

BEFORE THE
Federal Communications Commission
WASHINGTON, D C 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
AWI Spectrum Co., LLC and) DA No. 01-499
ACI 900, Inc.)
)
Application for Consent to Assign 800 and) File No. 0000370897
900 MHz SMR Licenses to ACI 900, Inc.)

REPLY OF AWI SPECTRUM, CO., LLC

AWI Spectrum Co., LLC (“AWI”), an indirect, wholly-owned subsidiary of Arch Wireless, Inc., hereby responds to the Comments filed by Southern Communications Services, Inc., d/b/a/ Southern LINC (“Southern”) opposing AWI’s application to assign 150 SMR authorizations to FCI 900, Inc., a wholly owned subsidiary of Nextel Communications, Inc. (hereinafter “Nextel”). For the reasons discussed herein, AWI believes Southern’s opposition is unfounded and the public interest is best served by an expeditious grant of the above-referenced application for assignment.

I. BACKGROUND

Southern opposes the AWI to Nextel assignment because Southern believes the transaction will adversely impact competition in the trunked dispatch market. Southern requests that the Commission either deny the assignment or condition a grant on a requirement that Nextel “enter automatic roaming agreements with technically-compatible digital SMR providers.”

Section 310(d) of the Communications Act requires the Commission to determine

¹ Southern Comments, filed March 21, 2001, at 2.

whether the proposed assignment will serve the public interest.² This public interest determination includes an assessment of the transaction's impact on competition. Southern asserts that the "only truly relevant market for analyzing competition with regard to the assignment of 900 MHz SMR licenses is trunked dispatch."³ As discussed below, this assertion is incorrect.

II. THE ASSIGNMENT OF AWI'S SMR AUTHORIZATIONS TO NEXTEL SHOULD BE ANALYZED IN LIGHT OF ITS IMPACT ON THE TWO-WAY MOBILE TELEPHONY MARKET

The Commission has repeatedly acknowledged that SMR providers such as Nextel compete directly with cellular and broadband PCS in the two-way mobile telephony market and that such competition produces competitive benefits for consumers. *In the Fifth Competition Report*, the Commission found that the mobile telephony sector "continues to experience heightened competition as a result of the expansion by broadband PCS and digital SMR carriers."⁴ The Commission stated as recently as November 2000 that "certain SMR providers have developed services that compete directly with services typically offered by cellular and broadband PCS The mobile telephone services offered by cellular, broadband PCS and certain SMR systems now are essentially interchangeable for many consumers."⁵

² 47 U.S.C. § 310(d).

³ Southern Comments at 5.

⁴ *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, Fifth Report, 15 FCC Rcd 17660, 17670 (2000) ("*Fifth Competition Report*"). The Commission also found, in particular, that "the mobile telephone sector continues to experience heightened competition within geographic areas as a result of the expansion by broadband PCS carriers and Nextel." *Id.* at 17735.

⁵ *Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Services*, Notice of Proposed Rulemaking, WT Docket No. 00-193, FCC 00-361 at ¶9 (rel.

This convergence of CMRS technologies has prompted the Commission to modify the way it analyzes the competitive impact of transactions involving CMRS spectrum and, in particular, SMR spectrum. Four years ago, the Commission employed a dual product market analysis to assess the competitive impact of Nextel’s acquisition of Pittencrieff’s SMR spectrum.’ The Commission’s analysis recognized two distinct product markets - - - dispatch and interconnected mobile voice.’ The Commission has concluded more recently, however, that the distinctions between these two product markets have blurred and that a single product market analysis is better suited for accurately analyzing the competitive impact of transactions involving SMR spectrum.

In January 2000, the Commission’s Wireless Telecommunications Bureau approved Nextel’s acquisition of Geotek’s SMR spectrum. The Commission noted that “[w]hile we adopt the *Pittencrieff* product market definition for convenience, we also find that the boundaries between various CMRS sectors are fluid Thus, we recognize that legitimate questions can be raised about the suitability of the market definitions we found appropriate in *Pittencrieff* three years ago.’⁸ The Commission then stated:

We are now more prepared to broaden our consideration of the competitive

Nov. 1, 2000) (“*Roaming NPRM*”).

⁶ *Pittencrieff Communications, Inc., Transferor, and Nextel Communications, Inc., Transferee, For Consent to Transfer Control of Pittencrieff Communications, Inc. and its Subsidiaries*, Memorandum Opinion and Order, 13 FCC Rcd 8935 (1997).

⁷ *Id.* at 8946, ¶ 23.

⁸ *Various Subsidiaries and Affiliates of Geotek Communications, Inc., Debtor-In-Possession, Assignors and Wilmington Trust Company or Hughes Electronics Corporation, Assignees, Wilmington Trust Company or Hughes Electronics Corporation, Assignors, and FCI 900, Inc., Assignee, For Consent to Assignment of 900 MHz Specialized Mobile Radio Licenses*, Memorandum Opinion and Order, 15 FCC Rcd 790, 802-803, ¶ 27 (2000) (“*Geotek*”).

impact of market participants outside of the sharply delineated wireless sectors we have used recently when evaluating proposed transfers and assignments. The convergence of these technologies leads us to believe that consumers may begin to use more of these wireless services interchangeably (and that carriers may increasingly market such services to the same set of consumers).’

The Commission could not be more explicit about its intent to assess the competitive impact of transactions involving SMR spectrum against the backdrop of the two-way mobile telephony market. Therefore, Southern’s argument that the AWI to Nextel assignment of SMR spectrum should be evaluated solely in light of its impact on the trunked dispatch market is without merit and should be dismissed by the Commission.¹⁰ Instead, the Commission should evaluate the AWI to Nextel assignment in light of the competitive benefits the transaction will bring to the two-way mobile telephony market.

III. THE IMPOSITION OF AUTOMATIC ROAMING OBLIGATIONS ON NEXTEL IN THE CONTEXT OF THIS PROCEEDING WOULD BE INAPPROPRIATE

The Wireless Telecommunications Bureau currently has pending a rulemaking proceeding in which it is addressing the issue of whether to impose automatic roaming

⁹ *Id.* at 803, ¶ 27.

¹⁰ Even under the two-market *Pittencrieff* analysis, evaluation of the AWI to Nextel assignment leads to the conclusion that the transaction will produce competitive benefits in the two-way mobile telephony market and will not likely cause competitive harm in the trunked dispatch market. Both the Commission and the Department of Justice (“DOJ”) have recognized that there are numerous opportunities for additional competition in the provision of trunked dispatch services. In 1999, the DOJ stated that it had become “apparent . . . that concentration in the relevant [trunked dispatch] markets is likely to be mitigated by other significant entry.” Response of the United States to Public Comments on the Proposed Modified Consent Decree, filed August 27, 1999, *United States v. Motorola, Inc.*, Case No. 1:94CV0233 1, United States District Court for the District of Columbia. When it assessed the impact of Nextel’s acquisition of Geotek’s SMR authorizations on the trunked dispatch market, the Wireless Telecommunications Bureau stated that “while these markets are concentrated . . . there are other sources of actual and potential competition that will likely constrain Nextel’s ability to set prices or restrict customers’ access to these services.” *Geotek*, 15 FCC Rcd at 804, ¶3 1.

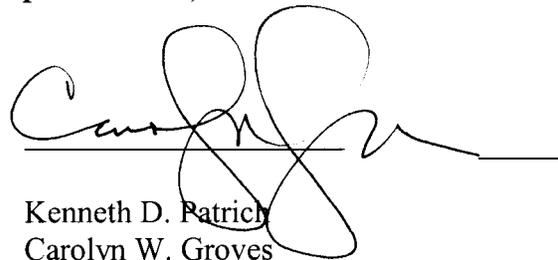
obligations on CMRS carriers.” Southern acknowledges that it is participating in that proceeding.¹² Southern’s request that the Commission impose an automatic roaming obligation on Nextel in the instant assignment of license proceeding is, therefore, entirely misplaced and must be rejected.

IV. CONCLUSION

Consistent with Commission precedent, the competitive impact of AWI’s assignment of SMR spectrum to Nextel should be analyzed in light of the transaction’s impact on the two-way mobile telephony market. Further, Southern’s roaming issues with Nextel must be resolved in the context of the Commission’s ongoing automatic roaming rulemaking in WT Docket No. 00-193. For these reasons, AWI respectfully requests that the Commission dismiss Southern’s Comments opposing the AWI to Nextel assignment and grant the above-referenced assignment as expeditiously as possible.

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¹¹ See *Roaming NPRM*, *supra*, note 5.

¹² Southern Comments at 2, n. 2.

CERTIFICATE OF SERVICE

I, LaVon E. Stevens, a secretary with the law firm of Wilkinson Barker Knauer, LLP, hereby certify that on this 2nd day of April, 2001, a copy of the foregoing Reply of AWI Spectrum Co., LLC was hand-delivered (unless otherwise noted) to the following:

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A handwritten signature in black ink, reading "LaVon E. Stevens", written over a horizontal line.

LaVon E. Stevens