

**Before the**  
**FEDERAL COMMUNICATIONS COMMISSION**  
**Washington, D.C. 20554**

<b>In the Matter of</b>	)	
	)	
<b>Motorola, Inc.; Motorola SMR, Inc.; and</b>	)	<b>DA 00-2352</b>
<b>Motorola Communications and Electronics,</b>	)	
<b>Inc.</b>	)	<b>Application Nos. 000-224876</b>
	)	<b>000-224877</b>
<b>Applications for Consent to Assign</b>	)	<b>000-224878</b>
<b>900 MHz SMR Licenses to FCI 900, Inc.</b>	)	

TO: Wireless Telecommunications Bureau  
Commercial Wireless Division, Policy and Rules Branch  
Chief, Wireless Telecommunications Bureau

**SOUTHERN COMMUNICATIONS SERVICES, INC. d/b/a SOUTHERN LINC**  
**MOTION TO STRIKE NEXTEL COMMUNICATIONS, INC.**  
**LETTER OF MARCH 8, 2001**

By:

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Date: March 30, 2001

Attorneys for Southern LINC

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SOUTHERN COMMUNICATIONS SERVICES, INC. d/b/a SOUTHERN LINC  
MOTION TO STRIKE NEXTEL COMMUNICATIONS, INC.  
LETTER OF MARCH 8, 2001

Southern Communications Services, Inc. d/b/a Southern LINC ("Southern") hereby respectfully submits its Motion to Strike the Nextel Communications, Inc. March 8, 2001, Letter ("Nextel Letter") filed in the above-captioned proceeding.

INTRODUCTION AND BACKGROUND

Motorola, Inc., Motorola SMR, Inc., and Motorola Communications and Electronics, Inc. (collectively "Motorola") have filed applications to assign fifty-nine of its 900 MHz SMR licenses and authorizations to FCI 900, Inc., a wholly-owned subsidiary of Nextel Communications, Inc. (collectively "Nextel").<sup>1</sup> Southern filed Comments requesting the Federal Communication Commission ("FCC" or "Commission") deny Motorola's license assignments on November 20, 2000. Motorola

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<sup>1</sup> Motorola, Inc. and Nextel Communications, Inc. Seek Consent to Assign 900 MHz SMR Licenses, Public Notice, DA 00-2352 (Oct. 19, 2000) ("Public Notice").

filed Reply Comments and Nextel filed an Opposition to Southern LINC's Comments on November 30, 2000.

On January 9, 2001, Southern filed a Reply to the Motorola Comments and Nextel Opposition and participated in an *ex parte* presentation to FCC staff concerning the substance of the Southern Comments and Reply. A notice of this *ex parte* presentation was properly filed in the record and notice served on interested parties. Nextel filed a Motion to Dismiss Southern's Reply on January 17, 2001, and Motorola filed a Motion to Strike on January 18, 2001. Southern filed a Response to Nextel's Motion to Dismiss and Motorola's Motion to Strike on January 24, 2001. Southern asserted that its Reply was properly filed, provided a valuable contribution to the record, did not unfairly prejudice the parties or delay final action, and was in full compliance with FCC requirements.

On February 8, 2001, Southern participated in an additional *ex parte* presentation to discuss Southern's position in the above-referenced proceeding. Southern's *ex parte* presentation reiterated the points made in its Comments and Reply and provided an Affidavit of Michael G. Baumann and Stephen E. Siwek from Economists Incorporated concerning the economic impact of approval of the requested assignment on market concentration in the Specialized Mobile Radio market. A notice of this *ex parte* presentation was properly filed in the record and notice served on interested parties.<sup>2</sup>

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<sup>2</sup> Nextel's Letter does not contend that the *ex parte* presentation notice was incomplete or inaccurate. The *ex parte* presentation notification letter also stated clearly that "A Supplement to this Affidavit will be filed in response to Commission staff questions concerning possible areas for trunked dispatch growth using 220 MHz, 450 MHz, 700 MHz, 1.9GH2, AMTS, ILT spectrum or traditional dispatch service assignments." Nextel did not object to the fact that a supplemental filing was to be made. This supplemental filing was made March 21, 2001.

On March 8, 2001, Nextel filed a 17-page letter with two attachments totaling 36 pages in this proceeding, as well as in WT Docket No. 00-193 and CC Docket No. 94-102. It is not clear from the filing and the service made by Nextel upon what authority Nextel is basing its letter. Nextel states its subject matter heading of "RE: *Ex parte* Presentation" and notes in its first paragraph that "(t)his *ex parte* letter and attached documents respond to Southern's February 9 presentation" in this proceeding, but this clearly can not be the basis for the filing since Nextel also filed this letter in the case record of WT Docket No. 00-193 and CC Docket No. 94-102 in which Southern had not provided an *ex parte* submission. Nextel noted only that these two other cases involved related issues. Service of the filing also does not provide notice upon what basis Nextel was attempting to make its filing. Copies of this filing submitted by Nextel's Senior Vice-President, Government Affairs, were served broadly at the FCC, provided to Motorola counsel and sent via U.S. mail to Southern Communications Services Director of Regulatory Affairs and co-counsel in this proceeding, but were not served on counsel who had filed the previous *ex parte* presentation notices for record in this proceeding as would have been customary and usual for pleadings. When a copy was requested from Nextel's Vice-President -Government Affairs, counsel was informed that the client had been served and the filing could be obtained from the client.<sup>3</sup>

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<sup>3</sup> Nextel's provision of a notice copy to the Regulatory Director of Southern LINC and co-counsel in this proceeding is superior to its usual handling of service. Nextel did not provide notice to anyone representing Southern LINC in its December 13, 2000, filing in response to staff questions. This filing was effectively an amendment to its Public Interest statement, but was not served on Southern. Similarly, Nextel did not serve notice of its 40-page March 9, 2001 submission of the Public Interest statement in the Arch transfer case into the instant proceeding. Nextel also did not provide notice of its almost 70 page submission on February 22, 2001, or notice of its January 26, 2001 *ex parte* presentation. Nextel also did not serve notice of its three separate *ex parte* contacts on March 14, 2001. Generally, the method of service does not provide definitive information about what type of filing it contemplated. Clearly, Nextel does not recognize any obligations to provide notice of its record submissions or any professional courtesy

Southern herein files a Motion to Strike the Nextel letter on procedural grounds, and asks that the Commission dismiss Nextel's letter as an untimely, unauthorized, unjustified, and redundant filing in blatant disregard of the Commission's processes which is designed to engender confusion and delay in the record.

### ARGUMENTS

- 1. NEXTEL'S MARCH 8, 2001, LETTER FILING SHOULD BE DISMISSED AS AN UNAUTHORIZED AND UNJUSTIFIED FILING IN BLATANT DISREGARD OF THE COMMISSION'S PROCESSES.**

Nextel's March 8, 2001, letter filing was not an authorized pleading contemplated under the Commission's rules. It was clearly not a petition, opposition, reply or request for temporary relief under § 1.45 of the Commission's rules. Nextel had already filed an opposition to Southern's filing in this matter. Further, the Public Notice clearly established that oppositions would have been due on November 30, 2000, so that a filing on March 8, 2001, would have been an untimely filing subject to strike or dismissal. Finally, Nextel provided copies to fifteen FCC staff members, counsel for Motorola and mailed a copy to Southern's Director of Regulatory Affairs. Southern's outside and lead counsel on the filing of its January 8, 2001 Reply and on both its *ex parte* notices on the instant case was not provided a copy.<sup>4</sup> Clearly, service of the filing on counsel filing the challenged *ex parte* would have been required if this were a pleading under § 1.45 of the Commission's rules.

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implications thereof even when Nextel's submissions were broad expansions of the record in serious violation of the Commission's contemplated *ex parte* process.

<sup>4</sup> Similarly, outside counsel for Southern in WT Docket No. 00-193 and CC Docket No. 94-102 was not

Nextel's March 8, 2001, letter filing also was not an *ex parte* notice filing contemplated by Section 1.1206 of the Commission's rules. Nextel's letter was not designed to memorialize an *ex parte* presentation in a "Permit-but-Disclose proceeding" described in § 1.1206 of the Commission's rules because Nextel did not engage in an *ex parte* presentation to provoke this filing. Nextel notes in its footnote 1, that it is providing additional copies for inclusion in WT Docket No. 00-193, and CC Docket No. 94-102 "pursuant to Section 1.1206 of the Rules of the Federal Communications Commission," but fails to establish that Section 1.1206 of the Commission's rules is applicable. Nextel appears to be using its letter to rebut or oppose materials properly provided to the Commission as part of an *ex parte* presentation filing. The *ex parte* process is designed to provide notice that certain presentations have occurred in a "permit-but-disclose proceeding." It is not designed to allow Nextel to open up the pleading cycle and provide extensive pleadings without the underlying *ex parte* contact, and to avoid service to opposing parties through the *ex parte* filing rules. In the past, Nextel has been quick to incorrectly state that filings demonstrate "blatant disregard for the Commission's process."<sup>5</sup> Unlike previous filings in this proceeding by Southern LINC, Nextel's letter of March 8, 2001, is clearly such a filing made in "blatant disregard for the Commission's process." Failure to provide copies of its filing to opposing parties, similarly does not indicate a high level of respect and appreciation of the Commission's rules, processes, and open records.

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provided a copy.

<sup>5</sup> Motion to Dismiss of Nextel Communications, Inc., DA 00-2352, filed January 17, 2001, at page 4.

Accordingly, the Commission should strike Nextel's letter as an unauthorized filing in violation of the Commission's rules and regulations.<sup>6</sup>

2. **NEXTEL'S MARCH 8, 2001, FILING PRESENTS NO NEW FACTS NOT ALREADY BEFORE THE FCC. IT MERELY REITERATES THE FACTS AND ARGUMENTS ALREADY MADE IN ITS NOVEMBER 30, 2000, OPPOSITION AND IS OBVIOUSLY DESIGNED TO DELAY THE FCC'S ULTIMATE REJECTION OF MOTOROLA'S APPLICATIONS FOR CONSENT TO ASSIGN 900 MHz SMR LICENCES TO NEXTEL AFFILIATE FCI 900, INC.**

Nextel's letter asserts that the relevant marketplace for analyzing Nextel's acquisition of SMR licenses for use in its iDEN digital network is the Commercial Mobile Radio Services ("CMRs") and that Southern has failed to acquire available spectrum. This was Nextel's contention in its opposition to Southern LINC's Comments on November 30, 2000, and has always been Nextel's contention. Nextel's letter submission presents no new arguments not already before the FCC<sup>7</sup> and the additional of this voluminous, redundant filing is designed merely to delay the Commission's ultimate rejection of Motorola's assignment. It should be dismissed.

Southern has proven that the relevant market is trunked dispatch, that Nextel dominates this market, and that Nextel has used its dominant position to deny essential

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<sup>6</sup> Southern LINC would also urge the Commission to strike its following filings: December 13, 2000; February 22, 2001; and its March 9, 2001 filing.

<sup>7</sup> Nextel asserts that Southern is seeking "cellular" roaming and thus can not deny its participation in the CMRs market. This assertion is a mischaracterization of Southern's arguments and ignores all the pleadings which have been filed in this proceeding. Southern seeks the ability to compete which has been denied because of Nextel's spectrum superiority and roaming opportunities on Nextel would improve competitive parity even though the relevant market is very concentrated. See Southern's Comments and Reply for a complete discussion of this matter.

services, such as roaming, to competitors so that they will ultimately be forced out of the market.

### CONCLUSION

WHEREFORE, Southern Communications Services, Inc., d/b/a Southern LINC hereby requests that the FCC Strike Nextel's March 8, 2001 Letter, and all other improperly filed and served pleadings made by Nextel, and deny the assignment of licenses to FCI 900, Inc. requested by Motorola, Inc., Motorola SMR, Inc., and Motorola Communications and Electronics, Inc. or, in the alternative, condition the approval of these transfers to provision of roaming to technically-compatible digital SMRs by Nextel and its affiliates.

Respectfully submitted,

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Dated: March 30, 2001

CERTIFICATE OF SERVICE

I, hereby certify that I have this day served a true and exact copy of the within and foregoing MOTION TO STRIKE NEXTEL COMMUNICATIONS, INC. LETTER OF MARCH 8, 2001, by SOUTHERN LINC COMMUNICATION SERVICES, INC. d/b/a Southern, via first-class United States Mail, postage paid and properly addressed to the following:

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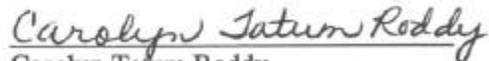
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Dated: March 30, 2001

  
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