

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

Wireless Telecommunications Bureau
Commercial Wireless Division
Policy and Rules Branch

In the Matter of

Arch Wireless, Inc. and
AWI Spectrum Co., LLC

Application for Consent to Assign
800 and 900 MHz SMR Licenses to
ACI 900, Inc. and Nextel
Communications, Inc.

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DA 01-499

Application No. 0000370897

COMMENTS OF SOUTHERN LINC

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EXECUTIVE SUMMARY

In this proceeding, the Commission seeks comments and petitions to deny on applications filed by AWI Spectrum Co., LLC, a wholly-owned subsidiary of Arch Wireless, Inc. (collectively "Arch Wireless") and ACI 900, Inc., a wholly-owned subsidiary of Nextel Communications, Inc. (collectively "Nextel"), to assign 150 900 MHz SMR licenses from Arch Wireless to Nextel. Southern Communications Services, Inc., d/b/a Southern LINC ("Southern"), opposes such assignment on the ground that allowing Nextel to further increase its already massively concentrated 800 and 900 MHz SMR spectrum holdings will adversely affect competition in the trunked dispatch market. If, however, the Commission does allow assignment of these licenses, it should mitigate the adverse impact on competition by requiring Nextel to enter automatic roaming agreements with technically-compatible digital SMR providers.

Section 310(d) of the Communications Act of 1934 requires that license assignments be in the public interest. In determining whether that is the case, the Commission must, among other things, balance the harmful and beneficial effects of the assignment to determine whether its overall effect will be to enhance competition in the relevant market. Southern asserts that the only relevant market is trunked dispatch, and permitting Nextel to amass 150 additional SMR licenses can only harmfully exacerbate its already dominant position therein. Even if, *arguendo*, 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.

One of the Commission's primary reasons for previously allowing Nextel to accumulate large chunks of SMR spectrum was its belief that carriers outside 800 and 900 MHz would soon penetrate the trunked dispatch market and offset Nextel's dominance. However, there is no indication that such hopes will ever come to fruition. Although cellular and PCS carriers have been authorized to provide dispatch service since 1995, they have steadfastly refrained from

doing so. Their special pricing and service plans offer unlimited minutes of calling between mobiles and among members of groups but do not provide the functionalities of true dispatch; the only two products noted by Nextel that even come close are currently not available in the United States. Additionally, the other bands Nextel cites as alternatives to the 800 and 900 MHz bands are, for various reasons specific to each band, highly unlikely to ever give rise to meaningful competition.

Also militating against the likelihood of more competition in the trunked dispatch market is the fact that Nextel is aggressively consolidating the market. Nextel currently plans to buy-out Chadmoore Wireless Group (5,000 licenses) and purchase all the 800 and 900 MHz SMR licenses of Mobex Communications (264 licenses), two of the few remaining major players in the industry. Further, it recently won eight hundred additional 800 MHz SMR licenses at auction, to the exclusion of potential new entrants.

Southern also notes that the regulatory structures for cellular and PCS ensure competition, but the regulatory structure for SMR does not. Due to this regulatory imbalance, the Commission must be especially diligent in preventing anti-competitive spectrum concentration in the trunked dispatch market.

If the Commission allows assignment of these licenses, Southern requests that it require Nextel to enter automatic roaming agreements with technically-compatible digital SMR providers. Southern believes that such a condition is directly related to this matter because it would help preserve competition by giving dispatch carriers the ability to compete even without access to additional spectrum (given that Nextel has consolidated so much of it). Also, beyond directly preserving competition, the condition would benefit the public interest generally by enabling customers of iDEN digital SMR carriers to roam outside their carriers' service territories. While an automatic roaming requirement would most immediately benefit iDEN digital SMR carriers and their customers, those carriers would serve as a catalyst to intensifying the state of competition in the entire dispatch market.

In accordance with the foregoing, the Commission should take a step toward reigning in Nextel's anti-competitive standing by denying the assignment at issue in this case. At the least, it should condition the assignment on Nextel entering automatic roaming agreements with technically-compatible digital SMR providers.

it should mitigate the adverse impact on competition by requiring Nextel to enter automatic roaming agreements with technically-compatible digital SMR providers.²

Southern operates an advanced digital communications system using Motorola's iDEN technology, the same advanced technology as Nextel. Southern provides digital dispatch, text messaging, paging, interconnected voice, and internet service, all on a single handset, throughout most of the states of Alabama and Georgia, the panhandle of Florida and southeastern Mississippi. It provides the most comprehensive geographic coverage of any mobile wireless service in Alabama and Georgia, and serves areas of Florida and Mississippi not served by other advanced wireless providers. Its service is used by statewide public safety agencies, local governments in rural areas, and public utilities, commercial users, and government customers operating in rural and urban areas.

Southern has actively participated over the past several years in various FCC proceedings involving the preservation of competition.³ Most recently, it filed comments in opposition to applications filed by Motorola, Motorola SMR, and Motorola Communications and Electronics to assign 59 900 MHz SMR licenses and authorizations to FCI 900, a wholly owned subsidiary

² Southern would note that it is currently involved in the FCC's automatic roaming rulemaking (WT Docket No. 00-193), in which it is seeking a rule that would require Nextel to enter automatic roaming agreements with technically-compatible digital SMR carriers. While Southern seeks an automatic roaming rule - in the alternative - in this proceeding, its motivation to file these Comments herein is independent of the roaming rulemaking (for example, before the roaming rulemaking was instituted, Southern opposed Nextel's acquisition of 900 MHz licenses in the Geotek Communications proceeding (DA No. 99-1027)). Southern requests that an automatic roaming rule be imposed *only* by way of mitigation if the Commission denies its primary request to deny the license assignment.

³ In the Matter of Biennial Review – Spectrum Aggregation Limits for Wireless Telecommunications Carriers, WT Docket No. 98-205, *Comments of Southern*; In the Matter of Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, *Comments of Southern*; In the Matter of Geotek Communications, Inc., Application for Consent to Assign 900 MHz SMR Licenses, DA 99-1027, *Petition to Deny of Southern*; In the Matter of Motorola, Inc.; Motorola SMR, Inc.; and Motorola Communications and Electronics, Inc., DA 00-2352, *Comments of Southern LINC*.

of Nextel Communications.⁴ In connection with that proceeding, Southern submitted an affidavit from Michael Baumann and Stephen Siwek of Economists Inc. setting forth an analysis of the competitive effects of the requested assignment.⁵ The affidavit concluded that due to Nextel's market power in the relevant markets, the assignment would raise antitrust concerns and should be denied.⁶ Southern incorporates that affidavit herein by reference, and notes that it will be submitting a similar affidavit specifically addressing the assignment at issue in this proceeding.

The assignment in this case is at the heart of the Commission's duty to analyze whether license transfers and assignments are in the public interest. Unlike some transactions in which the licenses are a minor aspect of the overall transaction or merely ancillary to the parties' operations, in this case the focus of the transaction is the assignment of spectrum and the parties' businesses center on the provision of wireless telecommunications services. Toward that end, Southern has serious concerns about the overwhelming concentration of 800 and 900 MHz SMR spectrum controlled by Nextel. Despite the fact that Nextel may not have as much *total* spectrum as some of the nationwide cellular and broadband PCS carriers, it nonetheless holds enough *800 and 900 MHz SMR* spectrum to dominate the trunked dispatch market in most major population centers, to the extent of hindering existing competitors from growing and new competitors from entering the market.

Regardless of whether Nextel intended this result, its dominant spectrum position serves to anticompetitively protect its massive share of the trunked dispatch market from significant competition by other firms. Nextel stands in stark contrast to nationwide cellular and PCS carriers, which have large amounts of spectrum but face considerable competition from other

⁴ In the Matter of Motorola, Inc.; Motorola SMR, Inc.; and Motorola Communications and Electronics, Inc., DA 00-2352, *Comments of Southern LINC*.

⁵ In the Matter of Motorola, Inc.; Motorola SMR, Inc.; and Motorola Communications and Electronics, Inc., DA 00-2352, *Affidavit of Michael G. Baumann and Stephen E. Siwak* (ex parte submission) (Feb. 8, 2001).

⁶ *Id.* at 12.

carriers and do not utterly dominate any particular bands. Because one of the few brakes on anticompetitive spectrum accumulation is the FCC's ability to deny assignments of additional licenses, the FCC must closely scrutinize applications for such assignments.

II. ANALYTICAL FRAMEWORK

Pursuant to Section 310(d) of the Communications Act of 1934, licenses cannot be assigned unless the Commission finds "that the public interest, convenience, and necessity will be served thereby." In applying the public interest test under Section 310(d), the Commission asks four questions, one of which is applicable here: Whether the transaction promises to yield affirmative public interest benefits.⁷ The applicants bear the burden of showing "that the predominant effect of the transaction will be to advance the public interest."⁸ The Commission "must weigh any harmful and beneficial effects to determine whether, on balance, the transaction is likely to enhance competition in the relevant markets."⁹ This review consists of determining the relevant market, assessing the effect on competition in that market, and analyzing whether transaction-specific public interest benefits will accrue.¹⁰

Applying the foregoing to Arch Wireless' licenses, the relevant market is trunked dispatch, granting the application at issue will further Nextel's harmful control of this market segment, and no meaningful public interest benefit could possibly result. Alternatively, even if the Commission views the interconnected mobile voice market as also being relevant, the end

⁷ In re Applications of Neoworld License Holdings, Inc., DA 00-1092, *Memorandum Opinion and Order*, 15 FCC Rcd. 13410, 13413, DA 00-1765, ¶ 8 (2000) ("*Neoworld Order*").

⁸ *Id.*

⁹ *Id.* at 13416, ¶ 16.

¹⁰ *Id.*

result does not change; the Commission should not facilitate the restraint of competition in the trunked dispatch market to realize a very small gain in the interconnected mobile voice market.¹¹

III. NEXTEL'S CONCENTRATION OF SPECTRUM AND DOMINANCE OF THE TRUNKED DISPATCH MARKET IS CONTRARY TO COMPETITION AND THE PUBLIC INTEREST

In a November 2000 Notice of Proposed Rulemaking, the Commission acknowledged the reality of the trunked dispatch market: "*Digital SMR remains dominated by one provider, Nextel, which in 1999 had over 4.5 million subscribers*"¹² Although the Commission's quote expressly refers only to digital SMR, the entire trunked dispatch market is clearly concentrated in Nextel's hands. In fact, in the January 2000 *Memorandum Opinion and Order in In re Applications of Various Subsidiaries and Affiliates of Geotek Communications ("Geotek ")*, the FCC flatly stated that "the relevant trunked dispatch markets are concentrated."¹³ While other reasons for denying the applications at issue in this proceeding may exist, Nextel's lock on the market provides an incontrovertible justification. As such, it is the focus of this submission.

A. The Relevant Market Is The Trunked Dispatch Market

Southern submits that the only truly relevant market for analyzing competition with regard to the assignment of 900 MHz SMR licenses is trunked dispatch. However, because the

¹¹ In the FCC's view, the interconnected mobile voice market consists of "all commercially available two-way, mobile voice services, providing access to the public switched telephone network via terrestrial systems." *Neoworld Order* at 13417, ¶ 19.

¹² In the Matter of Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Services, WT Docket No. 00-193, *Notice of Proposed Rulemaking*, 15 FCC Rcd. 21628, 21632-33, FCC 00-361, ¶ 11 (2000).

¹³ In re Applications of Various Subsidiaries and Affiliates of Geotek Communications, Inc., DA 00-89, *Memorandum Opinion and Order*, 15 FCC Rcd. 790, 805, DA 00-89, ¶ 33 (2000) ("*Geotek Order*").

FCC has determined in its past several decisions involving assignments of 900 MHz SMR licenses that the trunked dispatch and interconnected mobile voice markets are both relevant, Southern also gives consideration to the interconnected mobile voice market in these Comments.¹⁴ In any event, the conclusion that the assignment is not in the public interest is reached regardless of the analytical method employed, because any very small benefit that may accrue to the interconnected mobile voice market will be far outweighed by the harm that would be done to the trunked dispatch market.

The starting point for Southern's contention that the relevant market is trunked dispatch is that there is a sizable universe of customers which first and foremost need to purchase a system with a true dispatch function. While they may also desire interconnected mobile voice and other advanced features, they are constrained to choose a provider that offers true dispatch. These customers may not care whether they are subscribing to a cellular, PCS, or SMR carrier, but they do care whether a carrier provides true dispatch functionality as opposed to merely a modified price plan (as offered by cellular and PCS providers). Any doubt as to this assertion should be allayed by Nextel's own statement that in January 2001, 1.7 million of its subscribers used its system for nothing but dispatch.¹⁵

In determining the relevant market, the Commission must sort through numerous "red herring" issues. While these issues may be important for other proceedings, the Commission should immediately disregard them as irrelevant to this transaction. For example, it is irrelevant whether the CMRS industry in general is experiencing competition, whether consumer prices in general are decreasing, or whether carriers are offering a wider variety of services than before. It is also irrelevant that Nextel feels it needs additional spectrum to compete with nationwide cellular and PCS carriers with regard to non-dispatch features. The only important factors are those pertaining directly to dispatch services. Toward that end, Southern submits that there is

¹⁴ *Neoworld Order* at 13416, ¶ 17; *Geotek Order* at 802, ¶ 26.

¹⁵ Nextel Public Interest Statement at 6, n. 7.

still a market for true dispatch, and there is still no meaningful commercial provision of such service from cellular and PCS carriers.

In Nextel's Public Interest Statement, it attempts to convince the Commission to abandon its current two-market method for analyzing assignments of 900 MHz licenses and find that the only relevant product market for analyzing this transaction is the CMRS market as a whole, including nationwide cellular and PCS carriers.¹⁶ Nextel's position is based on its belief that the trunked dispatch market has been completely assimilated into the greater interconnected mobile voice market.¹⁷ In support of that belief, it points to the Commission's discussions of relevant markets in *Geotek* and the *Fifth Report on Competition*, claiming that they "reflect the reality that all CMRS providers now compete directly with one another in a single, integrated CMRS market as they are forced to offer the full range of wireless functions to satisfy the mobile communications needs of consumers" ¹⁸ Contrary to Nextel's assertion, however, there remains a significant divide between consumers who utilize their phones for personal and general business purposes and those who use them for dispatch purposes. That divide has not been meaningfully bridged by cellular and PCS carriers.

1. Within the CMRS marketplace, the dispatch sector and the other sectors are not fluid with each other.

Southern acknowledges that in *Geotek* the Commission indicated a willingness to consider analyzing the CMRS market as a whole in the future.¹⁹ However, the trunked dispatch world has not changed enough since *Geotek* was adopted in January 2000 to warrant such a fundamental analytical shift. In *Geotek*, the FCC discussed how market fluidity might eventually lead it to undertake a single market analysis. It observed that mobile data services are becoming closely integrated with mobile voice, and cellular and PCS providers are competing with paging

¹⁶ Nextel Public Interest Statement at 7.

¹⁷ Nextel Public Interest Statement at 6-15.

¹⁸ Nextel Public Interest Statement at 12.

¹⁹ *Geotek Order* at 802-803, ¶¶ 25-28.

and messaging carriers.²⁰ It also noted that "to some degree" Nextel's Direct Connect feature is a substitute for speed dialing and conference calling features.²¹ It summed-up these observations with the statement that "consumers may begin to use more of these wireless services interchangeably (and that carriers may increasingly market such services to the same set of consumers)."²² Separately, in the *Fifth Report on Competition*, the FCC stated that cellular and PCS providers are beginning to provide "price/service plans" similar to Nextel's offerings.²³

The market fluidity described by the FCC in *Geotek* for non-dispatch services has not come to pass for dispatch services. It may certainly have occurred with other mobile phone features, such as paging, mobile data, text messaging, and internet access. Those applications have broad appeal for mobile telephone users of all types, so CMRS carriers of all types have successfully bundled them into their service plans. True dispatch, however, addresses a different service requirement; it is necessary for fields such as public safety, transportation, heavy industry, power utilities, and construction (to name a few), but is of little value to the vastly larger demographic of the general public and general businesses. Due to this specialized appeal, cellular and PCS carriers have, with one extremely limited exception described below, avoided offering anything akin to true dispatch.

What cellular and PCS carriers have done is attempt to duplicate the *superficial aspects* of dispatch that they believe the broader markets - general public and general businesspersons - find favorable. This is primarily what the Commission is referring to in *Geotek* when it compares Direct Connect to speed dialing or conference calling, and what it is referring to in the *Fifth Report on Competition* when it discusses "price/service plans" similar to Nextel's offerings.

²⁰ *Geotek Order* at 803, ¶ 27.

²¹ *Geotek Order* at 803, ¶ 27.

²² *Geotek Order* at 803, ¶ 27.

²³ Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Radio Services, *Fifth Report*, 15 FCC Rcd. 17660, FCC 00-289, p. 70 (Aug. 3, 2000) ("*Fifth Report on Competition*").

Several of the large carriers offer unlimited minutes of mobile-to-mobile calling or calling among members of a defined group. These plans do not, however, offer the essential features of true dispatch such as push-to-talk immediate connection functionality and substantial simultaneous group calling functionality.²⁴ The FCC actually refers to some of these plans as "family-oriented price plans," and, quite obviously, they are of no real utility to workers requiring true dispatch in fields such as public safety and transportation.²⁵ Thus, they cannot be said to represent fluidity between dispatch and non-dispatch sectors in the CMRS market.

Nextel can point to only two products that go beyond the "family-oriented price plan" genre discussed above, and one of them has not even been released.²⁶ The first, Cingular Wireless' Cellular One-To-One, was launched in September 1999 to provide a streamlined conference call service in which simultaneous calls could be made with up to 30 persons in a pre-programmed group.²⁷ The 30 person limit, of course, was less than is possible with real trunked dispatch (for example, Nextel's Direct Connect can handle up to 100 persons). In any event, though, Southern's understanding is that the Cellular One-To-One service that permitted conference calls with up to 30 persons *has been discontinued*. Furthermore, the Ericsson technology that it utilized, the TDMA Pro phone, is not currently sold in the United States.

The second product noted by Nextel, OmniExpress, was developed jointly by Qualcomm and Descartes Systems Group and *may someday* offer a feature called QChat which may mimic push-to-talk and simultaneous group calling dispatch functionality. The problem with QChat is that it has *not yet been released*, and, in fact, the software for it is still in development. Southern's understanding is that it may be released sometime between 2002 and 2004.

²⁴ Southern's understanding is that the maximum group size permitted by cellular and PCS plans is four persons, as opposed to 100 with Nextel's Direct Connect.

²⁵ *Fifth Report on Competition* at p. 71.

²⁶ Nextel Public Interest Statement at 14-15.

²⁷ *Fifth Report on Competition* at p. 71; Cellular One-To-One was launched by SBC Wireless, which has since entered a joint venture with BellSouth to form Cingular Wireless.

Furthermore, the cost of a QChat-equipped handset may be prohibitive. To Southern's knowledge, while the cost of a "civilian version" of a QChat-equipped handset has not yet been determined, the estimated cost of a government version being developed is \$2,000. At this point, to Southern's knowledge, detailed information as to what QChat's true utility and limitations may be is not yet available. In light of these facts, QChat should not be given consideration in this proceeding.

Even if the Commission considers Cellular One-To-One and QChat to represent viable alternatives to true dispatch, it should not abandon analysis of a separate dispatch market because those two products alone do not make a market. Especially given their apparent complete lack of availability, they cannot be said to have fundamentally shifted the source of dispatch products. At this point, regardless of what two providers *may* offer *sometime* in the future, there does not appear to be any penetration of the true dispatch market by cellular and PCS providers. Thus, it is too early for the Commission to cease analyzing dispatch as a separate market.

B. Granting the Applications Would Facilitate Nextel's Dominance of the Trunked Dispatch Market

As the trunked dispatch market is the relevant market for purposes of this analysis, the next step is to review the effect upon it of the assignment of Arch Wireless' 150 900 MHz licenses to Nextel. Southern submits that allowing this assignment will exacerbate Nextel's dominance of the trunked dispatch market and deal a serious blow to any hope of increasing competition. Nextel contends otherwise, claiming that "there are numerous opportunities for additional competition in the provision of trunked dispatch services - whether they be provided on 800 MHz, 900 MHz, 220 MHz, 700 MHz, or 1.9 GHz channels."²⁸ It also references cellular and PCS carriers, wireless data services, non-trunked dispatch services, and private dispatch systems. Despite the length of Nextel's list of purported alternatives, its positive spin on the

²⁸ Nextel Public Interest Statement at 19.

potential for competition is flawed. As explained below, it already dominates the 800 and 900 MHz frequencies to the extent of being able to significantly hinder the growth of existing carriers and the entry of new firms, and the other bands and services it mentions are highly unlikely to serve as fertile ground for meaningful competition. Additionally, Nextel has been consolidating the trunked dispatch market at an alarming pace, further reducing the likelihood of consumer choice.

In addition to the arguments set forth below, Southern incorporates by reference the Supplemental Affidavit of Michael Baumann and Stephen Siwek of Economists Inc., which was filed with the Commission in connection with applications filed by Motorola, Motorola SMR, and Motorola Communications and Electronics to assign 900 MHz SMR licenses and authorizations to FCI 900, a wholly owned subsidiary of Nextel Communications.²⁹ The Supplemental Affidavit contains further detailed information regarding why the 220 MHz, 450-470 MHz, 700 MHz bands, as well as cellular and PCS providers, are not likely to support competitive entry into the dispatch market in the near future. It is attached hereto as Exhibit A.

1. Nextel's dominance of the 800 and 900 MHz bands constrains other carriers from providing meaningful competition on them.

Due to the unique historical evolution of the SMR market, Nextel has thus far been able to dominate the acquisition of 800 MHz and now 900 MHz SMR spectrum in most major markets. Unfortunately, the fact that it already has so much spectrum significantly hinders the growth of existing carriers and the entry of new firms. New carriers have very limited opportunity to obtain the critical mass of channels in any given area needed to provide competitive service. In most major markets, Nextel already holds so much 800 and 900 MHz spectrum that it is extremely difficult for a new entrant to cobble together enough frequencies to seriously challenge it.

²⁹ In the Matter of Motorola, Inc.; Motorola SMR, Inc.; and Motorola Communications and Electronics, Inc., DA 00-2352.

This critical mass rule was on vivid display in the August 2000 800 MHz SMR General Category Auction (Auction No. 34), in which Nextel won 76% of the available licenses (800 out of 1,053).³⁰ Its success in that auction was largely due to the fact that because it already holds so much spectrum in those markets (including the underlying incumbent licenses), attempting to compete with it using the licenses available at the auction would have been virtually fruitless for many carriers that might have otherwise sought to make the highest bid. Furthermore, the large difference in scale between Nextel's operations and those of smaller carriers or new entrants means that vendors may find it more profitable to allocate their production resources to Nextel's needs.³¹ While its needs may sometimes overlap with those of other carriers, in other cases they may not and, thus, could hinder existing carriers' growth or entirely shut-out new entrants.

In light of the foregoing, it is already extremely difficult for carriers other than Nextel to make competitive use of the 800 and 900 MHz bands. Accordingly, it is important for the Commission to preserve the little flexibility that remains. Allowing Nextel to take assignment of 150 additional 900 MHz licenses would significantly erode that remaining flexibility. Thus, contrary to its assurances, the assignment will not leave adequate opportunities for competition at 800 and 900 MHz.

2. Cellular and PCS carriers are not likely to provide meaningful competition in the trunked dispatch market.

Nextel gives the impression that the widespread provision of true dispatch services by cellular and PCS carriers is just around the corner.³² However, other than, possibly, the proposed but unreleased QChat, it provides no direct evidence that any carriers are developing dispatch

³⁰ 800 MHz Specialized Mobile Radio (SMR) Service General Category (851-854 MHz) and Upper Band (861-865 MHz) Auction; Applications Accepted for Filing, *Public Notice*, 15 FCC Rcd. 20079, DA 00-2337 (2000).

³¹ For example, Motorola has indicated an unwillingness to manufacture a certain functionalities Southern is seeking in connection with an E-911 solution because Nextel has not requested them.

³² Nextel Public Interest Statement at 19-20.

services (as explained above, Southern does not believe Cellular One-To-One constitutes a comparable alternative to true dispatch, to the extent it is available at all). Furthermore, in all likelihood the development of QChat is an anomaly (and possibly a very limited one at that; to Southern's knowledge, no detailed information on its functionality and limitations are currently available). Rather, cellular and PCS carriers are content to provide broadly marketable "price/service plans" that offer unlimited minutes of calling between mobiles or among members of group, without going to the time and expense of developing true dispatch systems. Given the fast pace of the telecommunications industry, the fact that cellular and PCS carriers have been able to offer dispatch since the Commission amended its rules in 1995, but have steadfastly refrained from doing so, speaks volumes about their future intent.³³

3. It is highly unlikely that carriers will use the 220 MHz, 450-470 MHz, 700MHz, and 1.9 GHz bands to provide significant competition to Nextel.

Nextel argues that the 220 MHz, 450-470 MHz, 700 MHz, and 1.9 GHz bands provide fertile ground for carriers seeking to compete in the trunked dispatch market.³⁴ As explained below, that is untrue for a number of reasons.

220 MHz. In *Geotek*, the Commission stated its belief that "entry of competitive dispatch providers in the 220 MHz band likely will occur in the relatively near term."³⁵ However, it tempered that prediction by emphasizing that "the capacity to be deployed by 220 MHz carriers alone will not be sufficient to prevent competitive harm from arising here."³⁶ Southern submits that the reality of the 220 MHz band indicates that the Commission's cautionary statement did not go far enough. First, there are only 2 MHz of spectrum in the 220

³³ See Eligibility for the Specialized Mobile Radio Services and Radio Services in the 220-222 MHz Land Mobile Band and Use of Radio Dispatch Communications, *Report and Order*, 10 FCC Red. 6280, FCC 95-98 (1995) (lifting restrictions on providing dispatch).

³⁴ Nextel Public Interest Statement at 19-25.

³⁵ *Geotek Order* at 807, ¶ 39.

³⁶ *Geotek Order* at 808, ¶ 40.

MHz band and a small number of users; in 1999, there were only approximately 30,000 customers, which was less than 1% of all SMR subscribers.³⁷ In connection with Nextel's efforts to lift a Department of Justice Consent Decree regarding the acquisition of 900 MHz spectrum, it submitted exhibits in 1999 acknowledging that the number of constructed 220 MHz systems "cannot compare with the incumbent systems at 800 and 900 MHz" and that 220 MHz licensees "may" capture just 4% of the SMR market in five years.³⁸

The slim likelihood of companies using 220 MHz spectrum to meaningfully compete with Nextel is further demonstrated by other factors. 220 MHz licenses generated only modest prices in fairly recent auctions. Auction No. 18 closed in October 1998 after raising just \$21,843,792 for 693 licenses (average of \$31,521 per license); 215 licenses were not even sold at all.³⁹ A follow-up auction in June 1999, Auction No. 24, was even worse: \$1,924,950 for 222 licenses (average of \$8,671 per license).⁴⁰ Additionally, from a technical standpoint, 220 MHz spectrum subjects adjacent systems to interference and cross-talk, requiring licensees to undertake a sizeable investment just to develop the infrastructure necessary to eliminate those problems. Also, equipment manufacturers have not exactly shown overwhelming faith in the future of 220 MHz; the manufacturers that dominate the 800 and 900 MHz bands - Motorola, Kenwood, Ericsson, and Uniden - do not produce 220 MHz equipment.

³⁷ *U.S.A. v. Motorola and Nextel Communications*, Memorandum of the U.S. in Opposition to Nextel's Motion to Vacate the 1995 Consent Decree at 17, CIV. A. 94-2331 (TFH) (filed Feb. 2, 1999), quoting Nextel's Motion to Vacate the 1995 Consent Decree, Ex. 8 at 121.

³⁸ *U.S.A. v. Motorola and Nextel Communications*, Memorandum of the U.S. in Opposition to Nextel's Motion to Vacate the 1995 Consent Decree at 17, CIV. A. 94-2331 (TFH) (filed Feb. 2, 1999), quoting Nextel's Motion to Vacate the 1995 Consent Decree, Ex. ___ at 121 (Ex. No. unlisted in DOJ filing).

³⁹ FCC's web site Fact Sheet for Auction No. 18, <http://www.fcc.gov/wtb/auctions/>.

⁴⁰ Phase II 220 MHz Service Spectrum Auction Closes, *Public Notice*, DA 99-1287, p.1 (July 1, 1999).

450-470 MHz. The 450-470 MHz band suffers from a number of problems that makes it an extremely unlikely source of competition to Nextel. First, the voice transmission provided on these frequencies is generally of much lower quality than that provided by Nextel, so most customers would not consider it an adequate alternative. The lower quality is largely due to the fact that the channels are licensed on a shared basis and are heavily congested in major metropolitan areas.⁴¹ Second, 450-470 MHz licensees generally cannot trunk their channels - virtually essential to providing viable commercial service - without obtaining consent from *all existing licensees* within a certain area, in some cases as much as a 70 mile radius from the applicant's base station.⁴² Given the congestion in this band, that could be nearly impossible in many instances. Third, even 450-470 MHz licensees which manage to obtain the necessary consents for a trunked system are initially limited to just ten channels, hardly enough to operate a competitive system.⁴³ Even in a 1999 filing generally favorable to Nextel, the Department of Justice refused to endorse the 450-470 MHz band, stating, "trunked dispatch providers sufficient to serve as real alternatives for customers would be unlikely to emerge in the 450 MHz band in the near term."⁴⁴

Community repeaters in the 450-470 MHz band are perhaps an even more unlikely source of competition. They largely suffer from all the same problems discussed in the preceding paragraph, and, additionally, are small operations that can accommodate only a limited number of users. There is thus no guarantee that a company desiring to utilize a community repeater will be able to do so, especially given the heavy congestion in major

⁴¹ In the Matter of Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, WT Docket No. 99-87, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 00-403, ¶ 95 (Nov. 20, 2000).

⁴² 47 C.F.R. 90.187(b) (2000).

⁴³ 47 C.F.R. 90.187(e) (2000). Licensees can request more channels only after they have constructed and placed into operation their initial channels.

⁴⁴ *U.S.A. v. Motorola and Nextel Communications*, Response of the U.S. to Public Comments on the Proposed Consent Decree at 11-12, n. 11, CIV. A. 94-2331 (TFH) (filed Aug. 26, 1999).

metropolitan arguments. Additionally, their coverage is generally limited to the radius of a single transmitter.

700 MHz. Nextel claims that the 700 MHz Guard Bands are a likely source of trunked dispatch competition.⁴⁵ However, much of the spectrum is currently encumbered by broadcasters who do not have to vacate it until, at the earliest, December 31, 2006.⁴⁶ Moreover, due to this broadcaster presence, wireless licensees do not have to provide "substantial service" until January 1, 2015.⁴⁷ Also, there are a total of only 112 700 MHz Guard Band licenses, less than the number of 900 MHz licenses that Nextel is seeking in this proceeding alone.⁴⁸ Nextel itself holds 40 of those licenses, or 36% of them.⁴⁹ Even though it has to lease out 50.1% of each license, it will effectively be able to block off approximately 18% of the Guard Bands for its own purposes. Additionally, the 700 MHz Guard Bands cannot be used by companies employing cellular-like technologies and architectures, which are now standard for advanced digital systems. Because it is hard to imagine new entrants setting up systems with older, less efficient technology, this restriction will block them from using these bands and thus foreclose the competition they might have brought. Given the foregoing issues, it is highly unlikely that much competition will *ever* stem from the 700 MHz Guard Bands, and certainly not prior to 2007.

⁴⁵ Nextel Public Interest Statement at 21.

⁴⁶ In the Matter of Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, WT Docket No. 99-168, *Second Report and Order*, 15 FCC Rcd. 5299, FCC 00-90, ¶ 72 (2000).

⁴⁷ In the Matter of Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, WT Docket No. 99-168, *Second Report and Order*, 15 FCC Rcd. 5299, FCC 00-90, ¶ 75 (2000).

⁴⁸ See 700 MHz Guard Bands Auction Closes, *Public Notice*, 15 FCC Rcd. 18026, DA 00-2154, p. 1. (2000); 700 MHz Guard Bands Auction Closes, *Public Notice*, DA 01-478, p. 1. (Feb. 22, 2001).

⁴⁹ See 700 MHz Guard Bands Auction Closes, *Public Notice*, 15 FCC Rcd. 18026, DA 00-2154, Exh. A. (2000); 700 MHz Guard Bands Auction Closes, *Public Notice*, DA 01-478, Exh. A. (Feb. 22, 2001).

1.9 GHz. Nextel briefly mentions that the 1.9 GHz PCS band is a suitable substitute for 900 MHz SMR spectrum, but it does not provide any explanation of why it believes that to be the case. Its lack of discussion may stem from the fact that 1.9 GHz has demonstrated no realistic potential of being used to provide trunked dispatch service. Southern is not aware of any trunked dispatch providers that purchased spectrum in Auction No. 35, the C & F Block PCS auction that ended January 26, 2001. One reason may be that the average license price at that auction was \$39,945,607.⁵⁰ Even Nextel dropped out of it.⁵¹ Southern is also not aware of any equipment that has been developed to provide dispatch at 1.9 GHz. Moreover, 1.9 GHz licenses are generally in the hands of cellular and PCS providers and are simply are not widely available for trunked dispatch providers to obtain and utilize. As explained above, it is not likely that the cellular and PCS carriers currently holding this spectrum will use it to provide trunked dispatch.

Additional Problems For Existing Carriers. It is especially unlikely that existing carriers will utilize the 220 MHz, 450-470 MHz, 700 MHz, and 1.9 GHz bands, because most existing carriers have already set up their networks on the 800 and 900 MHz bands. They have already committed to technologies on 800 and 900 MHz and cannot freely migrate to spectrum for which those technologies were not designed.⁵² For example, Southern uses Motorola's proprietary iDEN technology, which in the United States works only on 800 MHz SMR spectrum. If Southern wanted to take advantage of opportunities on a new band, it would have to convince Motorola to design equipment capable of operating on both 800 MHz and the new band. However, manufacturers are likely to object to developing such equipment, for Southern and other carriers, on the ground many regional and smaller carriers would not present them with the requisite economies of scale for developing new equipment.

⁵⁰ C & F Block Broadband PCS Auction Closes, *Public Notice*, DA 01-211, Exh. B. (Jan. 29, 2001).

⁵¹ *Id.*

⁵² This is particularly true for small carriers that normally do not have the potential customer base to make a new equipment line worthwhile for equipment vendors.

4. Wireless data services, non-trunked dispatch services, and private dispatch systems are not viable alternatives to commercial trunked dispatch service.

Nextel makes brief mention of having to compete with wireless data services, non-trunked dispatch services, and private systems. Southern does not believe much competition is likely to arise from those services and systems. With regard to wireless data services, they are, by definition, non-voice and thus fundamentally different from trunked dispatch. While customers might utilize wireless data devices *alongside* trunked dispatch equipment in some situations, it is hard to imagine most users entirely shifting from mobile phones to mobile keyboards. As to non-trunked dispatch services, it seems doubtful that most companies with even moderate dispatch needs would find adequate the older technology of non-trunked dispatch. With regard to private systems, they are difficult to expand due to spectrum shortages and cannot be viewed as a significant competitive alternative.

5. Nextel's consolidation of the trunked dispatch industry decreases the likelihood of future competition.

The foregoing explains how Nextel already controls enough 800 and 900 MHz spectrum in most major markets to constrain the ability of carriers to expand their trunked dispatch services or enter new geographic markets, and how there really are no suitable substitutes for 800 and 900 MHz spectrum. An additional factor the Commission needs to consider is that Nextel has succeeded in dramatically consolidating the market over the past several years. A lack of industry players, of course, dampens competition regardless of the existence of different spectrum options. Where, as here, there is both a lack of spectrum options and a lack of industry players, the outlook is especially grim.

The *Fifth Report on Competition* was released fairly recently, in August 2000.⁵³ In a table entitled, "Major SMR operators," it lists only five operators, in order of size: Nextel, Southern, Mobex, Chadmoore Wireless Group, and Securicor Wireless.⁵⁴ Within just five

⁵³ *Fifth Report on Competition*, 15 FCC Rcd. 17660, FCC 00-289.

⁵⁴ *Fifth Report on Competition*, 15 FCC Rcd. 17660, FCC 00-289 at D-2.

months of its release, two of those companies essentially dropped off the list, with plans for their 800 and 900 MHz SMR licenses to go to Nextel.⁵⁵ Specifically, Nextel has a pending buy-out of Chadmoore Wireless Group, which according to trade publications has nearly 5,000 800 MHz SMR licenses covering 55 million POPs in 180 markets throughout the United States.⁵⁶ It also plans to purchase Mobex Communications' 284 800 and 900 MHz SMR licenses.⁵⁷ While it is bad enough that the trunked dispatch market is losing two significant competitors, these losses are especially troubling because their spectrum is going directly to Nextel rather than other competitors.

C. Consideration Of The Interconnected Mobile Voice Market Does Not Alter The Conclusion That The Application Should Be Denied

Southern believes that the trunked dispatch market is the only market that should be considered for this analysis. However, for the sake of argument it would note that considering the interconnected mobile voice market as well would not change the end result of its analysis. In its Public Interest Statement, Nextel contends that the 150 licenses for which it is seeking assignment will enhance its ability to compete in the interconnected mobile voice market and thus benefit the public interest. Southern would submit, however, that a 150 license increase would be of only very small overall benefit given the breadth of the interconnected mobile voice market. Weighing that small benefit against the far more significant detriment to the trunked dispatch market clearly indicates that the applications should be denied.

⁵⁵ *Nextel's Warm Handshake; Suitor Makes Offer Chadmoore Cannot Refuse*, Wireless Week, Aug. 28, 2000, at 1; *Mobex License Company and Nextel Communications Seek Consent to Assign 800 and 900 MHz SMR Licenses*, *Public Notice*, DA 01-68 (Jan. 10, 2001).

⁵⁶ *Nextel Acquires Chadmoore*, Mobile Radio Technology, October 2000; *Nextel's Warm Handshake; Suitor Makes Offer Chadmoore Cannot Refuse*, Wireless Week, Aug. 28, 2000, at 1.

⁵⁷ *Wireless Telecommunications Bureau Grants Consent for Assignment of Licenses From Mobex License Company to Nextel Communications, Inc.*, *Public Notice*, DA 01-493 (Feb. 22, 2001).

D. The Commission Should Utilize This Proceeding To Help Balance The Inequities Caused By Its Asymmetrical Regulatory Treatment Of The SMR Industry

The Commission has established a regulatory structure for cellular, PCS, and paging services that ensures that each service is subject to competition, *i.e.*, that there are at least two competitors with roughly comparable access to spectrum. Although Section 6002(d)(3)(B) of the 1993 Budget Act directed the FCC to enact "comparable" technical requirements for cellular, PCS, and SMR,⁵⁸ the Commission has denied SMR providers a regulatory scheme that enables competition. The Commission must offset its failure to provide a comparable regulatory scheme pursuant to the 1993 Budget Act by denying assignments of SMR licenses to carriers which hold undue concentrations of spectrum. In this instance, that would necessitate denial of Nextel's application for assignment of Arch Wireless' 900 MHz licenses.

IV. IF THE APPLICATION IS NOT DENIED, THE FCC SHOULD REQUIRE NEXTEL TO ENTER AUTOMATIC ROAMING AGREEMENTS WITH TECHNICALLY-COMPATIBLE DIGITAL SMR CARRIERS

Southern first and foremost believes the Commission should deny the license assignment application at issue in this proceeding. If it chooses not to do so, however, it should at least mitigate the assignment's harmful effects on the trunked dispatch market by conditioning it upon an automatic roaming requirement.⁵⁹ As the Commission recently noted in the AOL-Time Warner proceeding, it "can attach conditions to a transfer of licenses and authorizations in order

⁵⁸ Section 6002(d)(3)(B), 1993 Budget Act, 107 Stat. 312, 397.

⁵⁹ Southern would note that it has been an active participant in the pending automatic roaming rulemaking (WT Docket No. 00-193), and has therein advanced the position that an automatic roaming rule should be enacted for digital SMR carriers.

to ensure that the public interest is served by the transaction.⁶⁰ It derives its authority to do so from Sections 214(c) and 303(r) of the Communications Act of 1934.⁶¹

As explained below, Southern believes the condition it recommends is directly related to Nextel's requested license assignment and will help preserve competition if the transaction is allowed to occur. Southern also believes the condition will benefit the public interest generally and that the Commission should give strong consideration to that benefit as well. Of course, pursuant to Sections 214(c) and 303(r) the Commission may attach conditions to a license assignment that accomplish relevant public interest goals beyond directly preserving competition. For example, in the AOL-Time Warner proceeding the Commission conditioned the merger on the new company agreeing to annually certify its compliance with Section 631 of the Communications Act of 1934, which deals with protecting subscriber privacy.⁶² Thus, while conditions should be carefully weighed and imposed only where clearly needed, the Commission's rules and precedent establish its authority to attach conditions to license transfers that address the preservation of competition and broader public interest considerations.

A. Conditioning The License Assignment In This Proceeding On An Automatic Roaming Requirement Will Preserve Competition And Enhance The Public Interest

Southern's assertion that an automatic roaming requirement will benefit trunked dispatch providers is premised on its belief that allowing Arch Wireless to transfer its 900 MHz licenses to Nextel will enable it to further constrain other carriers from expanding or entering the market through the acquisition of spectrum. If carriers cannot expand or enter the market through the

⁶⁰ In the Matter of Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations by Time Warner Inc. and America Online, Inc., Transferors, to AOL Time Warner Inc., Transferee, CS Docket No. 00-30, *Memorandum Opinion and Order*, FCC 01-12, ¶ 25 (Jan. 22, 2001).

⁶¹ *Id.*

⁶² *Id.* at ¶¶ 277-279.

acquisition of spectrum, they can only do so by utilizing the systems of carriers that already have spectrum in the areas they wish to provide service. Because Nextel has a nationwide network due to its massive holdings of 800 and 900 MHz spectrum, carriers can enhance their competitiveness by being able to offer roaming capability on a larger network. Because the need to do this will be even more pronounced if Nextel is allowed to take assignment of 150 additional licenses from Arch Wireless, Southern believes that an automatic roaming condition in this case will benefit both competition and the public interest.

An additional reason for conditioning the assignment on an automatic roaming requirement is that doing so would preserve the ability of iDEN digital SMR carriers' customers to roam outside their carriers' service territories. Currently, the only domestic iDEN carriers - and hence potential roaming partners - are Southern, Pacific Wireless Technologies, Nextel, and Nextel Partners. Nextel will not voluntarily roam with any non-affiliated domestic carriers, and presumably Nextel Partners, its affiliate, will not do so either. As Nextel obtains more spectrum and thus increases its ability to prevent the growth of existing carriers and the entry of new providers, it decreases the likelihood that the marketplace will see the entrance of new digital SMR carriers that could bolster the list of potential roaming partners. For example, carriers that currently operate non-digital trunked dispatch systems might be encouraged to upgrade to a more advanced iDEN platform if they have enough spectrum. If they do not upgrade for lack of spectrum, existing iDEN carriers are thus harmed because they are denied potential roaming partners. Accordingly, if Nextel is allowed to take assignment of 150 additional licenses and thus potentially further curtail the introduction of future roaming partners, it would clearly be in the public interest for the Commission to impose an automatic roaming rule ensuring that carriers will have at least one carrier to roam with in most major markets, *i.e.*, Nextel.

Southern realizes that an automatic roaming requirement may appear to directly benefit only digital SMR carriers with iDEN platforms and their customers. However, a roaming requirement would in fact benefit all dispatch providers. It would first enhance the

competitiveness of digital SMR carriers providing advanced dispatch and interconnect services. Their enhanced competitiveness, in turn, would serve as a catalyst to intensifying the state of competition in the entire dispatch market. A reduction in Nextel's dominance would be a positive development regardless of the type of firms that initiate the reduction. Therefore, Southern's request for a roaming requirement is more than a self-interested proposition.

Southern also realizes that dispatch roaming is not currently possible, so an automatic roaming requirement would at this stage enable roaming only for the interconnected mobile voice side of iDEN carriers' systems. However, because iDEN carriers provide a service in which interconnected mobile voice and dispatch are intertwined, *i.e.*, provided through the same handset and same service package, being able to offer customers the ability to roam will enhance their *overall* competitiveness. As explained in the preceding paragraph, this increase in overall competitiveness will serve as a catalyst and have positive repercussions across the entire trunked dispatch market. Moreover, it is Southern's understanding that Motorola will soon introduce a new technology that enables dispatch roaming.

B. An Automatic Roaming Requirement Would Not Be Contrary To Regulatory Parity Requirements

Conditioning the assignment in this proceeding on an automatic roaming requirement applicable only to Nextel, and not cellular or PCS carriers, would be consistent with the regulatory parity provisions of the 1993 Budget Act. Although the 1993 Budget Act mandates regulatory parity among CMRS providers, it does so within the bounds of its goal of leveling the playing field for carriers in different services and their customers. Digital SMR is the one CMRS market segment where roaming among competitors is *not* voluntarily taking place. As such, digital SMR carriers and their customers are not enjoying the benefits of roaming that cellular and PCS carriers and their customers are enjoying. Because they cannot attain equal

footing voluntarily, it is appropriate for the Commission to adopt a targeted regulatory requirement to assure that *all* carriers and their customers enjoy the benefits of roaming.

The foregoing is consistent with the qualification that regulatory parity is mandated only when doing so is *necessary and practical*.⁶³ Applying Section 6002(d)(3)(B) of the 1993 Budget Act to this matter, it is clear that nationwide carriers in the cellular and PCS services are generally entering into roaming agreements with smaller carriers.⁶⁴ That is not, however, the case among digital SMR carriers. While an automatic roaming requirement may not be necessary to get nationwide cellular and PCS carriers to roam with their competitors, it clearly necessary to get Nextel to do so. Thus, imposing such a requirement on Nextel would be in furtherance of Section 6002(d)(3)(B)'s goal of creating a level playing field because doing so is necessary to ensure that SMR carriers and their subscribers have the same roaming opportunities that cellular and PCS carriers and their customers already enjoy.

C. Southern Is Not Seeking To Take Undue Advantage Of Nextel's Efforts

Nextel may also oppose an automatic roaming requirement on the ground that Southern is trying to take undue advantage of the effort and expense Nextel put into building a nationwide

⁶³ Section 6002(d)(3)(B) of the 1993 Budget Act provides that, with respect to the regulations applicable to entities that were previously private land mobile services (including SMR carriers):

[The Commission] shall make such other modifications or terminations as may be *necessary and practical* to assure that licensees in such service are subjected to the technical requirements that are comparable to the technical requirements that apply to licensees that are providers of substantially similar common carrier services. (Emphasis added.)

⁶⁴ See, e.g., In the Matter of Automatic and Manual Roaming Obligations Pertaining To Commercial Mobile Radio Services, WT Docket No. 00-193: *Comments of Verizon Wireless* at 6; *Comments of Cingular Wireless* at 3-4; *Comments of Leap Wireless International* at 3.

network.⁶⁵ That argument fails for numerous reasons. First, the Commission has already found - for cellular, PCS, and SMR - that allowing access to other carriers' systems for purposes of roaming is in the public interest not only to enhance competition but also because of *customers'* needs. That finding is codified in the manual roaming rule, pursuant to which Nextel has an existing obligation to provide access to its network.⁶⁶ However, Nextel has steadfastly maintained that it is technically impossible to engage in manual roaming with Southern. Additionally, customers have come to expect and demand automatic roaming. Accordingly, the Commission can advance the public interest by conditioning this transfer on requiring Nextel to permit automatic roaming on its system.

Southern would also emphasize that requiring a company to allow other companies to use its infrastructure is hardly unusual in telecommunications policy. A cornerstone of the Telecommunications Act of 1996 is the requirement that incumbent local exchange carriers allow competitive local exchange carriers to have broad access to their network through interconnection and the sale of unbundled network elements.⁶⁷ In addition, access by internet service providers to infrastructure owned by the cable industry is now under active consideration by the FCC.⁶⁸ Furthermore, a major consideration in roaming policy is the needs and desires of customers to have roaming capability available to them, and to facilitate E-911 and TTY services.

⁶⁵ Of course, Southern has put substantial effort and expense into its own network, which cost hundreds of millions of dollars and provides coverage over 127,000 square miles.

⁶⁶ 47 C.F.R. § 20.12 (2000).

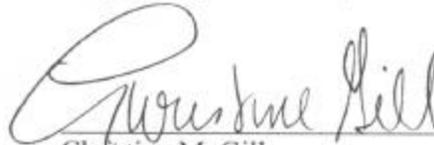
⁶⁷ 47 U.S.C. § 251 (Supp. IV 1998).

⁶⁸ In the Matter of Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities, Gen. Docket No. 00-185, *Notice of Inquiry*, 15 FCC Rcd. 19287, FCC 00-355 (2000).

V. CONCLUSION

WHEREFORE, THE PREMISES CONSIDERED, Southern respectfully asks the Commission to deny Arch Wireless' and Nextel's license assignment application. In the alternative, if the Commission grants the application, it should require Nextel to enter automatic roaming agreements with technically-compatible digital SMR providers.

Respectfully submitted,



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EXHIBIT A