First, connecting base stations with mobile switches unquestionably is a "critical input;" one cannot provide wireless service at all without such connections. In contrast, "off net" roaming is not a critical input, because one can provide wireless service without providing consumers with a roaming option. Indeed, as discussed above, some carriers have been extremely successful in the market without use of any off net roaming.

Second, in the vast majority of circumstances, wireless carriers have no alternative but to use the incumbent LEC's special access services to connect their cell sites to their switches. There simply is no economic alternative for installing this critical network component. Again, as demonstrated above, wireless carriers have numerous options if they want to use roaming to provide additional coverage for their customers. There is not a single provider of roaming as there is for special access.

Finally, the prices of special access services demonstrate that the market for those services is not competitive. Unlike special access, wireless prices, including roaming rates, have fallen dramatically and consumers are benefiting greatly.

In summary, there is no basis at all to Southern's claim that the position Sprint Nextel has taken in different proceedings involving different subjects is contradictory.

F. Southern Does Not Dispute the Facts in the "Sprint Declaration"

Sprint Nextel, on July 7, 2006, submitted a Declaration of its Corporate Strategy Director responsible for all domestic roaming matters that, among other things, explains the factors Sprint Nextel considers in agreeing to prices and terms in intercarrier roaming contracts.[31] Southern acknowledges this Declaration contains "quite a bit of information regarding automatic roaming arrangements,"[32] but it then asserts that the Declaration contains a "lack of detail," "irrelevant 'facts' and distracting pieces of information":

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[30] *See* Southern Letter at 1. *See also id.* at 1 ("completely opposite position"); 7 ("contradictory positions"); 7 ("directly contradicts"); 13 ("contradictory positions"); 14 ("opposite position").

[31] *See* Declaration of Wes. T. Coffindaffer, *appended to* Sprint Nextel Ex Parte Letter (July 7, 2006) ("Sprint Declaration").

[32] Southern Letter at 1. *See also id.* at 12.

> The only purpose that [the Declaration's] "facts" serve in this proceeding is to confuse the discussion and distract from the real issue at hand.[33]

While Southern may think this Declaration is "distracting," the important point is that Southern does *not* challenge the accuracy of *any* of the facts in the declaration. To the contrary, Southern concedes that these facts "must, for now, be taken at face value."[34] In addition, Southern does *not* claim that any of the factors which Sprint Nextel considers in developing terms for intercarrier roaming contracts are unreasonable – although this does not stop Southern from nonetheless claiming that Sprint Nextel is engaged in "anticompetitive behavior."[35]

Southern does assert that this Declaration contains "bad economics."[36] For example, Southern claims that Sprint Nextel's intercarrier roaming expert "ignores this basic [economic] concept of substitutability" and "fails to recognize the fundamental distinction between retail and wholesale markets and the need to assess the retail and wholesale markets separately."[37]

This criticism is completely unjustified. While Mr. Coffindaffer has a decade of experience in the intercarrier roaming arena, he is not an economist, and he did not submit his Declaration to opine on economic theory.[38] Moreover, there is reason Mr. Coffindaffer "failed" to discuss retail markets. Mr. Coffindaffer knows a lot about intercarrier roaming arrangements, but he is not involved in developing the retail plans that Sprint Nextel offers consumers (some of which include "off net" roaming).

G. Southern's Claim That Sprint Nextel Has Not Submitted Economic Evidence Is Contradicted by the Record

Southern claims that the "assertions of Sprint Nextel lack economic basis or support," and that only it (Southern) has supported its claims with economic analyses:

> [T]he only empirically *verified* definition of markets that include roaming services submitted in this proceeding to date has been the report of Dr. David S. Sibley. * * * To date, the Sibley Report is the only one that looks at CMRS roaming in the context of the USDOJ/FTC guidelines.[39]

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33 *Id.* at 3 n.4, 12 and 16.

34 *Id.* at 6.

35 *Id.* at 16.

36 *Id.* at 11. *See also id.* at 7 (Declaration contains "poorly grounded economic analysis and economic data that lacks any basis in acceptable economic theory.").

37 *Id.* at 7 and 10.

38 As Southern knows full well, Sprint Nextel has separately submitted economic analyses prepared by an economist – although as discussed in the next section below, Southern simply pretends this record evidence does not exist.

39 Southern Letter at 7 n.20, 10 n.29 and 11 (emphasis in original). Southern does not explain what it means by "verified," the word it italicized.

These Southern assertions simply are not accurate. Sprint Nextel submitted with both its comments and reply comments economic analyses prepared by Dr. Gregory Rosston, a former Deputy Chief FCC Economist, Acting Chief Economist of the former Common Carrier Bureau, and a senior economist with the Office of Plans and Policy. Dr. Rosston explained in considerable detail why Sprint Nextel's position is consistent with settled economic principles and FCC precedent. And, contrary to Southern's assertion, Dr. Rosston did discuss the DoJ/FTC guidelines – as Southern's own economist explicitly acknowledges.[40]

Southern further asserts that its proposal – that it should have access to its rival's network at its competitor's "best retail rate" – is "economically sound."[41] It is not surprising that Southern's letter does not support this claim with any authority. Dr. Rosston has explained that this Southern proposal would "turn competition policy on its head and create perverse incentives that could severely hamper wireless competition":

> The proposed regulation would simultaneously reduce incentives to invest and reduce price competition, both of which would harm, not help, consumers. The regulation would reduce incentives to invest since new facilities would immediately become available to any carrier at a very low price. It would blunt incentives to lower retail prices because retail price reductions would translate into lower roaming prices to competitors.[42]

Other noted economists have reached the same conclusion as Dr. Rosston.[43] Notably, neither Southern nor its economist has even attempted to respond to these points – although this does not stop Southern from claiming that its proposal is "economically sound."

Because Southern continually cites to Leap's economist, Dr. Sibley, Sprint Nextel herein also addresses the inaccuracies in Dr. Sibley's presentations. Among other things, Dr. Sibley's views are based on faulty factual premises:

- Dr. Sibley states that acquiring additional spectrum and expanding the scope of one's network is too "substantial" and "costly" for a regional carrier like Leap.[44] Yet, Leap and its affiliates recently spent over $1 billion to acquire AWS spectrum covering over 170 million POPs, giving Leap spectrum in 36 of the top 50 markets.[45]

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40 *See* McAfee Response at 4.

41 Southern Letter at 12.

42 Rosston Response at ¶¶ 5 and 6. *See also id.* at ¶¶ 32-39.

43 *See* Thomas W. Hazlett, *Mobile Roaming & Rate Regulation: an Economic Analysis* (Jan. 26, 2006), *appended to* Cingular's Reply Comments; Reply Declaration of Harold W. Furchtgott-Roth, *appended to* T-Mobile's Reply Comments.

44 Sibley Report at 15, *appended to* Leap's Reply Comments.

45 *See* Leap Press Release, *Leap and Denali Announce Successful Participation in FCC's Auction #66; Disciplined Bidding Strategy to Increase Consolidated Spectrum Holdings to 182 Million POPs* (Sept. 20, 2006); Leap Form 8-K, at 2 (Oct. 5, 2006).

- Dr. Sibley states that dual-mode handsets are "not . . . a viable option for regional carriers" like Leap because they are "more expensive" and "not . . . profitable."[46] Yet, Leap sells several models of dual/tri-mode phones; in fact, as noted above, Cricket customers can use Cricket's roaming option only if they have dual and tri-mode handsets.[47]

Dr. Sibley further criticizes Dr. Rosston for "confusing" wholesale markets with retail markets.[48] Yet, Dr. Rosston's conclusion – the wholesale roaming market is not the relevant point of analysis when consumers have access to multiple competing networks – is fully consistent with the conclusions that the Commission itself has reached. Indeed, Dr. Rosston's paper quoted from a recent FCC order to make his point:

> [W]e believe that an overall disciplinary force in the context of the intercarrier market for roaming services is that customers of various firms always have the option to switch to firms employing other air interfaces. In other words, if any mobile telephony consumers – regardless of whether they are on GSM, TDMA, or analog-only plans – were to find that the roaming aspects of their wireless service plans became less favorable (whether in terms of price or in terms of coverage) as a result of this merger, they would always have the option not only to upgrade to a GSM plan (in the case of TDMA or analog customers), but to switch to a CDMA-based carrier altogether. Thus, the availability of service from Verizon Wireless, Sprint, ALLTEL, or smaller CDMA-based carriers that comes with favorable roaming arrangements should also act to constrain Cingular's behavior in this regard.[49]

It also bears noting that Dr. Sibley in 2004 "supervised all economic analysis with the [DoJ] Antitrust Division (including both merger and non-merger investigations) and directed its Economic Analysis Group."[50] Thus, Dr. Sibley supervised DoJ's economic analysis of the AT&T Wireless/Cingular merger. Although this merger had the effect of reducing the number of nationwide GSM carriers by one, the DoJ did not express any concern whatsoever concerning the impact of the merger on intercarrier roaming or on consumers. It is difficult to square the conclusions Dr. Sibley has reached for Leap in this docket with the actions of the DoJ that he supervised.

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46 Sibley Report at 10-11. *See also id.* at 15 (dual-mode phones "not . . . an economic alternative").

47 Thus, Dr. Sibley's assertion – that "Leap operates a CDMA network, and so is limited to a roaming wholesale that also uses that technology" (*id.* at 10) – is factually incorrect. Other unsupported statements by Dr. Sibley – including, "there are relatively few dual-mode handset designs available;" "business travelers who wish to roam internationally are the primary users of dual-mode handsets;" and "Leap has not found it profitable to sell dual-mode hands to its customers" (*id.* at 11) – are all factually inaccurate. Had Leap included Dr. Sibley's paper with its comments (rather that waiting until its reply comments), economists retained by other carriers would have had the opportunity to respond.

48 *See* Sibley Report at 19.

49 Rosston Report at ¶ 22, *quoting AT&T Wireless/Cingular Merger Order*, 19 FCC Rcd 21522, 21591 ¶ 180 (2004).

50 Sibley Report at 1.

H. A Response to Miscellaneous Southern Assertions

Sprint Nextel below responds to miscellaneous assertions that Southern makes throughout its lengthy letter.

- Consumer Alternatives. Southern asserts that "[m]any of these consumers" served by carriers advocating new price regulation have "few available alternatives for wireless service."[51] Southern does not support this sweeping assertion with any facts. It should be noted, however, that the Commission recently determined that most consumers have a choice between nearly five facilities-based carriers and more than two dozen MVNOs, with most of these carriers offering several kinds of plans.[52]

- Industry Consolidation. Southern asserts that "industry consolidation is reducing roaming options."[53] Southern makes this claim even though under its theory of the case, other iDEN networks are its "only source" for intercarrier roaming.[54] Southern makes this claim even though the FCC has *twice rejected* Southern's arguments as being factually inaccurate.[55] And, Southern makes this claim even though it benefited by the merger of iDEN networks – since the merger resulted in Southern acquiring access to Nextel Partners markets that it did not have before the merger.

- Source of Sprint Nextel's Position. Southern claims that Sprint Nextel is urging the Commission to "pay no attention to that man behind the curtain and to take their word on the state of the market for roaming services."[56] This is an outright fabrication. Sprint Nextel has submitted extensive economic analyses prepared by a former FCC economist, and that economist's conclusions are based on all available facts (*e.g.*, CTIA data) and FCC precedent. Sprint has also submitted a Declaration detailing its intercarrier roaming practices, and Southern even concedes this Declaration contains "quite a bit of information."[57] In the end, it is Southern that wants the FCC to act on its "word" rather than the facts and sound economic analyses.

- HHI Data. Southern notes that during 2005, the *average* HHI for the industry increased by 10 percent (largely resulting from industry consolidation that, as noted, has had no effect on Southern's iDEN network roaming options).[58] It is understandable that

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51 Southern Letter at 2.

52 *Eleventh Report* at ¶¶ 27 and 86.

53 Southern Letter at 3-4.

54 *Id.* at 15 (underscoring in original).

55 *See Nextel Partners/Sprint Nextel Merger Order*, 21 FCC Rcd 7358, 7368 ¶¶ 14-15 (2006); *Sprint/Nextel Merger Order*, 20 FCC Rcd 13967, 14012 ¶¶ 125-26 (2005).

56 Southern Letter at 3 n.4.

57 *Id.* at 1 and 12.

58 *See* Southern Letter at 4.

Southern draws no conclusions from this data, since as the Commission has found, the highest HHIs are in rural areas, and not in the metropolitan areas served by Southern (Atlanta) and other regional carriers.[59] More fundamentally, the Commission has determined that the industry consolidation has had no negative effect on consumers, because "none of the remaining competitors has a dominant share of the market, and the market continues to behave and perform in a competitive manner."[60]

- Benefits of Competition. Southern complains that the "benefits of CMRS competition are not flowing to the non-nationwide carriers."[61] But why would Southern reasonably expect that the benefits of competition would flow equally to "all participants as a whole," especially when, as demonstrated above, and unlike many other carriers, Southern has not invested?[62] The key point, though, is that the benefits of competition flow not to service providers, but to consumers. And, the *Eleventh CMRS Competition Reports* confirms that consumers are the real winners by the robust competition that exists.

- Two-Way Roaming on Southern's Network. Southern repeatedly complains that Sprint Nextel customers do not roam on its network, even though Sprint Nextel's network overlaps Southern's small network.[63] Sprint Nextel is puzzled by this complaint, since Southern says that its proposal would apply "only to the provision of *inbound* roaming and would have no effect on the ability of Sprint Nextel . . . to pick and choose which networks they want their customers to roam on, thus leaving them free to develop their business and overall customer experience as they see fit."[64]

- Competitive Imbalance. Southern complains about "competitive imbalances" in the wireless industry.[65] Of course, there are competitive imbalances, as each competitor has different strengths and weaknesses. For example, a regional carrier like Southern, whose network covers less than four percent (4%) of the country,[66] cannot reasonably expect to compete on coverage against national carriers that have invested billions of dollars to deploy nationwide networks.

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59 *See Eleventh Report* at ¶ 47.

60 *Id.* at ¶ 2.

61 Southern Letter at 4.

62 *Id.* at 5.

63 *See* Southern Letter at 6-7 and 11.

64 *Id.* at 13 (emphasis in original).

65 *See* Southern Letter at 7.

66 Southern states that its network covers 128,000 square miles, which is 3.5% of our country's land mass. *See* www.southernlinc.com/telecommunications.asp.