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

In the Matter of

Motorola, Inc.; Motorola SMR, Inc.; and Motorola Communications and Electronics, Inc.

Applications for Consent to Assign
900 MHz SMR Licenses to FCI 900, Inc.

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

REPLY OF SOUTHERN LINC

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EXECUTIVE SUMMARY

Southern Communication Services, Inc., d/b/a Southern LINC (“Southern”) requests that the FCC deny the assignment of licenses requested by Motorola and its subsidiaries to FCI 900, Inc., a Nextel subsidiary. Southern urges the FCC to conclude that the transaction will not satisfy the public interest standard required under Section 310(d) of the Communications Act of 1934, as amended, because Nextel’s massive concentration of spectrum and market dominance will stifle competition in the trunked dispatch market, the relevant market for the public interest examination in this case.

Southern shows that prior decisions by the FCC and Department of Justice are not controlling because they were based on different facts and provided an overly optimistic view of the growth of competition in the SMR market. Southern urges the Commission to use this proceeding to help balance the inequities caused by its asymmetrical regulatory treatment of the Specialized Mobile Radio (“SMR”) industry. If the assignment is granted, Southern urges the FCC to condition the grant on the requirement that Nextel provide roaming services to Southern and other interested technically-compatible, digital SMRs.
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In the Matter of - -

Motorola, Inc.; Motorola SMR, Inc.; and Motorola Communications and Electronics, Inc.

Applications for Consent to Assign 900 MHz SMR Licenses to FCI 900, Inc.

DA 00-2352

Application Nos. 000-224876 000-224877 000-224878

REPLY OF SOUTHERN LINC

INTRODUCTION

Southern Communications Services, Inc. d/b/a Southern LINC (“Southern”) hereby respectfully submits its Reply to the Opposition of Nextel Communications, Inc. (“Nextel Opposition”) and the Reply Comments of Motorola, Inc. (“Motorola Reply”), filed in the above-captioned proceeding on November 30, 2000. This Reply incorporates by reference Southern’s previous Comments (“Southern Comments”) filed in response to the Federal Communication Commission (“FCC”) Public Notice of the above-described applications of Motorola, Inc., Motorola SMR, Inc., and Motorola Communications and Electronics, Inc. (collectively “Motorola”) to assign fifty-nine 900 MHz SMR licenses and authorizations held by Motorola to FCI 900, Inc., a wholly-owned subsidiary of Nextel Communications, Inc. (collectively “Nextel”).

The Southern Comments filed previously in this Docket assert that the Motorola applications should be denied for failure to satisfy the requirements of Section 310(d) of the Communications Act of 1934, as amended (“Act”). This provision requires that the assignment be in the “public interest, convenience, and necessity.” Southern contends that the transaction will not yield affirmative public interest benefits because Nextel’s massive concentration of spectrum and market dominance will stifle competition in the trunked dispatch market, the relevant market for the public interest examination in this case. Southern shows that prior decisions by the FCC and the Department of Justice (“DOJ”) are not controlling because they were based on different facts and provided an overly-optimistic view of the growth of competition in the Specialized Mobile Radio (“SMR”) market. Southern urges the Commission to use this proceeding to help balance the inequities caused by its asymmetrical regulatory treatment of the SMR industry. If the assignment is granted, Southern urges the FCC to condition the grant on the requirement that Nextel provide roaming services to Southern and other interested technically-compatible, digital SMRs.

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2 See In re Applications of Various Subsidiaries and Affiliates of Geotek Communications, Inc., DA 00-89, Memorandum Opinion and Order, 15 FCC. Rcd. 790, 794-795 (“Geotek”) for discussion of requirements of Section 310(d) as applied in the context of the license assignment context.

3 In support of the request that the FCC condition any assignment on the grant of roaming rights, Southern incorporates by reference its comments filed January 5, 2001, In the Matter of Automatic and Manual Roaming Obligations Pertaining to Commercial Radio Services, WT Docket No. 00-193, Notice of Proposed Rulemaking, FCC No. 00-361 (Nov. 1, 2000) filed January 5, 2001. A copy is attached as Exhibit “A”.

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The Motorola Reply and Nextel Opposition filed on November 30, 2000, have failed to show either that the assignment is in the public interest or that the assertions made by Southern are invalid.

**DISCUSSION**

I. The relevant market for purposes of examining Section 310(d) is the trunked dispatch market.4

Motorola and Nextel argue that trunked dispatch customers have numerous competitive options and that the Commercial Mobile Radio Service ("CMRS") market, rather than the trunked dispatch market, is the relevant one. Nextel notes that the DOJ and FCC have considered this question.

Southern disagrees with these assertions. The trunked dispatch market has not been assimilated into the greater interconnected mobile voice market. The trunked dispatch market continues to serve a distinct group of government and business customers who purchase communications products to serve their particularized dispatch needs. The iDEN system employed by Nextel and Southern is not interoperable with other CMRS services and the functions they perform are not comparable.

4 The FCC considered both the interconnected mobile phone and dispatch (mobile voice and trunked dispatch) markets when it considered whether SMR licenses should be transferred by bankrupt Geotek Communications, Inc. to the solvent Nextel affiliate FCI 900, Inc. See *Geotek*, 15 FCC Rcd. 790, 802. Southern has concluded that the above-captioned applications should be denied under an examination of either market but urges the FCC to recognize the unique qualities of the trunked dispatch marketplace and consider the trunked dispatch market as the relevant one for all matters affecting SMRs.
Although Nextel may argue that it competes in the greater interconnected voice market - cellular, broadband PCS, and SMR - the degree to which it attracts the same type of customer as individual consumer-oriented providers such as Verizon Wireless and VoiceStream Wireless is irrelevant. What is important is the fact that SMR is the only service capable of addressing the needs of customers that demand both dispatch and interconnected voice in the same handset. Because that sizable universe of customers can only look to SMR providers for their needs, SMR providers must be viewed as a separate industry for all purposes.

The Commission’s *Fifth Report* on CMRS competition mentions that several cellular and broadband PCS carriers “attempt to provide” dispatch service by providing group calling features. However, those are marketing-driven pricing plans, not dispatch service; the FCC actually refers to some plans as “family-oriented price plans.” The *Fifth Report* mentions only one non-dispatch carrier, SBC, that offers a service that approximates dispatch. Even that, though, provides only a streamlined conference call service in which simultaneous calls are limited to 30 persons in a pre-programmed group which is less than is possible with real dispatch.

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6 Id.

7 Id.
Even if the interconnected mobile voice market is also considered, the detrimental effect on the trunked dispatch market would far outweigh any slight benefits to the interconnected mobile voice market.

II. Nextel dominates the trunked dispatch market and granting the Motorola assignments would further allow Nextel to dominate and control the market and would make it even more difficult for competition to develop.*

Nextel clearly dominates a highly concentrated market and Southern’s Comments outlined Nextel’s increasing dominance of licenses for services. The FCC itself has acknowledged that "[d]igital SMR remains dominated by one provider, Nextel, which in 1999 had over 4.5 million subscribers . . . ." At this time Nextel’s network has coverage in more than 400 cities, including 178 of the top 200 markets in the United States and has over 6.1 million subscribers. As of June 1999, Nextel had launched its iDEN-based services in at least 187 BTAs, which contained 76% of the U.S. population. Nextel has the only nationwide network, and it continues to amass spectrum.” Moreover, its majority-

* Southern takes exception to Nextel’s statement that no new entrant or existing provider will be harmed by Nextel’s acquisitions in this proceeding. See Nextel Opposition at 10. Southern believes that it will be disadvantaged. Southern also finds it hard to believe that Neoworld License Holdings, LLC or other similarly situated companies will not find it more difficult to pursue plans for a 900 MHz iDEN dispatch and voice system if Nextel has already concentrated a vast amount of 900 MHz licenses. Such a statement can only be considered a nonsensical attempt to ignore business realities.


owned affiliate, Nextel Partners, is establishing facilities and gaining subscribers in the smaller and mid-size areas of the country that Nextel does not reach.  

At the same time, the list of other significant players, never long to start with, is shrinking. In its Fifth Report on competition, the FCC lists just five major SMR carriers: Southern and Nextel-controlled Nextel Partners each have 200,000 subscribers; Mobex has 65,000; Chadmoore Wireless Group has 37,475; and Securicor Wireless has 11,400. One of these, Chadmoore Wireless Group is now being purchased by Nextel. According to industry reports, Chadmoore holds nearly 5,000 800 MHz SMR licenses covering 55 million POPS in 180 markets throughout the United States.”

Nextel has also been aggressively acquiring licenses through auctions. In the recent auction for 800 MHz General Category SMR licenses (Auction No. 34), Nextel was awarded 800 of the 1,053 licenses offered. Additionally, in the recent auction for 800 MHz Lower 80 SMR licenses (Auction No. 36), Nextel was the successful bidder on 2,579 of the 2,800 licenses offered. Nextel’s success in these auctions is directly related to its dominance in the major markets. Prior to the first SMR auction, it amassed a vast number

11 Nextel and Nextel Partners, given its presumably Nextel-controlled Board, should be considered one for purposes of this proceeding.


13 Wireless Telecommunications Bureau Grants 800 MHz Specialized Mobile Radio (SMR) Service General Category (851-854 MHz) and Upper Band (861-865 MHz) Auction Licenses, Public Notice, DA 00-2874 (Dec. 20, 2000).

14 800 MHz SMR Service Lower 80 Channels Auction Closes, Public Notice, DA 00-2752 (Dec. 7, 2000).
of 800 MHz licenses throughout the country and is able to dominate the 800 MHz “overlay” auctions because it controls so many of the underlying licenses. Bidders without an existing foothold in the 800 MHz band simply cannot bid on an equal basis with Nextel. Given Nextel’s already dominant 800 and 900 MHz spectrum holdings, it is clear that market entry by future competitors will be made more difficult by problems in acquiring an adequate number of licenses.

The FCC and DOJ decisions have consistently spoken optimistically about the emergence of competition and convergence with other wireless carriers, but this competition has not emerged and, in fact, the field of SMR competition has contracted because of Nextel’s continued acquisition of licenses. Any decisions premised on this emerging competition should be considered suspect because the SMR marketplace has not responded as anticipated. The FCC has been anticipating competitive entry in the SMR trunked dispatched market for more than four years. These assessments were not made in accordance with the Department of Justice merger guidelines. It is not clear how the analysis was done, but it is clear that the competition has not materialized as anticipated. To continue to make these unsupported assertions without consideration of the Department of Justice merger guidelines is arbitrary and capricious.

There are only two sets of frequencies available for trunked dispatch SMR operations: 800 and 900 MHz spectrum. The availability of 800 and 900 MHz spectrum is crucial to the competitive viability of SMR providers currently in the market, and to companies interested in entering the SMR market because technological constraints

\[1^{5}\] Geotek at 801.
prevent SMR providers committed to a particular technology from moving freely to other spectrum bands that may be available for other CMRS services. A total of approximately 19 MHz is available for use by SMRs, 14 in the 800 MHz band and 5 in the 900 MHz band. While existing equipment places limitations on the interchangeability of 800 and 900 MHz SMR spectrum, Motorola is conducting research with regard to the development of an iDEN handset that will incorporate both bands. The availability of 900 MHz frequencies in sufficiently large blocks will be essential to a competitor’s ability to expand its service because there is virtually no more 800 MHz spectrum available.

With its national spectrum holdings in the 800 MHz and 900 MHz bands, Nextel has near complete control over the 800 and 900 MHz spectrum that is required by existing or potential new entrants to provide their services and develop new product lines. This spectrum dominance results in Nextel’s control of the national network necessary to maintain a competitive SMR market and gives it the ability to raise prices and exclude competitors and potential new entrants from the market. The record is abundantly clear that Nextel has strategic dominance in the SMR market by virtue of its acquisition of 800 and 900 MHz SMR spectrum.

Further, the 220 MHz band is not a reasonable alternative to 800 and 900 MHz SMR spectrum. While the Commission has made 220 MHz spectrum available for development in the SMR market as a possible alternative to 800 and 900 MHz SMR spectrum, it has not proved to be a viable substitute. No major SMR manufacturer

provides equipment compatible with 220 MHz spectrum. The equipment manufacturers which dominate the 800 and 900 MHz SMR spectrum markets (Motorola, Kenwood, Ericsson, Uniden) are notably absent from the 220 MHz equipment market. (SEA and Intek Global are the only manufacturers offering equipment that supports 220 MHz spectrum.)

The failure of the Commission to sell a substantial number of licenses in the first 220 MHz auction, and the low prices the Commission had to settle for when it held a follow-up auction, also demonstrate that SMR providers do not consider 220 MHz spectrum a competitively viable alternative.\textsuperscript{17} It is clear that 220 MHz spectrum subjects adjoining systems to interference and cross-talk and that an SMR provider would need sizable investment to develop the infrastructure necessary to eliminate those sorts of problems and reach economies of scale to use it to compete. Even Nextel acknowledged in \textit{United States v. Motorola Inc., and Nextel Communications, Inc.}, CIV. A. 94-233 1, Ex.8 at 121 (D.D.C. 1995) that the number of 220 MHz systems constructed “cannot compare with the incumbent systems at 800 and 900 MHz” and estimated that 220 MHz licensees “may” capture 4 percent of the SMR market by 2004, “assuming a reasonable licensing and construction schedule.” The consensus appears to be that 220 MHz spectrum is simply not a viable alternative to 800 and 900 MHz SMR spectrum.

Nextel’s assertion that the 1.9 GHz spectrum can be used as a substitute for 800 and 900 MHz is similarly not valid. This is evidenced by their decision to withdraw from the C & F Block PCS auction without acquiring new licensing authority.

Southern also takes exception to Nextel’s assertion that it appears to have “chosen to deploy a business strategy that relies on its utility status to acquire private spectrum, convert it to commercial use and then depend on regulatory intervention to achieve its business goals.” Nextel Opposition at 11. Southern recently spent more than $50 million in the 800 MHz General Category SMR auction alone (Auction No. 34) and has made numerous efforts to acquire more.

Nextel’s assertions that Southern has “passed on numerous opportunities to acquire additional spectrum” is similarly without validity. Nextel Opposition at 10. Southern has actively sought to acquire additional licenses, although its efforts have been overshadowed by Nextel. In fact, Southern attempted to buy spectrum from Chadmoore Wireless Group and from the Geotek Communications bankruptcy trustee, but both these opportunities have gone to Nextel. Southern was the second highest bidder for spectrum in the recent 800 MHz General Category and Lower 80 SMR auctions (Auction Nos. 34 and 36) in which Southern aggressively competed with Nextel. Southern also expressed an interest in acquisition of the subject 900 MHz licenses before they were sold by Motorola without notice to Nextel. Southern’s failed attempt to acquire spectrum, illustrates the difficulty of dealing with a market-niche monopoly such as Nextel. New entrants will have an even more difficult time competing with Nextel.

Southern rejects Nextel’s assertion that its system is somehow technically superior because it uses 3 to 1 calling capability rather than Southern’s 6 to 1 calling capability. Nextel Opposition at 13. Southern notes proudly that its service is widely used by public safety agencies, emergency services, school districts, rural local governments and public utilities because of its expansive and reliable coverage. Rather than being technologically
inferior, Southern’s system is in fact more efficient in its use of spectrum. Of course, Nextel has less need to conserve spectrum in light of its overwhelmingly dominant spectrum position in comparison with other SMR providers.

Similarly, Nextel’s ability to achieve the mobile telephone industry’s highest average revenue per unit per month (“ARPU”) is based on its dominant market position, i.e., its overwhelming spectrum advantage, its presence throughout the country and its anti-competitive decisions to withhold roaming opportunities and to buy out competitors. Instead of pointing to its high ARPU as a sign of its superiority, Nextel should recognize that these prices are inflated by the anti-competitive business strategy it pursues to acquire all available SMR spectrum, buy out all competitors which manage to acquire enough spectrum to implement a business plan, and slow roast any remaining competitors by denying essential services such as roaming. 8

Motorola, even though it is a part-owner of Nextel, currently offers traditional, non-interconnected analog dispatch service in competition with Nextel. Thus, Motorola, a Nextel competitor, will be lost to the competitive marketplace upon assignment of the licenses above. The FCC has stated that “in the relatively near future, we believe that additional market entry is likely to ensure that competitive conditions facing consumers in these markets will improve.” 18 That is clearly not happening, and it becomes less likely every time Nextel consolidates more SMR spectrum.

8 For full discussion of Nextel’s denial of FCC-ordered manual roaming services, see Southern’s Roaming Comments, WT Docket No. 00-193, attached hereto.

18 Geotek 15 FCC. Red, at 806.
III. Nextel’s assertion that Southern’s arguments are not supported by new facts or circumstances to require a different decision than was previously made by the FCC and the United States Department of Justice is erroneous.

Nextel asserts that Southern’s arguments were rejected by the Department of Justice and the FCC, but it fails to recognize that these decisions were rendered on different facts and with an inaccurate and overly optimistic view of potential competition developing in the SMR marketplace. Promised competition to Nextel’s SMR offering has not materialized. The market is increasingly concentrated by Nextel’s acquisition of licenses by auction and individual purchase as attempted here. Nextel has not provided roaming capability to Southern, its largest competitor, and this has clearly stunted its growth. These matters, taken together, show that trunked dispatch is the relevant market and that this license assignment should not be approved.

Further, the cases cited by Nextel as a rejection of Southern’s position involve different facts from the instant proceeding. Frequent reliance on the Commission’s decision in Geotek is especially misplaced. In approving the transaction in Geotek, the FCC approved the assignment of 900 MHz licenses after concluding that “the effect of this transaction is that currently unused spectrum will be put to its highest valued use.”

\[^{20}\text{Geotek ¶ 23.}\]
In *Geotek*, the licensee was not providing service and approval of an assignment to Nextel from the bankruptcy trustee brought the licenses back into use. That is not the case here where the assignment by Motorola to Nextel has, in the words of the *Geotek* decision, the “negative implications of a horizontal merger.” Motorola is now offering service under these licenses and will cease to provide service that competes with Nextel once the assignment is approved. This will reduce existing competition in the already highly concentrated trunked dispatch market.²²

Further, Motorola is requesting assignment of licenses in major metropolitan markets while the *Geotek* decision involved only those licenses in smaller markets not included in the Nextel consent decree. In fact, the *Geotek* decision expressly stated “we emphasize that our analysis here is limited to the non-consent decree markets. These markets are generally smaller than the consent decree markets, which constitute essentially the fifteen largest U.S. metropolitan areas. Thus, the demand for trunked dispatch service should be correspondingly smaller in these markets, and the capacity available from 200 MHz licenses is largely relative to that demand.”²³ The FCC should not be deluded into thinking that 900 MHz band will be used to provide non-dispatch services. In *Geotek*, for example, Nextel stated that it intends to use the licenses it acquires in the provision of bundled services, including mobile voice telephony, work group calling, messaging and data. *Geotek* at 802. Similarly, on page 4 of Nextel’s

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²¹ *Geotek* ¶ 23.

²² *Geotek* ¶ 33.

²³ *Geotek*, 15 FCC. Rcd. 808.
Opposition to Southern Comments, Nextel notes that “Nextel competes in the CMRS marketplace, and it is the marketplace in which the subject 900 MHz SMR licenses will be deployed.” This did not occur with the licenses acquired from Geotek and there does not appear to be plans for Nextel to do that with Motorola’s 900 MHz licenses either. It would appear that Nextel mislead the Commission in both Geotek and in this proceeding since Nextel has taken no steps to integrate 900 MHz frequencies into an efficient digital network. In fact, Neoworld has had to agree to pay Motorola for research and development costs estimated at $5 million in an effort to obtain a 900 MHz digital handset. Therefore, the FCC should not presume that Nextel in its public interest analysis plans to make more efficient use of this spectrum than currently made by Motorola.

Finally, the Geotek decision is based on a presumption that competition will increase as the Bureau noted in Geotek:

Moreover, in the relatively near future, we believe that additional market entry is likely to ensure that competitive conditions facing consumers in these markets will improve. We are confident that entry can be relied upon to prevent competitive harm in this case because barriers to entry are low and numerous firms with qualifications and abilities to enter exist. In particular, we find that cellular and broadband PCS firms will have the ability to enter easily because they hold spectrum licenses, have relevant physical assets in place, have expertise in wireless technologies and markets, are ongoing businesses with recognizable brand names, and have ample capital resources. In addition, certain 220 MHz licenses have some of these attributes, and we find they are likely entrants as well. Geotek, 15 FCC. Rcd. at 806.

This competition has not become a reality.

As Southern noted in its comments filed previously in this proceeding, the FCC issued an order in 1997 which concluded that “entry into the dispatch market is not
inherently costly, technically challenging, or unduly time-consuming.” Nextel cited this language as support for its position that its increased holdings of spectrum will not have an adverse impact on the trunked dispatch services marketplace. Southern contends that the language in this Bureau order is merely one more example of the failed expectation that competition will develop in the dispatch market. Southern disagrees about the difficulty of providing a dispatch function, and notes that anticipated competition has clearly not developed. As Southern noted in its comments filed previously in this proceeding, PCS and cellular carrier technology prevent them from readily using SMR dispatch spectrum since their systems are designed to provide interconnected mobile voice service and would need to be retrofitted to provide the very different one-to-many dispatch service. Further, there is no indication that trunked dispatch is part of future PCS and cellular carrier business plans as they have chosen to ignore SMR dispatch spectrum for years.  

IV. The Commission should utilize this proceeding to balance the inequities created by the regulatory treatment of the SMR industry.

The FCC has established a regulatory scheme for the cellular and broadband PCS services that ensures the existence of competition. For instance, FCC Rule Section


25 Southern also questions the accuracy of the average prices for dispatch cited in Geotek and thus, disagrees with the conclusion drawn from this statement of incomplete prices. Southern is confident that Nextel’s prices were not included in the average price for dispatch and that any conclusion based on these numbers is inaccurate. See Geotek 15 FCC, Red. 808.
22.942 contains a cellular cross-ownership prohibition which generally prevents a party from having an ownership interest in licenses or licensees for both cellular channel blocks in overlapping cellular geographic service areas. Cellular also was developed in a way which dictated at least two competitors with roughly comparable access to spectrum. Even the amount of allocated spectrum, the basic foundation of any mobile service, predisposes cellular to more competition than SMR: the Commission allocated 50 MHz to cellular but only approximately 19 MHz to SMR. Due to those factors, Nextel has been able to accumulate the vast majority of 800 MHz SMR spectrum in most major markets and completely preclude potential competitors from gaining a foothold in the business. Thus, the number of different SMR providers that can obtain enough licenses to effectively compete in any one area is inherently limited significantly.

In contrast to cellular and PCS services, the SMR service does not have such competition-enhancing regulations. Proceedings, such as this one, should be used to instill safeguards approximating regulatory parity. Such action would support provisions in Section 6002(d)(3)(B) of the 1993 Budget Act which directed the FCC to enact “comparable” technical requirements for cellular, PCS, and SMR.

See, e.g., In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Competition in the Commercial Mobile Radio Services Second Annual Report, 12 FCC. Rcd. 11266, 11309, FCC 97-75 (Mar. 25, 1997).

V. In the event the FCC grants these requests for assignment, Southern asks that finalization of the license grants be delayed until, at a minimum, Nextel successfully provides roaming services to other interested technologically-compatible digital SMRs.

Southern urges the FCC to deny the instant request for assignment of licenses from Motorola and its affiliates to FCI 900, a Nextel affiliate, as anticompetitive and thus contrary to the public interest requirements of Section 310(d) of the Communications Act. If the FCC determines that the assignments should be made, Southern requests that finalization of the assignments be delayed until roaming has been provided to requesting technologically-compatible digital SMRs.

Southern has unsuccessfully made numerous requests that Nextel provide it roaming services-manual as required by the FCC or automatic if that is more easily accomplished. Southern strongly believes that the SMR market is not competitive and that the acquisition of more and more licenses by Nextel will hamper competition. The enforcement of roaming rights would clearly serve to help level the competitive playing field despite Nextel’s massive concentration of spectrum and assist in mitigating the power acquired by Nextel through concentration of licenses and domination of the SMR market.

The FCC has frequently conditioned mergers based on its examination of the public interest under Section 310(d) and license assignments are subjected to the same analysis.**

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Southern strongly believes that the assignments should be denied but asks that assignment of the above-described licenses be conditioned upon provision of roaming to Southern and other technically compatible digital SMRs if approved.

CONCLUSION

WHEREFORE, Southern Communications Services, Inc., d/b/a Southern LINC hereby requests that the Commission 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.

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Dated: January 9, 2001

Attorneys for Southern LINC
CERTIFICATE OF SERVICE

I, hereby certify that I have this day served a true and exact copy of the within and foregoing REPLY OF SOUTHERN LINCS to Motorola’s Application for Consent to Assign 900 MHz SMR Licenses to FCI 900, Inc., DA No. 00-2352, via first-class United States Mail, postage paid and properly addressed to the following:

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EXHIBIT A
Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of
Automatic and Manual Roaming
Obligations Pertaining To Commercial
Mobile Radio Services

WT Docket No. 00-193

COMMENTS OF SOUTHERN LINC

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Dated: January 5, 2001
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III. THE MANUAL ROAMING RULE SHOULD NOT BE ELIMINATED NOR SUNSET UNLESS THE FCC ADOPTS AN AUTOMATIC ROAMING RULE FOR DIGITAL SMR CARRIERS

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EXECUTIVE SUMMARY

In this proceeding, the Federal Communications Commission is considering whether to adopt an “automatic” roaming rule for Commercial Mobile Radio Service ("CMRS") systems. Southern Communications Services, Inc., d/b/a Southern LINC (“Southern”), takes no position on whether such a rule should be adopted for cellular or broadband PCS systems. However, it strongly believes that the Commission must adopt an automatic roaming rule for Specialized Mobile Radio ("SMR") carriers to provide service using wide-area digital systems. This would primarily encompass Nextel Communications ("Nextel"), Nextel Partners, Southern, and Pacific Wireless Technologies, digital SMR carriers which utilize iDEN technology to operate in the 800 MHz band. Along with a roaming requirement, the Commission should also enact a specifically-tailored enforcement scheme through which carriers can file complaints against non-compliant carriers.

Simply stated, an automatic roaming rule for digital SMR carriers is necessitated by Nextel’s dominance of the trunked dispatch market. Through that dominance, it has created a nationwide network that cannot be matched by any of its existing or potential competitors; it has amassed so much 800 and 900 MHz spectrum that other companies cannot establish meaningful systems of their own beyond their current regional coverage areas. The state of the U.S. SMR market exacerbates this problem: unlike the cellular and PCS markets, it is consolidating and there are fewer carriers today than ever before. This consolidation has been to the benefit of Nextel, removing any incentive for it to cooperate in any manner with the remaining players. Accordingly, Nextel refuses to enter into automatic roaming agreements with any non-affiliated
U.S.-based carriers. Likewise, it has refused to enter even manual roaming agreements despite the Commission’s manual roaming rule.

Nextel’s rejection of any reasonable roaming agreements is highly detrimental to both consumers individually and the SMR industry generally. Most obviously, the hundreds of thousands of digital SMR customers in the United States who do not subscribe to Nextel or its affiliate, Nextel Partners, are unable to use their phone outside their carriers’ regional coverage areas for critical communications, whether it be emergency, business, or personal. Additionally, any hope of meaningful competition in the SMR market is stifled, as neither current nor potential providers can or will be able to offer consumers the ability to roam. Toward that end, far from simply lawfully promoting a distinguishing feature of its product, Nextel is leveraging its lock on the necessary spectrum to anticompetitive advantage.

Also as explained in Southern’s Comments, automatic roaming between digital SMR carriers is technically and economically feasible. Analysis on the part of Southern and Motorola, the iDEN vendor, confirms the lack of any insurmountable technical hurdles. From an economic standpoint, Nextel’s cost of implementing automatic roaming would be negligible and offset in any event by revenues from roaming fees. Additionally, other reasons for enacting an automatic roaming rule are the need to work towards regulatory parity for SMR carriers (as opposed to cellular and PCS carriers) and the fact that the remedies available under existing law are not adequate.

Finally, Southern takes this opportunity to raise antitrust concerns evidenced by Nextel’s conglomerate of 800 and 900 MHz SMR spectrum and its corresponding conduct. While Southern acknowledges that full pursuit of such concerns is appropriate for another forum, it believes they are pertinent to this proceeding because they further illustrate Nextel’s
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anticompetitive behavior and, hence, the need for an automatic roaming rule. In short, Southern believes Nextel has obtained monopoly power and controls an essential facility — 800 and 900 MHz SMR spectrum — and that its refusal to enter roaming agreements to allow use of that facility may constitute unlawful conduct.

The Commission first sought comment on an automatic roaming rule over four years ago. In the interim, the SMR playing field has tipped further away from the competitive goals of the Telecommunications Act of 1996. The Commission must now take a step toward remedying that imbalance by adopting the automatic roaming rule and ancillary enforcement regulations proposed by Southern.

Southern proposes that the Commission adopt an automatic roaming rule for digital Specialized Mobile Radio ("SMR") carriers, pursuant to which carriers with technically compatible systems would be required to enter automatic roaming agreements upon request. Southern also proposes that the Commission retain and not sunset the manual roaming rule unless it adopts an automatic roaming rule. If it adopts an automatic roaming rule, it should not set a sunset date for it. Southern takes no position on whether automatic roaming should be mandated for cellular or broadband PCS systems.

1 In the Matter of Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Services, WT Docket No. 00-193, Notice of Proposed Rulemaking, FCC No. 00-361 (Nov. 1, 2000) ("NPRM").
As explained herein, the ability to roam is highly important to mobile phone customers. When outside their carriers’ coverage area, an inability to roam not only prevents them from making ordinary business or personal calls, but also often prevents them from making the life-saving calls contemplated by the E-911 initiative or from taking advantage of the disabled access provisions of the Telecommunications Relay Service ("TRS") and TTY initiatives. Unfortunately, due to market failure in the SMR industry, Nextel Communications ("Nextel"), the only SMR carrier with a nationwide network, has refused to enter roaming agreements with any domestic carriers other than its majority-owned affiliate, Nextel Partners. As such, Nextel is depriving hundreds of thousands of SMR customers of the ability to roam.

Southern would note that it uses several terms throughout these Comments as terms of art. When referring to the SMR service, Southern is indicating the universe of all SMR carriers. In referring to the SMR industry, Southern is indicating the subset of SMR carriers that provide trunked dispatch services. In referring to digital SMR, Southern is further narrowing the discussion to wide-area digital SMR, which is primarily provided on Motorola’s iDEN technology platform by Southern, Nextel, Nextel Partners, and Pacific Wireless Technologies ("Pacific Wireless"). While the SMR service encompasses both analog and digital SMR, at this time implementation of an automatic roaming requirement is of concern mainly to digital carriers with extensive service footprints. Unless otherwise indicated, SMR service, SMR industry, and digital SMR, or derivations of them, should be given the meanings set forth in this paragraph.

BACKGROUND

Southern LINC operates a state-of-the-art digital wide-area SMR system covering 127,000 square miles and serving over 200,000 customers in Georgia, Alabama, the panhandle of Florida, and the southeastern third of Mississippi. It provides the most comprehensive
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geographic coverage of any mobile wireless service in Alabama and Georgia; its system is not limited to major metropolitan areas and highways corridors, but serves the extensive rural territory within its footprint as well. In fact, Southern serves areas of Florida, Georgia Mississippi, and Alabama that are not served by any other advanced wireless dispatch provider. In part because of this expansive and reliable coverage, its service is widely used by statewide public safety agencies, school districts, rural local governments, public utilities, and emergency services such as ambulance companies. It is also utilized by commercial entities and other government entities in both urban and rural areas.

Southern is considered a “covered SMR” for purposes of the roaming rules. Its system operates on the 800 MHz SMR band using Motorola’s iDEN technology, which offers capabilities including dispatch, interconnected voice, internet access, and data transmission. While Southern’s system provides its customers with some of the most sophisticated wireless capability available, due to the current state of technology its customers can only roam with other carriers using the 800 MHz SMR iDEN platform. For most of the United States, and certainly the areas adjacent to its coverage area, its only options for roaming partners are Nextel and Nextel Partners. In the several markets where their coverage overlaps, Southern competes vigorously with Nextel and Nextel Partners for customers that want a service that provides both dispatch and interconnected voice.

Nextel has roaming agreements with its close affiliate, Nextel Partners, which commenced operation in January 1999 with the general goal of introducing the Nextel brand to the small and mid-size markets where it does not presently have coverage. It is approximately 32% owned by Nextel, deals in its brand, contracts with it for various support services, and
shares its switches.” Nextel Partners claims its relationship with Nextel is "an integral part of our strategy” and boasts of an exclusive roaming partnership under which it is the sole provider of roaming services to Nextel customers who travel in its markets. In Nextel Partners’ most recent SEC Form 10-Q, it admits that Nextel “has certain approval rights that allow it to exert significant influence over our operations.” Southern submits that for purposes of securing voluntary automatic roaming agreements, Nextel and Nextel Partners are essentially one and the same. Certainly, Nextel Partners would refuse to enter any roaming agreements without Nextel’s approval; at the least, its presumably Nextel-controlled Board would direct any decisions.

**DISCUSSION**

Southern has sought for years to obtain an agreement in which its customers could roam on Nextel’s national network. However, Nextel has steadfastly refused to permit Southern’s customers to roam on its system either manually or automatically. With regard to manual roaming, Nextel essentially claims that technical issues still need to be worked out. As explained further below, Southern believes that any technical issues are easily resolvable and that Nextel is unreasonably delaying implementation. This failure to allow Southern’s customers to even manually roam on its system is highly illustrative of the depth of its uncooperativeness, especially in light of the FCC’s manual roaming rule.

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3. *Id.*
I. THE FCC SHOULD ADOPT AN AUTOMATIC ROAMING RULE FOR DIGITAL SMR CARRIERS

The NPRM marks the Commission's third pass at an automatic roaming rule. It first considered such a rule over four years ago in connection with its adoption of the manual roaming rule. In connection with that same rulemaking, it sought additional comments in December 1997. The rulemaking remained pending until August 2000, when the Commission reiterated its commitment to the manual roaming rule but held that the record had grown too stale to issue a decision with regard to automatic roaming. Nonetheless, Southern had participated vigorously in that rulemaking, submitting pleadings contending that digital SMR carriers needed an automatic roaming requirement to achieve regulatory parity and compete against Nextel, which in 1996 already had a nationwide footprint but was not allowing other carriers to roam on it.

Since 1996, Southern has continued to press its case through numerous ex parte presentations. The Commission announced in August 2000 that it needed to refresh the record

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7 In the Matter of Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54, Third Report and Order and Memorandum Opinion and Order On Reconsideration, 15 FCC Rcd. 15975, 15976, FCC No. 00-251, ¶ 3 (2000) ("Third R&O").

8 In the Matter of Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54, Reply Comments of Southern Company (Nov. 22, 1996); Supplemental Comments of Southern Company (Jan. 5, 1998).

9 See, e.g., February 18, 2000 letter from Southern Communications Services to Magalie R. Salas, CC Docket No. 94-54.
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Due, in part, to "the rapid expansion and development of the CMRS market in the intervening years . . ." While that may be true in regard to the cellular and PCS segments of the CMRS market, the SMR market has been contracting rapidly and has become more concentrated in Nextel's hands. In fact, Nextel acquired Pittenrieff Communications, a major provider, and is set to acquire Chadmoore Wireless Group, another major provider. Additionally, in January 2000 the FCC approved the assignment of Geotek Communications' 191 900 MHz SMR licenses to Nextel (with the exception of licenses in markets covered by a consent decree Nextel entered with the Department of Justice),” Consequently, competition among SMR providers has not increased and it is business as usual with regard to Nextel's refusals to enter into roaming agreements. Despite folding several of its significant competitors into its system and still being the only SMR provider with a national footprint, Nextel has yet to allow Southern or any other nun-affiliated U.S.-based carrier to roam with it on even a manual basis.

As explained below, an automatic roaming rule is required due to the consolidation of the SMR industry, Nextel's dominance in this market, and its unwillingness to voluntarily allow automatic roaming on its network. The reality of the situation is that the SMR industry is experiencing market failure and there will not be significant competition unless Nextel is required to allow other digital SMR carriers to automatically roam on its system. Such roaming is technically feasible and the public interest benefits would outweigh the costs. Additionally, implementation of a rule would be a significant step toward equalizing the regulatory disparity between the SMR service and the cellular and broadband PCS services. FCC action to address

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10 Third R&O, 15 FCC Red. at 15976, ¶ 3.
11 In re Applications of Geotek Communications, Memorandum Opinion and Order, 15 FCC Red. 790,806, DA 00-89, ¶ 35 (2000).
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unreasonable or discriminatory roaming behavior would serve to correct abuses that marketplace forces cannot.

A. SMR Providers Constitute A Distinct Industry For Purposes Of This Analysis

As an initial matter, the Commission should focus only on competition between bunked dispatch SMR providers to determine whether an automatic roaming rule should be implemented for digital SMR carriers. Although Nextel may argue that it competes in the greater interconnected voice market - cellular, PCS, and SMR - the degree to which it attracts the same type of customer as individual consumer oriented providers such as Verizon Wireless and VoiceStream Wireless is irrelevant. What is important is the fact that digital SMR is the only service capable of addressing the needs of customers that demand both advanced, digital dispatch and interconnected voice in the same handset. Because that sizable universe of customers can only look to digital SMR providers for their needs, the FCC must view them as a separate industry for roaming purposes.

Southern would note that the Commission’s Fifth Report on CMRS competition mentions that several cellular and PCS carriers “attempt to provide dispatch service by providing group calling features. However, those are marketing-driven pricing plans, not dispatch service; the FCC actually refers to some plans as “family-oriented price plans.” The Fifth Report mentions only one non-dispatch carrier, SBC, that offers a service that approximates dispatch.” Even that,

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13 Id.

14 Id.
though, **provides only** a streamlined **conference call** service in which **simultaneous** calls are **limited** to 30 persons in a **pre-programmed** group, less than is **possible** with **real dispatch**.

**B. Manual Roaming Is Not A Viable Substitute For Automatic Roaming**

**Also** as an initial matter, the FCC **should** not allow the existence of the **manual roaming** **rule** to weigh against enactment of an **automatic roaming** **rule**. **Although** Southern believes that the **manual roaming** **rule** has its **place**, manual **roaming** is extremely **cumbersome**, **often** requiring a customer to **wade** through a series of voice mail prompts to **enter** the roaming process or, worse, to place an entirely new call to reach a manual roaming operator. In a transaction that can take over five minutes; the **customer** must provide the operator with credit card and calling information. Even back in October 1996, **in** comments filed in this **rulemaking's predecessor**, the **Alliance** of **Independent Wireless Operators** **characterized** **manual roaming** as a “technological dinosaur” and noted that in its experience, **95%** of customers **prefer** not to place **calls at all** rather than deal with it.\(^5\)

**For a** public that **has** become accustomed to **the** type of **seamless connections** provided by automatic **roaming**, it is **safe** to say that **the** ability to **offer** **manual roaming** **would** not give a carrier **the** same competitive **edge**. **Nor would** manual roaming give customers the same **degree** of **convenience and access** to safety features. Additionally, from **an implementation standpoint**, it makes no sense to make the technical changes necessary to implement **manual roaming** **when carriers can** move to automatic roaming with **less** effort and expense.

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\(^{15}\) In the Matter of Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54, Comments of the Alliance of Independent Wireless Operators, p.8 (Oct. 4, 1996).
C. The Consolidated Nature Of The SMR Industry And Nextel's Dominant Position Prevent Market Forces From Ensuring The Widespread Availability Of Roaming Services

In the NPRM, the Commission states that it may be in the public interest to impose roaming requirements generally if “market forces alone are not sufficient to ensure the widespread availability of competitive roaming services, and where roaming is technically feasible without imposing unreasonable costs on CMRS providers.”16 With regard to an automatic roaming requirement specifically, it states that one should be adopted only if “it is clear that providers' current practices are unreasonably hindering the operation of the market to the detriment of consumers.”17 As explained below, there is market failure in the SMR industry; market forces alone clearly have not been and will not be sufficient to ensure the widespread availability of competitive roaming services. To the detriment of consumers, Nextel has taken advantage of its dominant position to unreasonably constrain existing and potential competitors from offering roaming.

The two overriding features of the SMR industry - the fact that the number of significant players has been greatly consolidated and the fact that Nextel dominates it - serve to prevent operation of the types of competitive forces that engender voluntary automatic roaming agreements. Simply put, Nextel has little reason to cooperate with other SMR licensees. Currently, consumers who need combined dispatch and interconnected voice functionality in an advanced digital form, and who also want the ability to roam beyond a regional coverage area, simply do not have the range of options that cellular and PCS customers enjoy.

16 NPRM at ¶ 16.
17 NPRM at ¶ 18.
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1.  Nextel dominates the SMR industry and leverages its dominance to reject proposals for roaming agreements.

Nextel clearly dominates a highly concentrated market. The FCC itself acknowledges in the NPRM that “[d]igital SMR remains dominated by one provider, Nextel, which in 1999 had over 4.5 million subscribers . . . .” At this time it has over 6.1 million subscribers, the only nationwide network, and it continues to amass spectrum. Moreover, its majority-owned affiliate, Nextel Partners, is establishing facilities and gaining subscribers in the smaller and mid-size areas of the country that Nextel has not yet reached. AL the same lime, the list of other significant players, never long to start with, is shrinking. In its Fifth Report on competition, the FCC lists just five major SMR carriers, and one of those, Chadmoore Wireless Group, is about to be bought by Nextel. The actual subscription numbers of the major carriers set forth in the Fifth Report shed even more light on the disparity in the SMR industry. While Southern and Nextel Partners each have 200,000 subscribers, the numbers immediately fill off from there to 65,000 for Mobex; 37,475 for Chadmoore Wireless Group; and 11,400 for Securicor Wireless.

Due to a confluence of several factors, the usual incentives that would motivate Nextel to enter into mutually beneficial automatic roaming agreements do not exist in this instance. In addition to the fact that it faces significant competition in only a few markets (for example, where Southern LINC operates) and has the only nationwide network, the only other carriers

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18 NPRM at ¶ 11.
20 As noted above, Nextel Partners, especially given its presumably Nextel-controlled Board, would refuse to enter a roaming agreement without Nextel’s approval. Accordingly, it and Nextel should be considered one and the same for purposes of this rulemaking.
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utilizing iDEN technology to provide advanced, digital SMR service are Nextel Partners, Southern, and Pacific Wireless (whose coverage currently does not extend beyond a region of California). Accordingly, given the current state of technology, Southern's and Pacific Wireless' customers can roam only on Nextel's or Nextel Partners' networks. However, because Nextel and Nextel Partners compete directly with Southern and Pacific Wireless in markets where their coverage overlaps, they have a strong incentive to refuse to enter roaming agreements. Although they would derive revenues from such agreements, Nextel and Nextel Partners have a greater economic incentive to dampen competition by denying their few competitors access to roaming.

Southern's actual experience with Nextel unequivocally confirms the foregoing. As noted above, for years Nextel has steadfastly refused to enter into a roaming agreement with Southern. In fact, it has constantly put off entering a manual roaming agreement, even in the face of the Commission's mandatory manual roaming rule, claiming there are technical difficulties with implementing manual roaming. As explained below, Southern does not believe there are insurmountable technical obstacles to either manual or automatic roaming. Southern cannot divine any reason for Nextel's refusal except for a deliberate intent to put Southern at a competitive disadvantage. For that matter, to Southern's knowledge Nextel has never entered a roaming agreement with a non-affiliated U.S.-based SMR carrier.

The only U.S.-based SMR carrier with which Nextel has a roaming agreement is Nextel Partners, which as explained above is a majority-owned affiliate of Nextel tasked with introducing the Nextel brand to the small and mid-size markets where Nextel does not presently have coverage. As stated on Nextel Partners' web site, this roaming agreement is comprehensive: "Our systems are operationally seamless with those of Nextel, enabling customers of both companies to roam on each other's potion of the Nextel digital mobile
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Nextel Partners also notes the importance of this roaming agreement: "As customers increasingly choose national rate plans, we believe that the ability to offer national coverage is a competitive advantage." Southern would assert that Nextel’s decision to push into smaller and mid-size markets and tout the benefits of its nationwide network, while simultaneously denying any roaming capability at all to its few remaining digital SMR competitors in those very markets, is a clear attempt to eliminate its remaining digital SMR competition in the United States.

Nextel’s refusal to enter roaming agreements with non-affiliates has not carried over to foreign countries which its own network does not reach. Nextel has had an automatic roaming agreement with Clearnet Communications, a Canadian iDEN carrier, since 1997. Also, in April 2000 it launched a worldwide calling service based on automatic roaming agreements it entered with carriers in Africa, Australia, Asia, Europe, South America, and the Middle East. Although Nextel purportedly has been unable to overcome the technical difficulties posed by manual roaming with Southern, another digital SMR iDEN carrier in the United States, it apparently had no problem overcoming the technical difficulties posed by automatic roaming with carriers in 75 different countries, many of which use a GSM platform rather than iDEN. Southern believes that Nextel’s eagerness to roam with foreign carriers, while refusing to roam with domestic carriers, again demonstrates an undeniable motivation to eliminate any digital SMR competition in the United States.

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23 Id. (emphasis added).
24 As stated in Nextel’s SEC Form 10-K for 1999, p. 12.
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Notably, Nextel’s international roaming agreements were part of a major initiative in which it invited carriers all over the world to roam with it, including nearly every iDEN carrier, but pointedly excluded Southern. Southern became aware that in 1999 Nextel began promoting its proposed “iDEN World” service, a gateway through which carriers utilizing iDEN technology could capitalize on the international automatic roaming agreements Nextel was entering. Nextel was recruiting Clearnet Communications of Canada and carriers from many other countries to participate in iDEN World. Southern expressed interest in participating, but was discouraged from doing so because of what was labeled the “proprietary” nature of the dialogue among these carriers.

2. Nextel’s refusal to enter roaming agreements harms consumers.

Nextel’s anticompetitive conduct causes significant harm to consumers. The most immediate harm is to customers of Southern and other iDEN carriers not affiliated with Nextel (currently over 200,000), who are prevented from utilizing their mobile phones outside of their carrier’s regional coverage areas. In Southern’s case, it has received an increasing number of customer requests to roam. The inability to do so is especially problematic for customers located on the fringes of a coverage area, for whom everyday travel may take them beyond areas where they can use their phone. Letters from Harrison County School District and American Medical Response (attached hereto as Exhibits A and B), two Southern SMR customers, attest to this problem.

Also, Southern serves an unusually large number of governmental entities, law enforcement agencies, emergency service entities, and other public service agencies, many of
which rely on its system for critical communications needs. Fur these organizations, roaming would be a highly valuable benefit. In addition to routine travel outside of Southern’s service footprint, it is not uncommon for public safety workers such as firefighters and law enforcement personnel, as well as power utility crews, to assist with natural disasters and other emergencies in locations well outside their usual jurisdictions. Continued access to their mobile phones would greatly assist these workers by enhancing their ability to communicate amongst themselves and with others.

Additionally, the Commission has made an enormous effort to ensure that E-911 services are available to wireless customers. These efforts have been made pursuant to the Wireless Communications and Public Safety Act of 1999 (“911 Act”). As stated by the Commission, the purpose of the 911 Act is “to enhance public safety by encouraging and facilitating the prompt deployment of a nationwide, seamless communications infrastructure for emergency services that includes wireless communications.” Towards that end, the Commission has promulgated regulations that on the most basic level generally require wireless carriers operating compatible systems to “answer” the 911 calls of roaming units. In Phases I and II of the E-911 initiative, the regulations require that making a 911 call results in the automatic provision of caller location information to the call recipient (arguably the core aspect of the initiative).

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27 See In the Matter of Southern Company Request for Waiver of Section 90.629 of the Commission’s Rules, Memorandum Opinion and Order, 14 FCC Rcd. 185 1, DA 98-2496 (1,998) (citing unique use of Southern’s network by public safety organizations).

28 47 USC. § 615 (1999).

Without the ability to roam, it will be extremely difficult for many iDEN customers with handsets manufactured before 1999 to make even basic Phase I calls outside of their coverage area. Even customers with handsets manufactured after 1999 will not have the full functionality contemplated by the Phase I and Phase II rules, without carrier to carrier roaming capability in place. Not only does this raise serious considerations regarding human safety, it is directly contrary to the Commission’s goal of a “nationwide, seamless communications infrastructure for emergency services.” Given the fact that today’s increasingly wireless society relies on mobile phones for safety more and more when travelling, it is simply not in the public interest to allow carriers to deny toting services when it is technologically feasible to provide them.

Likewise, disabled persons who do not have roaming capability are unable to take advantage of the FCC’s disability access initiatives, including TRS/TTY services and 711 dialing access. This contravenes the spirit of Title IV of the Americans with Disabilities Act of 1990, which, as noted by the Commission, requires it “to ensure that TRS is available, to the extent possible and in the most efficient manner, to individuals with hearing and speech disabilities in the United States.” Automatic roaming between iDEN carriers certainly comes within the purview of “to the extent possible,” and is the most efficient manner of providing nationwide access to disabled services for digital SMR customers that do not subscribe to Nextel.

3. Nextel's refusal to enter roaming agreements harms the SMR industry.

Nextel's refusal to enter domestic roaming agreements also harms the SMR industry and the large category of consumers who look to SMR for their wireless needs but are denied the benefits of a competitive market. Meaningful future entry by other companies is curtailed in large part because Nextel is likely to deny roaming agreements with them, preventing them from offering roaming to potential customers and thus significantly hindering their ability to attract customers in the first instance. Accordingly, Nextel is able to raise barriers to entry for new SMR competition. This, however, is completely contrary to the FCC's expectations and goals for the SMR industry.

When the FCC permitted the assignment of Geotek Communications' 191900 MHz SMR licenses to Nextel in January 2000 (with the exception of licenses in markets covered by a consent decree Nextel entered with the Department of Justice), it stated that "in the relatively near future, we believe that additional market entry is likely to ensure that competitive conditions facing consumers in these markets will improve." That clearly is not happening, and it becomes less likely every time Nextel consolidates more SMR spectrum. And, of course, it has been doing that aggressively. Consider that in the August 2000 auction for 800 MHz General Category and Upper Band SMR licenses (Auction No. 34), Nextel was awarded 800 of the 1,053 licenses offered. Additionally, in the November 2000 auction for 800 MHz Lower 80 SMR licenses (Auction No. 36), Nextel was the successful bidder on 2,579 of the 2,800 licenses

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33 Wireless Telecommunications Bureau Grants 800 MHz Specialized Mobile Radio (SMR) Service General Category (851-854 MHz) and Upper Band (861-865 MHz) Auction Licenses, Public Notice, DA 00-2874 (Rec. 20, 2000).
offered. Further, Nextel has a request pending with the FCC for approval of the assignment of 
$9,900 MHz licenses from Motorola and its subsidiaries."

Given the foregoing, it is abundantly clear that any future competition is not going to come from companies with competitive amounts of spectrum. Rather, competition needs to be enabled by narrowly targeted regulatory measures such as an automatic roaming requirement.

D. Automatic Roaming Between Digital SMR Carriers Is Technically And Economically Feasible, And The Public Interest Benefits Outweigh The Costs

There are no substantial technical hurdles to enabling automatic roaming among digital SMR iDEN providers. In part, this is demonstrated by the fact that Nextel has successfully maintained an automatic roaming agreement with Clearnet Communications, an unrelated Canadian iDEN carrier, since 1997." More directly, Southern has had discussions with Nextel regarding what Nextel believes are potential technical problems. Southern has closely analyzed those concerns and determined that they are either not problems at all or that solutions to them can be easily implemented at minimal cost to Nextel. Additionally, Southern has been advised

34 800 MHz SMR Service Lower 80 Channels Auction Closes, Public Notice, DA 00-2752 (Dec. 7, 2000).
35 Motorola, Inc. and Nextel Communications, Inc. Seek Consent to Assign 900 MHz SMR Licenses, Public Notice, DA 00-2352 (Oct. 19, 2000).
36 As Southern has argued in many proceedings, Nextel's ability to dominate 800 MHz spectrum auctions was due to (1) the fact that auctions were structured in such a way that the holder of the incumbent 800 MHz licenses had an insurmountable bidding advantage; and (2) contrary to what it did in PCS and cellular markets, the Commission decided to place no restrictions on one bidder acquiring all of the 800 MHz licenses. Nextel's spectrum position at these auctions reduced the value of the spectrum to parties other than Nextel, further discouraging competitive entry into the SMR market.
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by the iDEN vendor, Motorola, that the technical changes needed to enable full automatic roaming can be implemented

Southern would also note that Nextel stands to generate substantial revenue through roaming agreements. In 1994, Nextel earned approximately $1,000,000 from its roaming agreement with Nextel Partners,* which at that time had less than 50,000 customers. Given that Southern Company has over 200,000 customers, the roaming revenue from it, in addition to other iDEN carriers, has the potential to be significantly more. Surely, any negligible costs that Nextel incurs in implementing automatic roaming agreements will be more than made up for by the revenue it will gain from them.

In sum, there are tremendous public interest benefits to enacting an automatic roaming rule, including the restoration of competition in the SMR industry, enabling hundreds of thousands of customers to use their phones beyond their carriers’ coverage areas, and facilitating E-911 and TRS/TTY capability. On the other hand, the costs of such a rule would be negligible for the roamed-on carriers. Thus, in this matter the benefits clearly outweigh the costs.

E. An Automatic Roaming Requirement For Digital SMR Carriers Is Necessitated By The Need For Regulatory Parity

The Commission has established a regulatory scheme for the cellular and PCS services that ensures the existence of competition. For instance, FCC Rule Section 22.942 contains a cellular cross-ownership prohibition which generally prevents a party from having an ownership interest in licenses or licensees for both cellular channel blocks in overlapping cellular geographic service areas.

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* As stated in Nextel’s SEC Form 10-K for 1999, p. F-36.

The SMR service, in contrast, does not have such competition-enhancing regulations, despite the fact that Section 6002(d)(3)(B) of the 1993 Budget Act directed the FCC to enact "comparable" technical requirements for cellular, PCS, and SMR. Even the amount of allocated spectrum, the basic foundation of any mobile service, predisposes cellular to more competition than SMR; the Commission allocated 50 MHz to cellular but only approximately 19 MHz to SMR. As such, the number of different SMR providers that can obtain enough licenses to effectively compete in any one area is inherently significantly limited. Due to those factors, Nextel has been able to accumulate the vast majority of 800 MHz SMR spectrum in most major markets and preclude potential competitors from gaining even a foothold.

The enactment of an automatic roaming requirement for digital SMR is a necessary step toward offsetting the FCC’s failure to provide a comparable regulatory scheme. The FCC recognized the correlation between competition and regulatory parity when it brought SMR under the manual roaming rule in 1996, stating, “We are applying the manual roaming rule to [broadband PCS and covered SMR] licensees in order to ensure regulatory parity and to promote competition in the wireless market by enhancing all such carriers abilities to compete.” Now, the passage of time, advances in technology, and refined consumer expectations have shown that the manual roaming rule is not enough. Although Southern believes the Commission’s 1996 policy position continues to be relevant to the SMR industry, the Commission must update it

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41 See, e.g., In the Matter of 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 Radio Services, Second Report, 12 FCC Rcd. 11266.11309, FCC 97-75 (1 997).

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through the implementation of an automatic roaming rule for technically compatible SMR carriers.

F. The Remedies Available Under Existing Law Do Not Constiitute Feasible Alternatives To An Automatic Roaming Requirement

In the NPRM, the FCC asked whether there are adequate remedies under existing law to address CMRS providers which engage in unreasonable or discriminatory behavior by refusing to enter automatic roaming agreements.43 As noted in the NPRM, such remedies would stem from a complaint filed pursuant to Section 208 of the Communications Act of 1934 (“the Communications Act”), which empowers parties to file complaints and generally outlines the FCC’s procedure for handling them.44 Such a complaint would reference either Section 201 of the Communications Act (prohibition of unjust or unreasonable behavior), Section 202 (prohibition of discrimination), or Section 253 (interconnection requirements). While Southern agrees that those provisions apply to roaming services provided by CMRS carriers, it does not believe any of them provide a good alternative to an automatic roaming requirement.

In general, pursuing a complaint under Section 208 is cumbersome and unpredictable. The opportunity to conduct meaningful discovery is limited and the overall complaint process is time consuming; even under the FCC’s expedited docket it can take months, to say nothing of preliminary negotiations and potential appeals. Further, the outcome is uncertain given the limited precedent for fully litigated roaming matters. The sum of these problems is of significant concern in the roaming context, in which carriers seeking to avoid agreements will be encouraged to delay as long as possible to disadvantage competitors seeking agreements-

43 NPRM at ¶ 26.
44 NPRM at ¶ 26.
In addition to the foregoing problems with Section 208, there are problems with Sections 201, 202, and 251 individually. With regard to Section 201, which would involve allegations that a failure to enter a roaming agreement is “unjust or unreasonable,” specific direction from the Commission would be helpful in clarifying when such failure rises to the level of being unjust or unreasonable. Given the numerous variables involved in roaming, pursuit of this option to obtain a roaming agreement is unduly difficult and uncertain.

In terms of filing a complaint under Section 202, which would involve allegations that a carrier is unlawfully discriminating by failing to enter a roaming agreement, a petitioner must show that it is "similarly situated" with the companies the carrier is favoring.\textsuperscript{45} This gives carriers substantial room to allege differences between their chosen roammers and the petitioner, again raising the potential problem of unduly protracted, complicated, and uncertain litigation. Moreover, a carrier could potentially completely avoid discrimination charges by simply not engaging in automatic roaming agreements with any other providers at all. In that scenario, a carrier with an extensive network could maintain a virtual lock on the ability to offer roaming by simply denying it to all potential competitors. Such a possibility is at odds with the Telecommunications Act of 1996.

With regard to Section 251, which requires interconnection under certain circumstances, the Commission recently rejected the theory that Section 251 should encompass CMRS to CMRS interconnection.\textsuperscript{46} That decision, in fact, was an affirmation of a previous ruling.

\textsuperscript{45} In the Matter of the OTC v. South Central Bell Telephone Company and AT&T, Memorandum Opinion and Order, 2 FCC Rcd. 4546, 4552, DA 87-974, ¶ 32 (1987).

\textsuperscript{46} In the Matter of Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54, Fourth Report and Order, 15 FCC Rcd. 13523, 13534, FCC 00-253, ¶ 28 (2000).
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contained in the Local Competition First Report and Order.\textsuperscript{47} Whib those holdings would seem to preclude the possibility of successfully bringing a roaming claim through the interconnection obligations, Southern would additionally note that in a previous rulemaking 'several carriers raised arguments that Section 251 cannot be utilized to require CMRS carriers to accept interconnection requests until CMRS becomes a substitute for local exchange carriers for a substantial number of people.'\textsuperscript{48}

c. The FCC Should Adopt an Automatic Roaming Enforcement Mechanism

In addition to promulgating an automatic roaming requirement, Southern submits that a specifically tailored enforcement mechanism should also be enacted. It should be designed to facilitate good faith negotiations and the need for rapid adjudication. The FCC has employed specific enforcement mechanisms in other contexts, such as pole attachments.” Below are parameters which Southern believes should be encompassed in such regulations.

If a carrier refuses to enter into an agreement with another carrier, within 15 days of the request to roam the refusing carrier should be required to provide a written statement of the reasons for its refusal. It should then be required to negotiate in good faith with the carrier seeking the agreement within 20 days of a request to do so, in order to attempt to resolve the issues on which the refusal to roam is based. If the carrier wishing to roam is not satisfied with the outcome of those negotiations, it may file a complaint containing a complete statement of the

\textsuperscript{47} Id.


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facts in support of its claim, along with any supporting affidavits or other documentation. Within 30 days, the carrier against whom the complaint was filed must file a response containing a complete statement of the facts in support of its defense, along with any supporting affidavits or other documentation. The complainant will then have 20 days to file a reply to the response. Thereafter, the Commission will conduct settlement negotiations within 20 days, unless both parties certify that such negotiations would be fruitless. If the settlement negotiations are not successful, within 30 days of their conclusion the Commission will issue a decision based on the merits of the written pleadings.

II. ALTERNATIVELY, THE FCC SHOULD ADOPT AN AUTOMATIC ROAMING NON-DISCRIMINATION REQUIREMENT FOR DIGITAL SMR CARRIERS

Southern believes that the facts of this matter as set forth above compel the Commission to enact an automatic roaming rule for digital SMR. However, should the Commission feel such a rule is inappropriate, Southern requests that it at least implement a specific roaming non-discrimination requirement for digital SMR. Toward that end, Southern would endorse the Commission’s suggestion in the NPRM that such a rule “could require, as a condition of license, that covered providers that enter into roaming agreements with other such providers make like agreements available to similarly situated providers, where technically compatible handsets are being used, under non-discriminatory rates, terms, and conditions.”

A non-discrimination requirement would not be a significant change from a regulatory standpoint because Section 202 of the Communications Act already prohibits discrimination generally. The principal of prohibiting discrimination has been a fundamental tenet of communications law since 1934, when Section 202 was passed with the original version of the

50 NPRM at ¶ 21.
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Communications Act. The courts have emphatically endorsed the importance of prohibiting discrimination in telecommunications, with the D.C. Circuit Court of Appeals characterizing Section 202's mandate as “flat and unqualified” and “a matter of public interest and policy.” The FCC has also found that the provision of roaming is subject to the requirements of Section 202.

Although, as explained in the preceding section, there are numerous practical disadvantages to utilizing Section 202 alone to target discriminatory roaming practices, several of those disadvantages would be largely precluded by a roaming-specific non-discrimination rule. For example, in most circumstances a rule should eliminate the need to file a complaint and go through cumbersome litigation under Section 208. At a minimum, it would provide a definitive standard and allow petitioners to proceed with greater certainty.

In fashioning a nondiscrimination requirement, the FCC asks for comments on how it should define “similarly situated providers.” Southern submits that in the roaming context, carriers should not be distinguished beyond identifiable market segments such as digital SMR, cellular, and PCS. All carriers interested in entering roaming agreements within these discrete segments (i.e., SMR to SMR, cellular to cellular, and PCS to PCS) are likely to benefit from them and thus enhance competition; it does not matter how many subscribers a carrier has, how large its coverage area is, how its corporate organization is structured, or what type of customer it primarily serves. All that is important is that a carrier’s equipment is technically compatible with the roamed-on carrier's equipment, or can be made compatible. For example, in the digital

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52 NPRM at ¶ 15.
53 NPRM at ¶ 21.
SMR market segment, if a carrier has a roaming agreement with one or more other carriers, and another carrier’s technology is compatible or can be made compatible, that carrier should be deemed similarly situated and its customers allowed to roam on the system.

Southern would also contend that domestic and foreign carriers should be deemed similarly situated. It would be antithetical to the Telecommunications Act of 1996's goal of increasing domestic competition for a carrier to be able to enter roaming agreements with foreign carriers and give their customers the benefit of roaming while in the United States, but not be required to enter agreements that would similarly benefit United States citizens, The need for this provision is evidenced by the fact that Nextel has roaming agreements with carriers in 75 foreign countries.54

Additionally, if a carrier enters a roaming agreement with an affiliate or otherwise related company, it should have to make like agreements available to other carriers under non-discriminatory rates, terms, and conditions. The need for this provision is evidenced by the fact that Nextel has a roaming agreement in place with its majority-owned affiliate Nextel Partners but refuses to enter agreements with any other U.S.-based carriers. Without an affiliate provision, a non-discrimination provision could fail to reach such agreements and, thus, be ineffectual.

III. THE MANUAL ROAMING RULE SHOULD NOT BE ELIMINATED NOR SUNSET UNLESS THE FCC ADOPTS AN AUTOMATIC ROAMING RULE FOR DIGITAL SMR CARRIERS

In the NPRM, the FCC seeks comment on whether the manual roaming rule should be eliminated, and if not, whether it should be sunset. It also seeks comment on whether any automatic roaming requirements it adopts should be sunset. Southern submits that the manual roaming rule should not be eliminated nor sunset unless the FCC adopts an automatic roaming rule for digital SMR. It also contends that if the FCC adopts an automatic roaming rule, it should not set a sunset date at that time.

One of the FCC’s stated reasons for possibly eliminating or sunsetting the manual roaming rule is that it may no longer be relevant given the current state of technology. Southern acknowledges that manual roaming is not an ideal option. Nonetheless, for customers that do not have access to automatic roaming, it is better than not being able to use their phone at all outside their carrier’s coverage area. As explained above, at least in regard to digital SMR service, some customers do not have access to automatic roaming and the only carriers that could provide it to them will not do so voluntarily. In light of those facts, unless the FCC adopts an automatic roaming rule, it would be wrong to eliminate the manual roaming rule.

Another of the FCC’s possible reasons for eliminating or sunsetting the manual roaming rule is its concern that it may no longer be necessary given the current state of competition. In that regard, the FCC renews the tentative conclusion it made in 1996 in the Third Notice of

55 NPRM at ¶¶ 31-32.
56 NPRM at ¶ 32.
57 NPRM at ¶¶ 31-32.
58 NPRM at ¶¶ 31-32.
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Proposed Rulemaking in CC Docket No. 94-54, the predecessor to this docket. That conclusion was as follows:

We believe that once broadband PCS providers’ buildout periods are completed, sufficient wireless capacity will be available in the market [to preclude] either the incentive or the ability to unreasonably deny manual roaming to an individual subscriber, or to unreasonably refuse to enter into an automatic roaming agreement with another CMRS provider, because some other carrier in its service area would be willing to do so. We anticipate . . . that the market for cellular, broadband PCS and covered SMR services will be substantially competitive within five years after we complete the initial round of licensing broadband PCS provider; . . . therefore . . . any action taken concerning [manual or] automatic roaming should sunset five years after we award the last group of initial licenses for currently allocated broadband PCS spectrum.

The preceding sections of these Comments make clear that with regard to SMR, the FCC’s predictions completely missed the mark. The SMR industry has consolidated, not expanded, leading the FCC to proclaim in the NPRM, “Digital SMR remains dominated by one provider, Nextel . . . .” Commensurate with Nextel’s hold on the market, sufficient 800 MHz capacity is not available to preclude it from unreasonably refusing to enter manual roaming agreements. As it stands, Southern and Pacific Wireless can roam only with Nextel, Nextel Partners, or each other (which is of little practical benefit due their regional coverage areas and distance from each other). Nextel’s past conduct with Southern of refusing to enter an automatic roaming agreement and interminably delaying a manual roaming agreement demonstrate its propensity to refuse to enter a manual roaming agreement unless forced to do so by rule. Therefore, unless the FCC adopts an automatic roaming rule, a manual roaming rule is still necessary for digital SMR.

59 NPRM at ¶ 32.
60 Second R&O, 11 FCC Rcd. at 9479, ¶ 32.
61 NPRM at ¶ 11.
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As an additional reason for not eliminating or sunsetting the manual roaming rule, Southern would reiterate that it has been trying to get Nextel to enter a manual roaming agreement for approximately four years. Nextel has delayed doing so with the excuse that it is still working out the technical problems such an agreement would engender. Again, Southern submits that Nextel’s position is without merit. In any event, at this time it would almost certainly refuse to work any further toward an agreement if the FCC takes away its obligation to do so. Thus, eliminating or sunsetting the manual roaming rule would reward Nextel’s delay, something the FCC should not do. Southern also believes that it would be arbitrary and capricious for the FCC to sunset the manual roaming rule since regulatory uncertainty encouraged delay in effecting roaming agreements.62

In terms of sunsetting an automatic roaming rule adopted for digital SMR, Southern believes that doing so would be a mistake. As the state of competition in the SMR industry currently stands, Nextel has an incentive to simply “pull the plug” on automatic roaming agreements with its competitors upon the expiration date of a rule. To be sure, its present conduct does nothing to alleviate that concern. Therefore, if the FCC adopts an automatic roaming rule, it should not set a sunset date for it at this time. Southern does believe, however, that the Commission should revisit the issue when market conditions have changed to the point where government intervention may no longer be necessary.

62 For example, Nextel’s Petition for Reconsideration of the manual roaming requirement, in which it took the position that it was not required to enter into manual roaming agreements, was on file for nearly four years before the FCC addressed it.
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IV. NEXTEL'S UNREASONABLE REFUSAL TO ENTER INTO AUTOMATIC ROAMING AGREEMENTS WITH ITS COMPETITORS RAISES SERIOUS CONCERNS REGARDING UNLAWFUL MONOPOLIZATION IN VIOLATION OF THE SHERMAN ACT

Although the Commission's jurisdiction does not extend to enforcing the antitrust laws, Southern believes that the FCC should consider the pro-competitive underpinnings of the antitrust laws in considering the issue of automatic roaming. Specifically, it should consider Nextel's dominance of the 800 and 900 MHz SMR spectrum that enables it to squash competition in the trunked dispatch segment of the SMR market. This competitive distortion can be remedied in part if the FCC institutes the proposed automatic roaming rule.

The Sherman Act was promulgated to protect trade and commerce against unlawful restraints and monopolies. Specifically, Section 2 of the Sherman Act makes it unlawful for a company to "monopolize" or "attempt to monopolize," trade or commerce. As the law has been interpreted, it is not necessarily illegal for a company to have a monopoly. The law is only violated when a company tries to maintain or acquire a monopoly position through tactics that either unreasonably exclude competitors from the market or significantly impair their ability to compete.

Under certain conditions, a refusal to deal with competitors may constitute a predatory and monopolistic act. One such instance arises when a company has obtained monopoly power and controls an essential facility. When a monopolist controls an essential facility, the courts

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have imposed an affirmative duty on the monopolist to make the essential facility available to its competitors if it can be technically and feasibly accomplished.\textsuperscript{65}

The Commission should be guided in its consideration of the automatic roaming rule by one of the seminal essential facilities cases, \textit{MCI Communications Corp. v. AT&T}.\textsuperscript{66} In that case, \textit{MCI} argued that AT&T improperly refused to let it interconnect with AT&T's nationwide telephone network and that doing so was essential for MCI to compete against AT&T in the long distance market. In analyzing MCI's claim, the court considered the following four elements: (1) control of the essential facility by a monopolist; (2) a competitor's inability practically or reasonably to duplicate the essential facility; (3) denial of the use of the facility to a competitor; and (4) the feasibility of providing the facility.\textsuperscript{67}

The Seventh Circuit, applying the essential facilities doctrine, held that AT&T's nationwide network could not be reasonably duplicated by MCI. The Seventh Circuit also found that "it was technically and economically feasible for AT&T to have provided the requested interconnection, and that AT&T's refusal to do so constituted an act of monopolization."\textsuperscript{68} As a result, the court ordered AT&T to provide the interconnection to MCI.

As discussed below, Southern believes that Nextel has obtained monopoly power in the SMR market, controls the essential facility necessary for SMR operators to provide services — a

\textsuperscript{65} \textit{Otter Tail Power Co. v. United States}, 410 U.S. 366 (1973) (upholding liability of a wholesale supplier of electricity that refused to supply power to a power system that competed with it for retail customers where other power companies had no other source of supply).

\textsuperscript{66} 708 F.2d 1081 (7th Cir.), cert. denied, 464 U.S. 891 (1983).

\textsuperscript{67} Id at 1133.

\textsuperscript{68} Id at 1132.
national network of 800 and 900 MHz SMR spectrum--and refuses to make it available to its competitors by denying access to its networks through roaming agreements even though it is technically feasible to do so.

A. The Trunked Dispatch Market Is The Relevant Product Market For Analyzing The Monopolization Of 800 And 900 MHz Spectrum

The relevant market for analyzing the necessity of automatic roaming in the antitrust context is the trunked dispatch segment of the SMR market. There are only two sets of frequencies available for trunked dispatch SMR operations: 800 and 900 MHz spectrum. A total of approximately 19 MHz is available for use by SMRs, 14 in the 800 MHz band and 5 in the 900 MHz band. While existing equipment places limitations on the interchangability of 800 and 900 MHz SMR spectrum, Motorola is conducting research with regard to the development of an iDEN handset that will incorporate both bands.” In any event, 800 and 900 MHz SMR spectrum are the only bands used to provide trunked dispatch SMR services.

The availability of 800 and 900 MHz spectrum is crucial to the competitive viability of SMR providers currently in the market and to companies interested in entering the SMR market. Because of technological constraints, SMR providers committed to a particular technology cannot move freely to other spectrum bands that may be available for other CMRS services. Thus, for example, an SMR provider using iDEN technology cannot incorporate cellular or PCS spectrum into its system, even if it were readily available, for roaming or any other purpose.

70 The availability of 900 MHz frequencies in sufficiently large blocks will be essential to a competitor’s ability to expand its service because there is virtually no more 800 MHz spectrum available.
In anticipation of an argument regarding the availability of 220 MHz spectrum, Southern would note at this time that the 220 MHz band is not a reasonable alternative to 800 and 900 MHz SMR spectrum. While the Commission has made 220 MHz spectrum available for development in the SMR market as a possible alternative to 800 and 900 MHz SMR spectrum, it has not proved to be a viable substitute. Potential users of this spectrum are already discovering that it subjects adjoining systems to interference and cross talk. To use it to successfully compete, an SMR provider would have to undertake a significant investment to develop the necessary infrastructure to address these significant technical difficulties and reach economies of scale.

Additionally, no major SMR manufacturer provides equipment compatible with 220 MHz spectrum. SEA and Intek Global are the only manufacturers offering equipment that supports 220 MHz spectrum. The equipment manufacturers who dominate the 806 and 900 MHz SMR spectrum markets, Motorola, Kenwood, Ericsson, Uniden, etc., are notably absent from the 220 MHz equipment market. Further, the failure of the Commission to sell a substantial number of licenses in the first 220 MHz auction, and the low prices the Commission had to settle for when it held a follow-up auction, demonstrate that SMR providers do not consider 220 MHz spectrum a competitively viable alternative.71

Additionally, a market definition limited to 800 and 900 MHz SMR spectrum is supported by prior Department of Justice and Commission decisions. In analyzing the relevant product market for the acquisition of 800 and 900 MHz SMR spectrum for use in dispatch services, the Department of Justice determined that the trunked dispatch market is the relevant

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... market for purposes of analyzing Nextel's acquisition of this spectrum. Likewise, the Commission's detailed analysis of this market in its 1997 Pittencrief decision concluded that purposes of merger analysis, the Commission should not look at the entire CMRS market but the distinct market segment for dispatch services within the CMRS market.

There simply is no competitive substitute for 800 and 900 MHz spectrum once an SMR provider has developed its infrastructure to support this type of spectrum. Moreover, even for new entrants, for the reasons stated above the 220 MHz band does not provide a sufficient competitive alternative.

B. Nextel Has Market Power In The Relevant Market And Is Continuing To Grow Its Market Power Through Acquisition Of Both 800 MHz And 900 MHz Spectrum

Nextel's network has coverage in more than 400 cities, including 178 of the top 200 markets in the United States. It has over 6.1 million subscribers. As of June 1999, Nextel had launched its iDEN-based services in at least 187 BTAs, which contained 76% of the U.S.

75 As stated on Nextel's website at http://www.nextel.com/information/fact_background.shtml.
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population. A July 1999 Herfindahl-Hirschman Indices ("HHI") study conducted by HAI Consulting for the Alliance for Radio Competition ("ARC") indicated that Nextel had an approximately 90% market share of the SMR dispatch market at that time.” In contrast, its next closest competitor in the trunked dispatch segment of the SMR market, Southern, has approximately 200,000 subscribers using its iDEN-based services in Alabama, Georgia, the Florida panhandle, and the southeastern third of Mississippi. Courts have routinely held that a market share of 70% or more of the relevant market constitutes a monopoly.

Nextel’s monopoly power in the SMR market is likely to increase. It is set to acquire Chadmoore Wireless Group, one of the few remaining large players in the industry. According to industry reports, Chadmoore holds nearly five thousand 800 MHz SMR licenses covering SS million POPs in 180 markets throughout the United States. Additionally, Nextel has a request pending with the FCC for approval of the assignment of fifty-nine 900 MHz licenses from Motorola and its subsidiaries. The consolidation of the market does not end there.

77 In the Matter of Geotech Communications, Inc. Seeks FCC Consent to Assign 900 MHz SMR Licenses, DA 99-1027, Exhibits to the Alliance for Radio Competition’s Response to the Opposition of Nextel Communications, Inc. to Petitions to Deny, p. 12.
78 See United States v. E.I. du Pont de Nemours & Co., 351 U.S. 377, 399 (1956) (market share of 75% constitutes monopoly power); Morgenstern v. Wilson, 29 F.3d 1291, 12% n.3 (8th Cir, 1994) (80% market share sufficient).
80 Id.
81 Motorola, Inc. and Nextel Communications, Inc. Seek Consent to Assign 900 MHz SMR Licenses, Public Notice, DA 00-2352 (Oct. 19, 2000).
In the August 2000 auction for 800 MHz General Category and Upper Band SMR licenses (Auction No. 34), Nextel was awarded 800 of the 1,053 licenses offered. Additionally, in the November 2000 auction for 800 MHz Lower 80 SMR licenses (Auction No. 36), it was the successful bidder on 2,579 of the 2,800 licenses offered. Nextel's success in these auctions is directly related to its dominance in the major markets. It has amassed a vast number of 800 MHz licenses throughout the country. Because it controls so many of the underlying licenses, it is able to dominate the 800 MHz "overlay" auctions, Ridders without an existing foothold in the 800 MHz band simply cannot bid on an equal basis with Nextel.

With its national spectrum holdings at the 800 MHz and 900 MHz level, Nextel has near complete control over the 800 and 900 MHz spectrum that is required by Southern, Pacific Wireless, Mobex, and any potential new entrant to the market. This spectrum is essential for Southern and other SMR providers to provide their services and develop new product lines.

In essence, because Nextel dominates the 800 and 900 MHz spectrum in the SMR market, it controls the national network necessary to maintain a competitive SMR market and has the ability to raise prices and exclude competitors and potential new entrants from the market. The record is abundantly clear that it has strategic dominance in the SMR market by virtue of its acquisition of so much of the 800 and 900 MHz SMR spectrum. As noted above, the July 1999 HHI study conducted by HAl Consulting indicated that it had an approximately 90%

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82 Wireless Telecommunications Bureau Grants 800 MHz Specialized Mobile Radio (SMR) Service General Category (851-854 MHz) and Upper Band (861-865 MHz) Auction Licenses, Public Notice, DA 00-2874 (Dec. 20, 2000).

83 800 MHz SMR Service Lower 80 Channels Auction Closes, Public Notice, DA 00-2752 (Dec. 7, 2000).
market share of the SMR dispatch market. As noted by ARC, six locales were studied and the HHI indicated market dominance by Nextel in every one. This dominance in the trunked dispatch segment of the SMR market not only provides Nextel with a nationwide network, but also significantly hinders its competitors by limiting them to small geographic areas.

c. Southern LINC's Interest In The SMR Market

As discussed above, Southern is the second largest trunked dispatch provider and operates an advanced digital communications system that, like Nextel, uses iDEN technology. In areas where Southern and Nextel's trunked dispatch services overlap, the two compete vigorously. However, competition in the overlapping market (i.e., the Southeastern U.S.) is reduced because of Nextel's ability to promote the only available nationwide network capable of supporting 800 and 900 MHz spectrum.

D. A Nationwide 800 MHz And 900 MHz Footprint Is The Essential Facility Needed By SMR Providers To Compete In The SMR Market

The facility in question — Nextel's nationwide network of 800 and 900 MHz SMR spectrum — meets the criteria of an essential facility in that it is necessary to be a meaningful competitor in local market areas and Nextel's competitors cannot technically duplicate the network on their own.

Nextel's nationwide network is clearly an essential facility. Southern and other SMR providers need access to it to meaningfully compete against Nextel; they must be able to offer customers the ability to use their equipment when they travel outside their carriers' service

84 In the Matter of Geotek Communications, Inc. Seeks FCC Consent to Assign 900 MHz SMR Licenses, DA 99-1027, Exhibits to the Alliance for Radio Competition's Response to the Opposition of Nextel Communications, Inc. to Petitions to Deny, p. 12.

85 In the Matter of Geotek Communications, Inc. Seeks FCC Consent to Assign 900 MHz SMR Licenses, DA 99-1027, ARC Petition to Deny, ¶ 17 (June 28, 1999).
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territories. Without automatic roaming capacity, SMR providers are inhibited in competing within their existing geographic markets.

Nextel's national network of 800 and 900 MHz SMR spectrum cannot be duplicated. It has effectively obtained almost all of the spectrum available for SMR. There simply is not enough available spectrum to recreate its network. However, automatic roaming agreements are an available proxy for duplicating Nextel's facilities. Without access to its network through roaming agreements, it will be very difficult for SMR providers to compete with Nextel.

E. Nextel's Refusal To Roam With Its Competitors Is Indicative Of An Attempt To Monopolize The SMR Market

Under the antitrust laws, when a monopolist refuses to deal with its competitors and controls a facility that is essential for those competitors to compete, it is required to make the essential facility available to its competitors. Nextel by far has amassed more 800 and 900 MHz spectrum than any of its competitors and has used that spectrum to create a nationwide network. It faces competition in only a few regional markets, including against Southern in the Southeastern United States. However, Nextel is using its nationwide network to the detriment of its regional competitors (and potential new entrants) by refusing to enter into roaming agreements. By its actions, Nextel is attempting to maintain and expand its dominance in the trunked dispatch market.

86 It has been suggested that mobile systems can be developed to provide dispatch services on 220 MHz spectrum as a substitute for 800 and 900 MHz SMR spectrum. As previously discussed, this is not a workable solution. The experience of users of 225 MHz spectrum demonstrates it is neither technically nor economically feasible for an SMR provider to attempt to duplicate Nextel's nationwide network using 220 MHz spectrum.
It is clearly feasible for Nextel to permit at least Southern to roam on its network. As discussed in a preceding section of these Comments, there are no legitimate business or technical reasons for it to avoid entering an automatic roaming agreement with Southern, and that is probably also true of other digital SMR providers. Technical solutions permit roaming between iDEN systems; in fact, Nextel initiated a global effort to establish roaming with virtually every iDEN carrier in the world (both affiliated and non-affiliated) with the exception of Southern. It is counterintuitive for a profit-seeking SMR provider to turn away the revenues that would be generated by a roaming agreement unless that provider’s motives are predatory. Here, Nextel is simply taking advantage of its monopoly to unreasonably constrain its existing and potential competitors from offering competitive roaming services.

In sum, Southern firmly believes that Nextel has monopoly power in the trunked dispatch market, that it dominates and controls the essential facility necessary to meaningfully compete in this market -- a national network of 800 and 900 MHz SMR spectrum -- and is expanding and maintaining its monopoly power in a manner that raises serious concerns regarding the antitrust laws.
CONCLUSION

WHEREFORE, THE PREMISES CONSIDERED, Southern LINC respectfully requests the Commission to act in the public interest in accordance with the proposals set forth herein.

Respectfully submitted,

[Signature]

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202-756-8000

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5555 Glenridge Connector, Suite 500  
Atlanta, Georgia 30342  
678-443-1541

Attorneys for Southern LINC

Dated: January 5, 2001
November 2, 1999

Robert G. Dawson
Chief Executive Officer
Southern LINC
5555 Glennridge Connector, Suite 500
Atlanta, GA 30328

Dear Mr. Dawson:

The Harrison County School District is one of the oldest Southern LINC users on the Mississippi Gulf Coast. We appreciate the reliability of Southern LINC, but we are disappointed that Southern LINC has not been able to make arrangements to allow us to roam into the Jackson, Mississippi (the state capital) and the New Orleans, Louisiana areas.

The Harrison County School District needs radio and telephone service in the Jackson, Mississippi area, for many of our key personnel have to travel in the Jackson and New Orleans areas often. With the concerns that public education and the parents that we serve have for safety, it is of utmost importance that our supervisory staff has the ability to stay in contact with the district when traveling in the Jackson and New Orleans area.

As a school district we use the Southern LINC system for all of our radio and cellular service for the schools and the key personnel. It is a great disadvantage for us to lose contact with the district when we travel to the Jackson area.

The Superintendent of Education is the most frequent traveler to the Jackson area. Needless to say, he needs to be able to be reached at a moments notice. We are able to do that at any time other than when he travels to Jackson. It is also imperative that he can call back to the district.

We urge that Southern LINC establish roaming arrangements with Nextel Communications, which operates an IDEN system in the New Orleans area and hopefully the Jackson area as well. The Jackson, Mississippi area is our first choice for roaming services.

Sincerely,

Henry Arledge
Superintendent
EXHIBIT B
Robert O. Dawson  
Chief Executive Officer  
Southern LINC  
5525 Glencarly Connector  
Suite 500  
Atlanta, GA 30343  

Dear Bob,  

American Medical Response ("AMR") is the nation's largest private provider of medical transportation. As you know, AMR—a loyal Southern LINC customer—provides this critical public safety service in Mississippi and Louisiana. Currently we can only communicate via Southern LINC to the Magee, Mississippi area. We have operating units in the St. Tammany, Orleans and Jefferson parishes in Louisiana. If we were able to communicate with our South Louisiana operating units, it would greatly enhance our efficiency. Right now we must maintain three separate communications systems in order to provide total area-wide communications. We would greatly benefit by having roaming capability.  

On behalf of AMR Clint Case, please consider this our formal request for roaming, and please present this request to Novel Communications on our behalf.  

Sincerely,  

[Signature]  
Steve DelBene  
Director of Operations
Comments of Southern LINC
January 5, 2001

CERTIFICATE OF SERVICE

I, Gloria Smith, do hereby certify that on this 5th day of January, 2001, a single copy (unless otherwise noted) of the foregoing “Comments of Southern LINC” was hand-delivered to the following:

Magalie R. Salas, Esquire, Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-A325
Washington, D.C. 20554

William E. Kennard, Chairman
Federal Communications Commission
445 12th Street, S.W., 8th Floor
Washington, D.C. 20554

Michael Powell, Commissioner
Federal Communications Commission
445 12th Street, S.W., 8th Floor
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Harold Furchtgott-Roth, Commissioner
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Gloria Tristani, Commissioner
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Gloria Smith