

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

In the Matter of)
)
Automatic and Manual Roaming) WT Docket No. 00- 193
Obligations Pertaining to)
Commercial Mobile Radio Services)

To: The Commission

REPLY COMMENTS OF NEXTEL COMMUNICATIONS, INC.

NEXTEL COMMUNICATIONS, INC.

Robert S. Foosaner
Senior Vice President – Government Affairs

Lawrence R. Krevor
Vice President – Government Affairs

Laura L. Holloway
Director – Government Affairs

James B. Goldstein
Regulatory Counsel

200 1 Edmund Halley Drive
Reston, VA 20191

(703) 433-4141

February 5, 2001

TABLE OF CONTENTS

SUMMARY.....	i
I. INTRODUCTION.....	1
II. THE COMPETITIVE CMRS MARKETPLACE OBVIATES THE NEED FOR COMMISSION INTERVENTION.....	3
A. The CMRS Marketplace Is Competitive.....	3
B. A Roaming Mandate Eliminates the Incentive To Build Systems and Provide a Differentiated Product.....	6
C. A Roaming Mandate Would Result in Unnecessary Commission Regulation of CMRS Rates, Terms and Conditions.....	12
III. BY PROMOTING A RULE THAT WOULD EXPRESSLY CONTRAVENE THE CMRS REGULATORY PARITY MANDATE, SOUTHERN SEEKS TO ENHANCE ITS OWN COMPETITIVENESS AT THE EXPENSE OF COMPETITION.....	15
A. The CMRS Marketplace is the Relevant Marketplace for Analyzing the Need for an Automatic Roaming Mandate.....	15
B. Southern’s Request for a Digital SMR-Only Roaming Mandate Violates Congress’ CMRS Regulatory Parity Requirement, Adversely Impacting Competition.....	21
C. The Facts Do Not Support Southern’s Claims Regarding Monopoly Power and Control of Essential Facilities.....	23
1. 800 and 900 MHz SMR Spectrum is Not an Essential Facility, and Nextel is Not a Monopolist.....	23
2. Southern Can Duplicate Nextel’s Facilities for Roaming Purposes.....	24
3. Nextel Never Refused to Deal with Southern.....	26
4. Forcing Nextel to Enter Non-Economic Roaming Arrangements Is Contrary to the Essential Facilities Doctrine and Would Inhibit Meaningful Competition.....	28
D. Southern’s Comments are Replete with Factual Misstatements on Which It Bases its Faulty Legal Analysis.....	29
IV. CONCLUSION.....	35

SUMMARY

The Commercial Mobile Radio Service (“CMRS”) marketplace has never been more competitive and wireless consumers have never been better off. As the record in this proceeding demonstrates, the CMRS marketplace will become even more competitive as carriers launch new services, differentiate their product offerings, pursue new technological innovations (e.g., dual and triple mode handsets, access to Internet services and Third Generation (“3G”) technologies), reduce prices and offer a variety of service and pricing plans. Accordingly, no evidence exists of a CMRS marketplace failure justifying the Federal Communications Commission (“Commission”) imposing a CMRS automatic roaming mandate – particularly when it never imposed such regulation in the cellular duopoly marketplace. If unnecessary to protect competition in a market with only two facilities-based providers, requiring automatic roaming is not warranted in a marketplace with multiple robust competitors.

On the contrary, mandatory automatic roaming could result in significant consumer harm by creating disincentives for carriers to build facilities, invest in technology and differentiate products and services. The Comments of Southern LINC (“Southern”), a regional CMRS provider in the southeastern states, aptly demonstrate the disincentives this mandate would provoke. Southern readily admits that it seeks mandated automatic roaming with a nationwide CMRS carrier to gain nationwide coverage without having to “undertake significant investment to develop the necessary infrastructure to address [] significant technical difficulties and reach economies of scale.” Southern establishes for the record that the proposed rule will reduce long-term facilities-based competition among commercial wireless service providers. As Chairman

Powell has recognized, “meaningful, robust competition requires that firms vie for customers on the distinct assets and capabilities that each brings to the market.”

The competitive disincentives created by an automatic roaming mandate are particularly acute when potential roaming carriers provide service in overlapping markets. Mandated in-market roaming significantly exacerbates the diseconomies created by the company that chooses to compete by being a “free rider” on a competitor’s system. This allows the “free-rider” to enhance its own in-market system, not through investments in technical or operational improvements, but by using the competitor’s system to fill coverage holes and provide peak capacity. In essence, the competitor’s network becomes a back-up system to cover for the frailties of the “home” system, filling in coverage holes or providing additional system capacity at peak times of the day – a particularly egregious result when the “roamed-on” network is forced to increase capacity to serve its own customers as a result of the infrastructure impact of the roamer’s usage.

Additionally, Commission adoption of a CMRS automatic roaming mandate would be a regulatory step backwards. If it adopts an automatic roaming requirement, the Commission will face numerous issues regarding whether the rates, terms and conditions of a particular roaming agreement are just, reasonable and nondiscriminatory. Since the marketplace would no longer dictate whether to enter into such an agreement, nor dictate the most economic rates, terms and conditions of such an agreement, it would inevitably fall to the Commission to review, adjudicate and approve these matters. As a number of commenters stated, roaming agreements are complex arrangements raising numerous case-specific issues. The Commission’s regulation thereof would have to be sufficiently flexible to permit carriers to differentiate their roaming terms from competitor-to-

competitor, yet not so broad as to make the system unworkable. Given the competitiveness of the CMRS marketplace, and the Commission's current Sections 201, 202 and 208 enforcement processes, a new roaming regulatory scheme is unjustified and would impose unnecessary costs on consumers without any corresponding benefit.

An automatic roaming mandate is not warranted in the overall CMRS marketplace; there is even less justification for singling out one subset of CMRS competitors – digital Specialized Mobile Radio providers – for an automatic roaming obligation, Congress mandated in 1993 that all CMRS competitors receive regulatory parity to ensure that the marketplace – not governmental regulation – governs carriers' competitiveness. Southern's proposal to limit the automatic roaming mandate – for all practical purposes – to a single carrier, Nextel Communications, Inc. ("Nextel"), is far beyond the bounds of CMRS regulatory parity and thus impermissible.

Interestingly, Southern's position is predicated on its fanciful assertion that Nextel's nationwide CMRS network is an "essential facility," i.e., that Nextel is a public utility which all-comers are entitled to access. Southern's reasoning fails on numerous grounds, including the fact that (1) Nextel provides service to only seven million of the more than 100 million CMRS subscribers in today's marketplace – hardly a monopoly or "dominant carrier" position warranting "bottleneck facility" government-mandated competitive access; (2) Nextel's network is only one of six nationwide CMRS networks; and (3) a plethora of spectrum is available in both the secondary markets and in Commission auctions for nationwide and near-nationwide CMRS services. For example, the C and F Block Personal Communications Services re-auction, which recently closed, provided an ideal opportunity for Southern to obtain a nationwide footprint. Southern

chose, however, not to make this investment, seeking instead to obtain a nationwide footprint for free through Commission mandate.

Furthermore, Southern's attempt to carve itself and Nextel out of today's competitive CMRS marketplace and into their own micro "relevant marketplace" further ignores reality, as its own Comments indicate. Southern would limit the Commission's competitive analysis for determining whether to mandate automatic roaming to *non-interconnected trunked dispatch* service. Southern fails to inform the Commission, however, that it intends to provide only *interconnected mobile telephone* service via its proposed automatic roaming mandate – *i.e.*, the very services numerous competitors offer, including Voicestream, Verizon, AT&T Wireless, and Sprint PCS. Southern's attempt to delude the Commission into believing that it competes only with Nextel is transparent. There is no separable digital SMR marketplace for purposes of evaluating the need for mandated automatic roaming.

The Commission's job is to protect competition; not competitors. As the record in this proceeding aptly demonstrates, competition is flourishing in the CMRS marketplace. The proposed governmental intervention is not necessary to protect or enhance competition. On the contrary, such regulation would protect a few competition-adverse carriers at the expense of wireless consumers. Accordingly, a CMRS automatic roaming mandate is not in the public interest.

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

In the Matter of)
)
Automatic and Manual Roaming) WT Docket No. 00-193
Obligations Pertaining to)
Commercial Mobile Radio Services)

To: The Commission

REPLY COMMENTS OF NEXTEL COMMUNICATIONS, INC.

I. INTRODUCTION

Nextel Communications, Inc. (“Nextel”) respectfully submits these Reply Comments in the above-captioned proceeding.* At its heart, this proceeding queries whether the Federal Communications Commission (“Commission”) should mandate that all Commercial Mobile Radio Service (“CMRS”) providers allow competitors to access their networks via roaming arrangements, without regard for the economics of any particular transaction. Chairman Powell previously recognized that such policies may not be in the public interest, noting that “unconstrained access [to the facilities of other carriers] would eviscerate incentives for entrants to install their own facilities and thereby inhibit the type of competition most likely to spur innovation, provide price discipline and otherwise benefit consumers.. . . [M]eaningful, robust competition requires that firms

¹ *In the Matter of Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Services*, Notice of Proposed Rulemaking, WT Docket No. 00- 193, FCC 00-361, released November 1, 2000 (“Notice”).

vie for customers based on the distinct assets and capabilities that each brings to the market.”²

Thirteen parties, including Nextel, submitted Comments in this proceeding. All but three oppose an automatic roaming requirement in favor of continued Commission reliance on the competitive marketplace to protect consumers and further enhance the products, services and technology options available to wireless users. As the record herein overwhelmingly demonstrates, the CMRS marketplace is competitive and will continue to grow increasingly so as carriers launch new services, differentiate their product offerings, pursue new technological innovations (e.g., dual and triple mode handsets, access to Internet services and Third Generation (“3G”) technologies), reduce prices and offer a variety of service and pricing plans.

Nextel, therefore, submits this Reply to demonstrate that mandated automatic roaming will inhibit the development of true facilities-based competition, thereby denying consumers differentiated products and services, and plunge the Commission into an unavoidable regulatory morass concerning roaming rates, terms and conditions that would further stifle robust competition. Nextel also responds herein to unsubstantiated allegations, factual misstatements and faulty legal analyses throughout the Comments of Southern Communications Services, d/b/a Southern LINC (hereinafter “Southern”), a CMRS competitor seeking to impose automatic roaming obligations on only one sub-set of CMRS provider, digital Specialized Mobile Radio (“SMR”) providers.³ As a practical

² *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, and *Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, Second Further Notice of Proposed Rulemaking, 14 F.C.C.R. 8694, FCC 99-70, released April 16, 1999 (“Local Competition Second FNPRM”), Commissioner Powell separate statement at p. 1.

³ Comments of Southern LINC, filed January 5, 2001 (“Comments of Southern”). Similarly, the Comments of Pacific Wireless Technologies, Inc. (“Pacific Wireless”) rely on the same faulty legal

matter, Southern's proposal would impose an automatic roaming obligation only on Nextel because Nextel is the digital SMR provider that has made the investment necessary to provide coverage sufficient to benefit any other CMRS provider interested in a roaming agreement.

For the reasons discussed herein and in the majority of the Comments, the Commission should not interfere with the functioning of a competitive marketplace that plainly is benefiting U.S. wireless consumers by imposing mandatory automatic roaming obligations on any CMRS carrier.

II. THE COMPETITIVE CMRS MARKETPLACE OBIVIATES THE NNED FOR COMMISSION INTERVENTION

A. The CMRS Marketplace Is Competitive

As the Commission has recognized, and a majority of the commenters herein demonstrated, there is significant competition in the CMRS industry.⁴ This competition, created by the Commission's licensing decisions and the various products and services of cellular, Personal Communications Services ("PCS") and SMR licensees, ensures that consumers have numerous choices of wireless telecommunications service providers – choices among differing technologies, pricing plans, service footprints, and service options, among other things. Far from being harmed by the current state of competition, consumers have benefited tremendously as a result of CMRS competition.⁵

analysis proffered by Southern. Thus, Nextel also is responding herein to the assertions of Pacific Wireless.

⁴ See, e.g., Comments of Leap Wireless International, Inc. ("Leap Wireless") at p. 2; Comments of United States Cellular Corp. ("US Cellular") at p. 5; Comments of Office of Advocacy, U.S. Small Business Administration ("Small Business Administration") at p. 2; Comments of Verizon Wireless ("Verizon") at p. 2; Comments of Cellular Telecommunications and Internet Association ("CTIA") at p. 3.

⁵ 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 Services*, Fifth Report, FCC 00-289, released August 18, 2000 (hereinafter "Fifth Report on Competition")

Competition among CMRS providers is expected to grow as carriers move to 3G technologies. An automatic roaming mandate could interfere with marketplace decisions regarding 3G technologies and their timely deployment; it also could impose significant burdens and costs on carriers.⁶ With as many as five or more facilities-based CMRS providers in most markets, it is difficult to ascertain how an automatic roaming mandate can be justified today when it was never justified even in the cellular duopoly marketplace. If unnecessary to protect competition in a market with only two facilities-based providers, such regulation cannot be justified in a marketplace with multiple robust competitors.

It is axiomatic that the Commission's job is to protect competition; not competitors.⁷ Competition in the CMRS marketplace is flourishing, as Congress intended,⁸ and any automatic roaming obligation is unjustified in today's CMRS marketplace. Southern's proposed digital SMR-only automatic roaming mandate, discussed in greater detail below, is particularly unjustified as it would contravene the Commission's regulatory parity requirements and benefit no one other than Southern. With multiple facilities-based wireless providers in a market, **consumers** are not harmed

at p. 4 ("In the year 2000, the CMRS industry continues to benefit from the effects of increased competition as evidenced by lower prices to consumers and increased diversity of service offerings.").

⁶ See Comments of National Telephone Cooperative Association ("NTCA") at p. 5 ("As technology advances and the transmission of data become prevalent, it is unlikely that all carriers will upgrade at the same pace. NTCA's members warn that an automatic roaming requirement would be unworkable if, for example, their systems were incapable of handling the type of traffic carried by larger carriers.").
⁷ See *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477 (1977) (Antitrust laws were enacted for 'the protection of competition; not competitors'') (citations omitted); see also *SBC Communications Inc., v. FCC*, 56 F.3d 1484, 1492 (D.C. Cir. 1995) (noting BellSouth's "mistaken belief that the Commission should protect competitors at the expense of consumers"); *Hawaiian Telephone v. FCC*, 498 F.2d 771, 776 (D.C. Cir. 1974) ("relative competitive positions of . . . carriers . . . is of little relevance in determining whether the public interest test is satisfied").

⁸ See Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 3 12 (1993), discussed below.

by a particular carrier's self-inflicted coverage limits.⁹ System coverage is – and should continue to be -- one of many competitive product-differentiating factors consumers weigh in choosing among providers in a competitive wireless marketplace.” Improving and enhancing system coverage does not come cheaply or easily; thus, carriers should be entitled to use such investment to promote the advantages of their products and services – just as they differentiate themselves based on technology, pricing, billing or customer care, among other things.

Similarly, if a carrier makes a significant investment in another carrier, either purchasing an interest therein, merging with that carrier or entering into some other venture, those carriers should be permitted to enter into roaming arrangements on more favorable terms than they would with non-affiliates. Having made the investment to expand their coverage and/or services through these business transactions, the carriers should be entitled to benefit from their investment and enjoy the economies and competitive opportunities they have created for themselves.’¹ Forcing similar terms and conditions on all roaming arrangements via regulatory mandate would have a “chilling effect” on roaming rates “and would eliminate one of the primary benefits carriers have sought to obtain by making acquisitions or by entering into strategic alliances.”¹² Therefore, the Commission should “stay the course” and allow the marketplace to continue promoting the competition that Congress and the Commission have facilitated to date.

⁹ Southern's Comments claim that consumers are harmed by the lack of an automatic roaming mandate when, in reality, consumers have numerous competitive alternatives. Southern's customers knew they were choosing a limited coverage service that they presumably accept as a price/service tradeoff.

¹⁰ See e.g., Comments of Cingular Wireless LLC (“Cingular”) at p. 7.

¹¹ See Comments of Verizon at pp. 12- 13.

¹² *Id.* at p. 13.

B. A Roaming Mandate Eliminates the Incentive To Build Systems and Provide a Differentiated Product

In stark contrast to any consumer benefit that may be achieved, a mandatory roaming obligation actually could result in significant consumer harm by creating a disincentive for carriers to build facilities, invest in technology and differentiate products and services -- as Chairman Powell has stated. The Commission has recognized the disincentive that can be created by such regulatory intervention. In reviewing and deciding to sunset its cellular resale rules, for example, the Commission reasoned that a resale mandate could harm facilities-based competition by creating a disincentive to build out networks and deploy innovative technologies.¹³

Following the same logic, the Commission queried in the instant Notice whether an automatic roaming mandate would “create disincentives to the growth of facilities-based competition, or to the continued deployment of nationwide footprints.”¹⁴ In their Comments, Nextel, CTIA and Cingular Wireless LLC (“Cingular”) each warned that an automatic roaming mandate would create disincentives to invest in spectrum, build networks and differentiate products and services through innovative technology development.”

Southern confirms these concerns. In explaining why it needs mandated access to Nextel’s network via roaming, Southern asserts that it cannot look to other spectrum opportunities or technology options for providing a nationwide service because it would have to “*undertake a significant investment to develop the necessary infrastructure to*

¹³ See *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, First Report and Order, 11 FCC Rcd 18445, para. 30 (1996), *aff’d Cellnet Communications v. FCC*, 149 F.3d 429 (6th Cir. 1998).

¹⁴ Notice at para. 22.

¹⁵ See Comments of Nextel at pp. 12-14; Comments of Cingular at p. 1; Comments of CTIA at p. 6.

address these significant technical difficulties and reach economies of scale.”¹⁶ In

other words, Southern prefers what CTIA defines as the “free rider” approach.¹⁷

Knowing it can build a limited, low-investment network and then rely on the more robust and geographically-expansive networks deployed by its competitors, a “free rider” avoids the risk of investing in and establishing new networks and providing new, differentiated products and services to the public. For example, Southern did not even sign up for participation in the 1.9 GHz C and F Block PCS re-auction. Had Southern participated in the auction and obtained a near-nationwide C and F Block footprint, wireless consumers would have benefited significantly – certainly more than they would from a me-too, resold nationwide service via Nextel’s existing network, and arguably even more than they will benefit from the majority of C and F Block licenses going to large CMRS incumbents with pre-existing nationwide footprints.

Having failed to participate in Commission auctions and in the secondary spectrum markets, Southern has chosen not to make the investment necessary to create the nationwide presence it seeks to obtain via governmental mandate. Government complicity in a scheme, no matter how inadvertent, is irreconcilably at odds with the overriding goals of Congress in the 1993 Budget Act, one of which is to “**promot[e]**

¹⁶ Comments of Southern at p. 32. Not only is Southern uninterested in making investments to improve its competitiveness, it apparently has little interest in making the infrastructure investments necessary to meet its Commission obligations as a CMRS licensee. In attempting to impose a roaming obligation on Nextel via the Commission’s Phase II Enhanced 9 11 proceeding, Southern readily admits that it has not even tested a Phase II location technology – nearly three months after Southern should have reached a decision on what type of technology to deploy. See Fourth Memorandum Opinion and Order, CC Docket No. 94-102, FCC 00-326, released September 8, 2000, at para. 78, requiring CMRS carriers to submit their technology choice to the Commission by November 9, 2000. Southern goes on to say that “it may find that it also has no alternative but to implement a handset-based solution[.]” *i.e.* the solution in which Nextel has invested significant time, resources and personnel to investigate, analyze, test and begin to develop.

¹⁷ Comments of CTIA at pp. 6, 7. A Commission mandate “may actually reduce incentives for carriers to build out their networks since they can rely on roaming, thereby eliminating consumer choice.”

investment in mobile telecommunications infrastructure. . .”¹⁸ The Commission’s policies should encourage facilities-based investment in competition; not discourage it.

The competitive disincentives created by an automatic roaming mandate are particularly acute when the two potential roaming carriers provide service in overlapping markets.¹⁹ As Verizon stated, “[a]llowing licensees in the same market to roam on other licensees’ systems creates disincentives to build out networks and strains. . .capacity.”²⁰ The Commission recognized these particular disincentives in the Notice by requesting comment on whether any “automatic roaming rule should require a carrier to enter an automatic roaming arrangement on a nondiscriminatory basis with a facilities-based competitor in the same market (‘in-market roaming’).”²¹ Anticipating the potential economic consequences of such in-market roaming arrangements, the Commission further queried whether such “agreements diminish carriers’ incentives for building out their networks[.]”²²

Mandated in-market roaming significantly exacerbates the diseconomies of the “free rider” problem. It would allow a provider to enhance its own in-market system, not through any investment in technical or operational improvements, but by using its competitor’s system to fill coverage holes and provide additional capacity at peak usage times – a particularly egregious result where the roamed-on carrier already experiences capacity limitations in serving its own customer base.²³ In essence, the competitor’s

¹⁸ Third Report and Order, 9 FCC Rcd 7988 (1994) (“hereinafter “CMRS Third Report and Order”) at para. 11 (emphasis added).

¹⁹ Comments of Verizon at pp. 11-12.

²⁰ *Id.* at p. iii.

²¹ Notice at para. 27.

²² *Id.*

²³ According to the Strategis Group, a consulting firm with extensive experience in telecommunications industry research, Nextel will need additional capacity – which it is attempting to acquire through the secondary marketplace – “to continue to grow its subscriber base and offer consumer services as well [as its

network becomes a back-up system to cover for the frailties of the “home” system. There is no public policy justification for imposing a governmental mandate that creates this result. Thus, to the extent the Commission concludes that the CMRS marketplace is not operating properly ‘without an automatic roaming mandate, it should except from the requirement any and all roaming agreements between parties with overlapping footprints. Such “poaching” on a competitor’s system flies in the face of facilities-based competition and the Commission’s pro-competitive policies.

Additionally, “free riders” – whether Southern or any other CMRS provider -- deprive consumers of distinct product and service alternatives because, in essence, they are simply reselling the services of a facilities-based provider.²⁴ As Cingular noted, “[i]nstead of a variety of competitors differentiated in product quality, coverage, and features, all the competitors would appear more or less alike.”²⁵ Those seeking an automatic roaming mandate, Cingular observed, simply want to eliminate “coverage and roaming footprints [as a] competitive factor.”²⁶ Cingular also points out that rural areas could suffer disproportionately by the disincentives created by an automatic roaming obligation. Because cellular carriers have been building networks since the late 1970s, many have built out in rural areas. If those carriers are obligated to provide automatic

business-oriented services].” “The State of the SMR Industry: Nextel and Dispatch Communications,” The Strategis Group, September 2000 (hereinafter “The Strategis Group Report”) at p. 48. Thus, if forced into roaming arrangements with carriers that have overlapping coverage areas, Nextel may be unable to provide quality services to its own customers because its system capacity is being used by “roamers” in their home market but unable to access their home system.

²⁴ This resale analogy is particularly applicable to another commenter in this proceeding, Pacific Wireless. As an iDEN provider with a network covering little more than a few coastal areas in California as well as Fresno and Sacramento, Pacific Wireless’ request to roam on Nextel’s nationwide system is little more than a request to resell Nextel’s services in every area of the country but a few cities in California. Pacific Wireless seeks to construct a handful of cell sites and then provide nationwide service via the network Nextel has constructed nationwide. The Commission’s CMRS resale requirements sunset in 2002; they should not be reenacted through the side door.

²⁵ Comments of Cingular at pp. 6-7.

²⁶ *Id.* at p. 7. See *also* Comments of Leap Wireless at pp. 5-7.

roaming to other CMRS carriers, for example, there will be little incentive among new entrants to build competitive systems in those areas.²⁷

Commenters supporting an automatic roaming mandate are arguing that access to a nationwide wireless network has become the “right” of all competitors rather than a competitive factor upon which the carrier that created it has a right to distinguish itself.²⁸ In effect, they ask the Commission to treat nationwide wireless providers as public utilities – monopolists in control of bottleneck essential facilities. One commenter goes so far as to analogize the need for a nationwide wireless footprint to a CMRS carrier’s need to interconnect to the Public Switched Telephone Network (“PSTN”).²⁹ This analogy is inapt. Without interconnection to the PSTN (still a bottleneck facility in many markets today) a CMRS carrier cannot provide service. Without access to a particular nationwide wireless network, a carrier still can provide service within the scope of its own footprint and the footprints of those carriers with whom it has roaming agreements. The lack of a nationwide footprint is not a prerequisite to providing competitive CMRS services, as demonstrated by Leap Wireless.³⁰ Some CMRS carriers offer large, multi-state and national footprints while others, such as Leap, offer more localized coverage.³¹ To the extent a carrier’s coverage is not sufficient for a particular wireless consumer, he or she can look to other wireless providers – in many markets five, six or seven alternatives.

²⁷ Comments of Cingular at p. 7.

²⁸ See Comments of Corr Wireless Communications, LLC (“Corr”) at p. 8 (A roaming “rule is essential to ensuring that customers of all systems have fair and reasonable access to the nationwide network when they are outside their home market.”).

²⁹ *Id.* at p. 8.

³⁰ Comments of Leap Wireless at pp. 5-6.

³¹ *Id.*

Acting as if infrastructure deployment and technology development were investments required only of SMR licensees among all CMRS providers, Southern readily admits that it is seeking to avoid such capital expenditures.³² The reality is, whether licensed on SMR channels, PCS channels or cellular channels, a CMRS provider faces numerous technical, operational and marketplace challenges that must be overcome to compete effectively. Cellular providers, having deployed analog systems in the late 1970s and early 1980s, have been forced by the marketplace to replace those systems with digital technologies – certainly a “significant investment . . . to address these significant technical difficulties. . . .” PCS providers, licensed on spectrum previously allocated to microwave facilities, were faced with relocating microwave incumbents prior to building their systems and deploying service – again, not an insignificant investment. Finally, many PCS and cellular providers have found themselves holding both 1.9 GHz PCS spectrum and 800 MHz cellular spectrum, requiring them to develop dual and triple mode phones that could operate on all portions of their system, whether analog, digital, 1.9 GHz or 800 MHz – technology developments that were financed by the carriers seeking to enhance their own services.³³

The fact that Southern pursued a regional iDEN strategy that limited its system build out to the pre-existing footprint of its parent utility holding company’s private

³² See Comments of Southern at p. 32 (Southern seeks a roaming mandate because providing service on its own spectrum would require Southern to “undertake significant investment to develop the necessary infrastructure to address these significant technical difficulties and reach economies of scale.”).

³³ Pacific Wireless asserts that “it is not aware of any PCS or cellular equipment or software that would currently enable [its] customers to roam on PCS or cellular networks. Even if such an advance were available, however, it would not service [its] customers that already have purchased single-mode iDEN handsets.” Comments of Pacific Wireless at p. 7, fir. 10. Certainly, no PCS or cellular carrier had access to dual mode technologies until they made the investment to develop such technologies. And, once those dual mode handsets were available, their existing customer base (exponentially larger than Pacific Wireless’) was required to change out their existing handsets to access the benefits of the new dual mode phone. Again, like Southern, Pacific Wireless is raising no special issues that have not been previously faced by other CMRS competitors.

internal communications system does not justify regulatory intervention -- particularly when Southern has had and continues to have numerous alternatives to expand its network and when the problems associated with its regional strategy are the result of its own business judgments, not a failure of competition in the CMRS marketplace. It is not the Commission's job to assure Southern or any other CMRS competitor the path of least resistance or a "quick fix." So long as consumers have significant competitive choices -- and there is sufficient evidence of competition in the wireless marketplace -- there is no justification for a mandatory automatic roaming obligation.

C. A Roaming Mandate Would Result in Unnecessary Commission Regulation of CMRS Rates, Terms and Conditions

In this era of unprecedented wireless telecommunications competition, an automatic roaming mandate would be a regulatory step backwards. If the Commission were to mandate automatic roaming, it would face numerous issues regarding whether the rates, terms and conditions of a particular roaming agreement are just, reasonable and nondiscriminatory. Since the marketplace would no longer dictate whether to enter into such an agreement, nor dictate the most economic rates, terms and conditions of such an agreement, it would inevitably fall to the Commission to review, adjudicate and approve these matters.

With respect to roaming agreements, as Corr Wireless recognized, the costs may vary from agreement to agreement, and one transaction may be more difficult and costly than another.³⁴ Additionally, as US Cellular noted, the Commission would be "inviting carrier-to-carrier adjudications involving such questions as whether CMRS carriers may charge higher rates to distant as opposed to neighboring systems, or their own systems as

³⁴ Comments of Corr at p. 9.

opposed to competitors, or may charge lower rates to carriers with more rather than fewer customers, or whether rural operators can support their buildouts and E-911 costs, for example, through relatively high roaming rates.”³⁵ Even Southern admits in its Comments that there are “numerous variables involved in roaming. . .”³⁶ Should the Commission choose this regulatory path, on the one hand it must be flexible enough to “allow carriers to continue to differentiate roaming terms based on market conditions[,]” but on the other hand, if the Commission’s regulatory framework is too broad, it becomes unworkable.³⁷

Given the state of competition in the CMRS industry and the Commission’s deregulatory policies of the past decade, it is, as CTIA stated, “by no means clear that the Commission has the resources or inclination to determine the rates and other terms for the many hundreds of cases that would arise with respect to CMRS providers.”³⁸ Additionally, as Justice Breyer stated in his concurrence in *Iowa Utilities*, a mandate such as the proposed roaming obligation would result in the Commission, not the marketplace, being the governor of such agreements:

Rules that force firms to share every resource or element of a business would create, not competition, but pervasive regulation, ***for the regulators, not the marketplace, would set the relevant terms.***³⁹

Thus, an automatic roaming mandate essentially would make the Commission a third party to the roaming negotiation process, particularly as envisioned by Southern. In its Comments, Southern proposes that the Commission establish a process whereby a

³⁵ Comments of US Cellular at p. 4; see also Comments of CTIA at p. 6 (“Regulatory complexities would surely arise over how to determine whether non-discriminatory rates, terms and conditions are being used and whether carriers are ‘similarly situated.’”).

³⁶ Comments of Southern at p. 21.

³⁷ Comments of Verizon at p. 9.

³⁸ Comments of CTIA at p. 6.

³⁹ *AT&T Corp. v. Iowa Util. Bd.*, 525 U.S. 366, 429 (1999) (emphasis added).

carrier is required to file a written statement of its reasons for refusing a particular roaming request. That written statement would be filed with the Commission within 15 days of the roaming request.⁴⁰ The Commission would then be required to review the written statement and determine whether or not the carrier “rightfully” refused to negotiate. If not, the Commission would issue an order requiring the carrier to negotiate with the requesting carrier. Once the negotiations are finished, the carrier seeking roaming would come back to the Commission (via a complaint) for assistance in the negotiating process if it “is not satisfied with the outcome of those negotiations. . .”⁴¹ Thirty days later, the other carrier would file with the Commission its response; 20 days later, a response from the complainant; and 20 days after that, the Commission would act as a settlement facilitator unless the parties certify that such settlement negotiations are “fruitless.”⁴² After conducting the settlement negotiations, the Commission would review the findings of fact and issue a decision within 30 days.

This process is not only unnecessary given the competitiveness of the CMRS industry, but duplicates the Commission’s existing complaint processes. Southern apparently disfavors the Section 208 complaint process and the prospects of seeking relief under Sections 201 and 202 of the Communications Act – perhaps because those provisions do not guarantee the results it desires; accordingly, Southern seeks an automatic roaming obligation. Notwithstanding Southern’s disinclination to enter into regulatory proceedings which carry with them the possibility of losing, they provide ample opportunity for the Commission to protect competition and ensure that consumers are not being harmed by the actions of any particular carrier. Therefore, there is no

⁴⁰ Comments of Southern at p. 22.

⁴¹ *Id.*

justification for creating an entirely new CMRS regulatory scheme that will force the Commission into regulating the rates, terms and conditions of wireless carriers' roaming agreements. In light of the increasingly competitive CMRS marketplace and the obvious success of the Commission's de-regulatory approach, any move to regulate these aspects of wireless service would be contrary to the public interest and Congress' intentions of creating a CMRS marketplace governed by marketplace forces rather than by Commission intervention.

**III. BY PROMOTING A RULE THAT WOULD EXPRESSLY
CONTRAVENE THE CMRS REGULATORY PARITY MANDATE,
SOUTHERN SEEKS TO ENHANCE ITS OWN COMPETITIVENESS
AT THE EXPENSE OF COMPETITION**

A. The CMRS Marketplace is the Relevant Marketplace for Analyzing the Need for An Automatic Roaming Mandate

Southern states that “the Commission should focus only on competition between trunked dispatch SMR providers to determine whether an automatic roaming rule should be implemented for digital SMR carriers.”⁴³ This argument should be rejected for two reasons: (a) it ignores the reality of the CMRS marketplace, including Southern's own plans for roaming on Nextel's CMRS network; and (b) it ignores Congress' regulatory parity mandate by singling out one CMRS sub-segment (actually one carrier) for a roaming mandate, thereby creating regulatory disparity among competing CMRS providers. As the Strategis Group recently stated, “[d]ispatch communications is neither an industry nor a distinct technology. Rather, it is an application that can be provided by several different technologies.”⁴⁴

⁴² *Id.* at p. 23.

⁴³ *Id.* at p. 7.

⁴⁴ The Strategis Group Report at p. 7.

First, in attempting to justify an automatic roaming mandate that would require Nextel to provide Southern access to Nextel's nationwide network, Southern boldly asks the Commission to limit its analysis to a supposed "marketplace" of services that do not even include the very services Southern seeks to provide via a roaming mandate: interconnected mobile telephone services.⁴⁵ **In other words, Southern would have the Commission review the competitiveness of one purported relevant market (i.e., non-interconnected trunked dispatch, or SMR, services) for the purpose of obtaining relief in a different marketplace (i.e., interconnected mobile telephone service).**

To make its relevant marketplace argument, Southern must carve up the CMRS marketplace into arbitrary slices, asking the Commission first to accept that digital SMRs are a self-contained group comprised only of Nextel, Southern and Pacific Wireless competing only among themselves and offering services not generally substitutable with cellular and PCS. Then, Southern makes further fine slices and distorts marketplace reality by portraying a separate market of trunked *dispatch* SMRs, asserting that competition therein is insufficient, thus warranting an automatic roaming rule for digital SMRs. As a result of its analysis, Southern concludes that the Commission should mandate that those digital SMRs, specifically Nextel, provide it access to CMRS networks to enhance its ability to provide nationwide *interconnected* mobile telephone services.

Southern's back-and-forth arguments vividly demonstrate that interconnected mobile telephone services and non-interconnected dispatch services, as well as numerous

⁴⁵ See Exhibit A attached hereto, a November 14, 2000 Letter from Robert P. Edwards to Morgan E. O'Brien requesting that Nextel implement manual and automatic roaming as it relates "to the 800 **MHz Motorola iDEN interconnect service** feature offered by Nextel and Southern alike." (emphasis added) On December 7, 2000, Nextel provided Southern a written response containing proprietary information about

other wireless services, have converged into a single marketplace – any one service substitutable for another. Southern states that “the degree to which [Nextel or Southern] attracts the same type of customer as individual consumer oriented providers such as Verizon Wireless [Verizon] or Voice&ream Wireless [Voicestream] is irrelevant”⁴⁶

On the contrary, it is exceedingly relevant because Southern is seeking a roaming agreement to provide the very same interconnected mobile telephone service provided by Verizon, Voicestream, AT&T Wireless and many others. This is a fatal flaw in Southern’s position.

The obvious reason for Southern’s attempt to winnow away competitors from the appropriate marketplace analysis is to portray its services as in competition only with those of Nextel. This assertion ignores reality. As the Commission recently concluded “. . . the mobile telephone sector continues to experience heightened competition as a result of the expansion by broadband PCS carriers and Nextel.”⁴⁷ When it imposed a manual roaming obligation on only “covered SMRs” (rather than all interconnected SMRs), the Commission stated that it intended “to cover only those SMR carriers that compete directly with traditional providers of cellular service and broadband PCS service.”⁴⁸ The Commission’s statement recognized that covered SMRs such as Nextel and Southern compete directly with cellular and PCS providers in the CMRS marketplace. The reality of the wireless marketplace is simple: consumers seeking wireless services have numerous options beyond Nextel and Southern. As US Cellular

the operation of iDEN systems. On February 2, 2001, Nextel met with Southern and Motorola, Inc. (“Motorola”) to discuss iDEN roaming in greater detail.

⁴⁶Comments of Southern at p. 7.

⁴⁷Fifth Report on Competition at p. 11.

⁴⁸*Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, Third Report and Order and Memorandum Opinion and Order on Reconsideration, CC Docket No. 94-54, FCC 00-25 1, released August 28, 2000 (hereinafter “Third Report and Order on Roaming”) at para. 13.

stated in its Comments, "[s]ince 1996, PCS **and SMR** carriers have become real competitors to cellular in much of the country."⁴⁹

Both Nextel and Southern offer interconnected and dispatch services substitutable for the suite of services offered by-cellular and PCS carriers today.⁵⁰ Interconnected mobile telephone service and dispatch services are themselves similarly situated substitutable services,⁵¹ and they continue to converge in the CMRS marketplace. Both provide users the ability to communicate while on the move,⁵² and therefore, at certain price points consumers will find one service more desirable than the other. Moreover, many CMRS competitors have created pricing plans intended to attract customers away from Nextel's and Southern's dispatch services.⁵³ The Commission's Fifth Report on Competition chronicled this service convergence as cellular and PCS licensees offer increasingly competitive calling plans intended to compete with the group functionality of dispatch services.⁵⁴ Industry analysts have recognized the continued convergence of services as cellular and PCS licensees launch an array of service packages to compete with integrated interconnected mobile telephone/dispatch services:

- "You can't compare the SMR market as an independent market anymore. . . . They are part of the PCS market nowadays. Their services are definitely not marketed toward the dispatch market exclusively anymore."⁵⁵

⁴⁹ Comments of US Cellular at p. 5 (emphasis added).

⁵⁰ The Strategis Group reports that "[a]pproximately 85% of all [Nextel] net additions are former cellular telephone users. . . [who] are replacing a significant portion of their traditional cellular calls with Direct Connect calls." The Strategis Report at p. 49.

⁵¹ CMRS Third Report and Order at para. 58.

⁵² *Id.*

⁵³ See Exhibit B attached hereto, listing some of the innovative calling plans developed by cellular and PCS competitors to respond to digital SMRs' and other CMRS providers' integrated service packages in the CMRS marketplace.

⁵⁴ Fifth Report on Competition at p. 71 (Cellular and PCS licensees "now offer plans that allow unlimited calling among members of a defined group, such as a family, or among all of an operator's subscribers in a defined area.").

⁵⁵ Dan Meyer, The Winds of Change: Southern Linc, Nextel Partners Define their Roles in Market, Radio Comm. Rept., Nov. 13, 2000, at p.16 (quoting Elliot Hamilton, Senior Analyst, Strategis Group).

- SMR integrated voice/dispatch service “awakened the sleeping giant of the cellular industry, which previously had never paid much attention to the dispatch market.”⁵⁶
- “Many regional operators such as Bell Atlantic Mobile have been offering free or reduced rates for mobile-to-mobile calls in an effort to fight off intense competition for business users from Nextel, which is targeting work groups with its integrated cellular and dispatch service.”⁵⁷
- “Noel Salmi, director of corporate communications with AT&T Wireless, said the company’s group calling plan targets much of the same market segments Nextel is going after, but the advantage is that customers can call five landline numbers for free.”⁵⁸
- “The Strategis Group projects that by 2004, subscribers to Workgroup and family calling plans will account for slightly more than 20% of cellular/PCS subscribers.”⁵⁹

The point here is compelling: regardless of the spectrum on which they initiated service, all CMRS carriers now must offer not just mobile telephone or just trunked dispatch service, but a full menu of mobile telephone, group calling and advanced data capabilities in order to remain competitive in the CMRS marketplace. Customers do not purchase mobile communications based on carriers’ spectrum classifications; they simply enjoy the benefits of vigorous competition among all CMRS carriers. For example, in recent exit interviews of departing Nextel customers, about half of those that had enrolled in a replacement CMRS service stated that their new plan had either a special price for mobile-to-mobile service or that this mobile-to-mobile service was free.⁶⁰ Approximately 60% of these former customers had used Nextel’s Direct Connect (sm) feature.⁶¹ These facts confirm the Commission’s expectations that “consumers may begin to use more of these wireless services interchangeably (and that carriers may

⁵⁶ Alan Tilles, Is there still a place for plain old dispatch?, Radio Comm. Rept., Feb. 28, 2000, at p.42.

⁵⁷ Lynette Luna, Group Calling is Weapon in Wireless Wars, Radio Comm. Rept., June 28, 1999, at p.20.

⁵⁸ *Id.*

⁵⁹ The Strategis Group Report at p. 67.

⁶⁰ Nextel Customer Satisfaction: November 2000 Exit Interviews, Dec. 15, 2000, at p. 24. -7,

⁶¹ *Id.* at p. 26.

increasingly market such services to the same set of consumers).”⁶² Even more to the point, they expressly contradict Southern’s claims that digital SMR providers’ dispatch services do not face direct competition from PCS and cellular providers.

Still more intensive service convergence and CMRS competition is on the way. Wireless handset and infrastructure manufacturers are developing cellular and PCS handsets that integrate the interconnected mobile telephone service with dispatch functionality, much like Nextel and Southern’s iDEN technology. For example, OmniExpress, a joint venture between Qualcomm and Descartes Systems Group, offers an integrated wireless dispatch and route optimization solution that includes mobile terminals within the vehicle, a communications network to connect drivers to dispatchers and dispatch and route optimization that promotes the efficient use of fleet assets.⁶³ In July 1999 Sprint PCS purchased OmniExpress for \$400 million,⁶⁴ and Qualcomm has already obtained the trademark rights to “Q-chat.” Q-chat is the button located on the side of Qualcomm phones that will connect one user to all of the other users in a particular calling group.” This single-button push-to-talk fleet service will likely further intensify competition among Sprint PCS, Nextel, Southern and other CMRS providers.

Thus, today’s CMRS marketplace reality is that Nextel, Southern, AT&T Wireless, Verizon and other CMRS providers are competing head-to-head in providing a variety of wireless communications services. Nextel and Southern cannot be segregated

⁶² In re Geotek Communications, Inc., DA 00-89, released January 14, 2000 (hereinafter “Geotek Order”) at para. 27.

⁶³ Press Release, Qualcomm, *Solution by Descartes and Qualcomm Improves Communication and Smoothes Logistics for Private Fleets, Less-Than-Truckload Carriers and Metropolitan Fleets* (June 15, 2000); www.qualcomm.com.

⁶⁴ Press Release, Qualcomm, *Sprint Signs Agreement Valued at Approximately \$400 Million with Qualcomm for the Purchase of CDMA Digital Handsets* (July 20, 1999); www.qualcomm.com.

⁶⁵ Press Release, Qualcomm, *Secure Wireless Handsets for Civilian Use* (January 2001); www.qualcomm.com.

from the overall CMRS marketplace for roaming purposes and, as competitors therein, must be subject to the same Commission regulations, as discussed further below.

B. Southern’s Request for a Digital SMR-only Roaming Mandate Violates Congress’ CMRS Regulatory Parity Requirement, Adversely Impacting Competition*

In 1993, Congress passed the Omnibus Budget Reconciliation Act (“1993 Budget Act”),⁶⁶ creating the CMRS regulatory classification and mandating that all CMRS carriers be subject to comparable regulation. Congress concluded that a “regulatory parity” mandate was necessary “to establish a consistent regulatory framework for all commercial mobile radio services,” and was “an essential step toward achieving the overarching Congressional goal of promoting opportunities for economic forces -- not regulation -- to shape the development of the CMRS market.”⁶⁷ Southern itself stated as recently as last year that the 1993 Budget Act “established a national policy *mandating that all participants in the commercial wireless industry* be afforded *equal* regulatory treatment.”⁶⁸ “Congress,” Southern continued, “mandated that the [Commission] modify its rules to ensure that all licensees in the wireless industry are subject to the same rules.”⁶⁹

Now, in a CMRS marketplace that has become even more competitive in the year since Southern sought regulatory parity for all CMRS, Southern ignores marketplace realities and the 1993 Budget Act in urging the adoption of a disparate automatic roaming mandate applicable to one carrier. Southern promotes this disparity to force Nextel to underwrite Southern’s competitiveness in the CMRS marketplace. Pursuant to the 1993

⁶⁶ Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 312 (1993).

⁶⁷ CMRS Third Report and Order at **para.** 29.

⁶⁸ Comments of Southern Company, PR Docket No. 93-144, filed March 27, 2000, at p. 1.

⁶⁹ *Id.* In that instance Southern argued, ultimately successfully, that its single site SMR licenses should have the same extended five year construction period as wide-area licenses held by competing CMRS carriers.

Budget Act, as Southern previously recognized, the Commission must treat each of these competitors comparably to ensure that “consumer demand, not regulatory decree, dictates the course of the mobile services marketplace.”⁷⁰ Southern’s eager abandonment of this legal principle further exposes its desperation to obtain competitive advantage through regulatory disparity.⁷¹

Additionally, in its order “establish[ing] regulatory symmetry among similar mobile services,”⁷² the Commission applied a single spectrum cap to all CMRS providers, whether cellular, PCS or SMR, limiting their spectrum holdings in any one market to 45 MHz.⁷³ When Southern sought an SMR-specific spectrum cap in 1999 based on the same marketplace “justifications” it applies to its proposal for a disparate roaming obligation,⁷⁴ the Commission rejected the request concluding that “the appropriate service(s) for a spectrum cap are all broadband CMRS, as CMRS carriers generally compete or have the potential to compete against each other.”⁷⁵ Given the overwhelming evidence that all CMRS licensees, whether originally licensed under the cellular, PCS or SMR rules, compete vigorously with each other, the same conclusion applies here. To the extent the increasingly competitive CMRS marketplace is in need of an automatic roaming mandate, it must apply equally, to the extent practicable, to all CMRS competitors.

⁷⁰ CMRS Third Report and Order at **para.** 1.

⁷¹ Interestingly, Southern initially had a competitive advantage over new entrant CMRS providers. First, using its position as a utility company, Southern was able to obtain spectrum free of charge by licensing 800 MHz Business/Industrial Land Transportation channels that have not been available to other commercial telecommunications service providers since 1995 (and still are not available to commercial providers for initial licensing). Additionally, Southern had a pre-existing system footprint in the Southeastern U.S. and a “captured” customer base via Southern Company’s utility employees.

⁷² CMRS Third Report and Order at **para.** 1.

⁷³ *Id.* at **para.** 268.

⁷⁴ Comments of Southern Communications Services, Inc., filed January 25, 1999 in WT Docket No. 98-205.

⁷⁵ Report and Order, WT Docket No. 98-205, FCC 99-244, released September 22, 1999, at **para.** 133.

C. The Facts Do Not Support Southern’s Claims Regarding Monopoly Power and Control of Essential Facilities

To demonstrate the existence of an “essential facility” to which it is entitled government-mandated access, Southern would have to demonstrate: (1) control of an essential facility by a monopolist; (2) its inability to practically or reasonably duplicate the essential facility; (3) denial of the use of the facility to a competitor; and (4) the absence of any legitimate business or technical reason for the denial.⁷⁶ Southern’s arguments fail on all counts.

1. *800 and 900 MHz SMR Spectrum is Not an Essential Facility, and Nextel is Not a Monopolist.*

By ignoring that Nextel and Southern compete with any number of CMRS competitors – far larger by many measures than Nextel – Southern sets up its “monopolist” claim. As the fifth largest CMRS carrier in the United States, providing service to seven million of the more than 100 million total domestic wireless subscribers,⁷⁷ Nextel is hardly a monopolist (or even a dominant carrier). While Nextel provides service to a significantly larger customer base than Southern, has competed for and acquired significantly more spectrum than Southern, and has invested in and constructed a significantly larger network than Southern’s, these factors have no bearing on whether Nextel is a “monopolist” that may or may not have control of an essential facility. In fact, Southern is expanding its wireless customer base at a rapid pace. In August 2000, Southern signed its 200,000th wireless customer.⁷⁸ This represents a 33%

⁷⁶ *MCI Communications Corp. v. AT&T*, 708 F.2d 1081, 1132 (7th Cir. 1982), cert. denied, 464 U.S. 891 (1983) (“*MCI v. AT&T*”).

⁷⁷ See, e.g., News Release of the Cellular Telecommunications and Internet Association, “US Wireless Industry Continues to Experience Record-Setting Growth,” October 18, 2000, www.wow-com.com/news.

⁷⁸ Press Release, Southern Company, *Southern LINC Reaches 200,000 Customers* (August 29, 2000) (only about 15,000 of those users were power company employees), <http://newsinfo.southernco.com>.

increase in its customer base in less than a year,⁷⁹ thus demonstrating that Southern has identified a customer base that values its regional CMRS service. Thus, Southern's growing CMRS business in-and-of-itself adds to the evidence that Nextel, far from being a monopoly, faces competition in the marketplace.

With respect to Southern's assertion that 800 MHz and 900 MHz SMR spectrum, and Nextel's iDEN network thereon, is somehow an "essential facility," it fails to demonstrate that it has no other alternatives for achieving its objective of providing interconnected mobile telephone services outside the scope of its existing system footprint. All Southern has demonstrated is that Nextel's network is the easiest, cheapest path of least resistance to achieving its business objectives. The fact that an existing facility may make Southern's business plans simpler and more economical does not make those facilities "essential" requiring governmentally mandated access to them.⁸⁰ As described below, there are any number of ways that Southern could duplicate Nextel's nationwide network.

2. *Southern Can Duplicate Nextel's Facilities for Roaming Purposes.*

At the core of the essential facilities doctrine is the requirement that the facility at issue is "unique,"⁸¹ and that the supposed monopolist is "misusing control of [that] **unique facility** to foreclose competition in a downstream market."⁸² The Commission

⁷⁹ *Id.*

⁸⁰ See, e.g., *Twin Laboratories, Inc. v. Weider Health & Fitness*, 900 F.2d 566, 570 (2d Cir. 1990) ("As the word "essential" indicates, a plaintiff must show more than inconvenience, or even some economic loss; he must show that an alternative to the facility is not feasible.") (citations omitted); see also *Anti-Monopoly, Inc. v. Hasbro, Inc.*, 1995 WL 380300 at *6 (S.D.N.Y. 1995) ("The essential facility doctrine cannot be read so broadly as to mean that a plaintiff is entitled to any facility it finds desirable or convenient. . .").

⁸¹ *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice Of Proposed Rulemaking, 15 FCC Rcd 3696 (1999) ("Local Competition Third R&O and Fourth FNPRM") at para. 59 (citations omitted).

⁸² Local Competition Third R&O and Fourth FNPRM at para. 60. For example, in *MCI v. AT&T*, AT&T had "complete control over the local distribution facilities," and its denial of interconnection foreclosed MCI from providing end-to-end long distance telephone service. *MCI v. AT&T* at 1133.

has emphasized in explaining this requirement that it is not enough that competitors “are merely ‘impaired’ in their ability to provide services they seek to offer.”⁸³ Assuming Southern’s goal is to provide its customers a nationwide service, Southern has had and continues to have a number of avenues for achieving that goal.

First, Southern could acquire spectrum and construct its own nationwide network, using the vast resources of its corporate parent, Southern Company.⁸⁴ To date, the Commission has held thirty-two auctions for various types of radio licenses, of which sixteen were for licenses that could support broadband CMRS services. Notwithstanding the extensive financial resources of its world class electric utility parent company, Southern chose to actively participate in only three of those auctions spending less than \$53 million for fewer than 200 wide-area SMR licenses. In sharp contrast, Nextel has made successful bids totaling nearly \$350 million – monies it raised through equity and debt placements – for spectrum licenses in these auctions. Southern’s failure to even participate in the recent PCS C and F Block **reauction** fatally undercuts any argument that Nextel has monopoly control of an essential facility. Had it participated in the auction, it would have had the opportunity to obtain a near-nationwide footprint and deploy available TDMA, CDMA or other technologies, or work with a manufacturer to develop a dual-mode handset that could integrate its iDEN capabilities. Southern’s decision not to invest simply is not a decision that requires Commission redress.

⁸³ Local Competition Third R&O and Fourth FNPRM at para. 60.

⁸⁴ Southern Company is “the largest producer of electricity in the United States and one of the world’s leading independent power producers.” Press Release, “Southern LINC to Offer Customers Access to Wireless Data and Internet Using Motorola Internet-Ready Handsets,” July 14, 1999, www.moboc.com/news. Having operations that span the globe producing record earnings, Southern clearly has the financial ability and business acumen to participate in Commission spectrum auctions and to win them, as well as to acquire expanded coverage through secondary market spectrum acquisitions and mergers. See Press Release, “Southern Company Reports Record Earnings for 2000,” January 19, 2001.

In addition to Southern's decision to forego opportunities in Commission spectrum auctions, Southern has had and still has limitless opportunities to create a nationwide footprint via the secondary marketplace. The Commission has found that "there are now six nationwide or near-nationwide CMRS carriers offering service in the United States, as well as a large number of regional and local CMRS providers."⁸⁵ Nextel's CMRS network is only one of these networks. Southern, as other CMRS carriers have done, can develop dual mode handsets enabling its customers to roam with any of these providers. For example, Motorola already offers an iDEN/GSM dual mode handset; nothing prevents Southern from offering it or from working with Motorola to develop other dual mode (or triple mode) handsets to roam on non-iDEN systems.⁸⁶ Of course, this would require Southern to "undertake a significant investment to develop the necessary infrastructure to address these technical difficulties"⁸⁷ – investment Southern apparently believes it should not have to make or that it cannot pass on to its parent company's ratepayers.⁸⁸

3. *Nextel Never Refused to Deal with Southern.*

The third element of the essential facilities doctrine is a categorical refusal to deal by the monopolist controlling the facility essential to competition in a downstream market. So absolute is this tenet that the Commission has emphasized "the essential facilities doctrine allows monopolists to continue charging monopoly rates for use of

⁸⁵ Fifth Report on Competition at pp. 10-12.

⁸⁶ Southern contends that "due to the current state of technology its customers can only roam with other carriers using the 800 MHz SMR iDEN platform [and] its only options for roaming partners are Nextel and Nextel Partners." Comments of Southern at p. 3. This does not mean that Nextel's frequencies are "essential facilities." It only means that Southern's other alternatives may be more expensive than accessing Nextel's network.

⁸⁷ Comments of Southern at 32.

⁸⁸ Southern vociferously attacks Nextel's secondary market spectrum acquisitions; this is just "sour grapes." Southern has had equal opportunities to make such acquisitions.

their facilities[,]" so long as they do not refuse to deal with potential competitors.⁸⁹

Having failed to demonstrate that Nextel is a "monopoly," that CMRS spectrum is an "essential facility," and that it cannot reasonably duplicate facilities to provide nationwide CMRS services, Southern also fails to establish a "refusal to deal" by Nextel.

Significantly, Southern has yet to "bring to the table" any reasonable, economic bilateral roaming proposal under which both Nextel's customers and Southern's customer benefit substantially equally. All Southern has done to date is attempt to foist upon Nextel – via Commission intervention – an obligation to open its nationwide network to Southern's customers so they can gain access to nearly all but some 100,000 square miles of the Southeastern U.S. while Nextel's customers would have access to a few new areas of rural Alabama, Georgia, and Mississippi." Nextel has discussed and will continue discussing the technical possibility of manual roaming among iDEN systems, and will welcome any written automatic roaming proposal that makes economic and operational sense for Nextel and its customers." Thus, Southern's assertions that Nextel has "refused to deal" should be considered in the light in which they were made – not in the context of attempting to fabricate an anti-trust lawsuit, but in the context of gaining access to Nextel's competitive CMRS system via regulatory fiat.

⁸⁹ Local Competition Third R&O and Fourth FNPRM at **para.** 60 (citations omitted).

⁹⁰ As Nextel Partners deploys its competitive services in those rural areas in competition with Southern, Nextel's customers will not need access to Southern's system to obtain service in even those limited geographic areas.

⁹¹ As noted earlier, Nextel met with Southern and Motorola on February 2, 2001 to continue discussions on roaming among iDEN systems, focusing in large part on whether in-market roaming can be technically avoided when there is a roaming agreement between iDEN carriers with overlapping coverage areas.

4. *Forcing Nextel to Enter Non-Economic Roaming Arrangements Is Contrary to the Essential Facilities Doctrine and Would Inhibit Meaningful Competition.*

The final element of the essential facilities doctrine “basically raises the familiar question of whether-there is legitimate business justification for the refusal to provide the facility.”⁹² As the Commission has explained, the essential facilities doctrine “creates a narrow exception to the general antitrust presumption that a single firm may decline to deal with another firm.”⁹³ In other words, if there are legitimate business reasons for a carrier to choose not to enter into a roaming agreement, there is no justification for forcing that carrier to do so. In general, “a business justification is valid if it relates directly or indirectly to the enhancement of consumer welfare.”⁹⁴ While Nextel has demonstrated its willingness to discuss roaming agreements with its CMRS competitors, Nextel opposes governmental mandate that would require it to enter non-economic roaming arrangements – for example, a roaming agreement that provides significant benefit to its competitors’ customers but little or no corresponding benefit to its own customers.⁹⁵

A carrier’s decision whether or not to enter into a roaming agreement should be left to the marketplace in the competitive CMRS environment. Forcing carriers to enter into roaming agreements without regard for their economic impact will harm customers by imposing on them costs that otherwise would not be incurred by the carrier. By injecting these unjustified costs into the marketplace, while creating disincentives for

⁹² *Anaheim v. So. California Edison Co.*, 955 F.2d 1373, 1380 (9th Cir. 1992) (citations omitted).

⁹³ Local Competition Third R&O and Fourth FNPRM at para. 59 (citations omitted).

⁹⁴ *Data General Corp. v. Grumman Sys. Support Corp.*, 36 F.3d 1147, 1183 (1st Cir. 1994).

⁹⁵ This, of course, is precisely the case Southern presents. Its customers would gain a nationwide roaming opportunity, while Nextel’s customers would gain redundant coverage in Greater Atlanta and some limited rural coverage beyond Nextel’s network in parts of Alabama and Mississippi. Similarly, Pacific Wireless’

carriers to invest in mobile telecommunications infrastructure, an automatic roaming mandate would inhibit meaningful competition to the detriment of all consumers.

D. Southern's Comments are Replete with Factual Misstatements on Which It Bases its Faulty Legal Analysis

Southern's arguments rely on a foundation of factual inaccuracies. This section exposes their most egregious inaccuracies and misrepresentations, and sets the record straight. When the facts are exposed, Southern's self-serving desperate attempt to build its business through government fiat, rather than marketplace competition, is readily apparent.⁹⁶

Southern Claim: *The SMR industry in the United States, "unlike the cellular and PCS markets," is "consolidating and there are fewer carriers today than ever before."*⁹⁷

Fact: Cellular and PCS carriers have consolidated significantly over the past two or three years, but because all CMRS carriers compete, competition has never been stronger.

Nextel agrees that the SMR industry has consolidated in recent years; it takes issue, however, with Southern's attempt to contrast SMR consolidation with the same trend in the overall CMRS industry. As the Commission recognized in the Fifth Report on Competition, there has been significant consolidation in the CMRS industry -- Voicestream Wireless Corp., Onmipoint Corp. and Aerial Communications, Inc. combined to create a nationwide footprint; mega-firms Bell Atlantic Mobile Systems,

customers would gain nationwide coverage while Nextel's customers would gain little, if any coverage, outside of Nextel's existing California footprint.

⁹⁶ Southern's efforts to enhance its competitiveness via regulatory mandates rather than marketplace innovation and investment is further demonstrated by its recent flurry of petitions at the Commission, wherein it seeks to block unrelated Nextel activities unless the Commission mandates automatic roaming between Nextel and Southern. See Comments of Southern LINC in DA 00-2352, filed November 20, 2000, and Reply of Southern LINC, a late-filed, unauthorized pleading submitted January 9, 2000 in DA 00-2352, both opposing the transfer of Motorola's 900 MHz SMR licenses to Nextel; see *also* Reply Comments of Southern LINC, submitted January 22, 2001 in CC Docket No. 94-102, requesting that the Commission condition approval of Nextel's Phase II Enhanced 911 implementation plan on a mandatory roaming agreement with Southern.

⁹⁷ Comments of Southern at Executive Summary p. 1 (emphasis added).

GTE, Vodafone, Airtouch Communications, Inc. and Primeco Personal Communications have merged to create “Verizon Wireless,” another nationwide competitor; and Regional Bell Operating Companies Bellsouth and SBC have created a joint wireless venture called Cingular.⁹⁸ Notably, each of these mergers was, in part, an investment by the carriers in facilities and spectrum necessary to create a nationwide footprint and achieve the economies of scale necessary to be more competitive, thereby benefiting wireless consumers.⁹⁹ Consolidation is occurring throughout the CMRS industry.

Thus, Nextel is far from alone in its efforts to expand its footprint and provide improved services to the public, and no negative anti-competitive inference can be drawn from Nextel’s actions. The Commission and the Department of Justice have approved such mergers and acquisitions precisely because they have strengthened competition among providers of CMRS services. Had the Commission viewed the CMRS industry as sharply segmented, as Southern proffers, such consolidation might have been problematic.

Southern Claim: *“[T]he Commission allocated 50 MHz [of spectrum] 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.”¹⁰⁰*

Fact: SMRs operate on 26.5 MHz of 800 MHz spectrum and 5 MHz of 900 MHz spectrum, in addition to the 120 MHz of PCS spectrum and 50 MHz of cellular spectrum also available for the provision of trunked dispatch SMR services.

⁹⁸ Fifth Report on Competition at p. 11.

⁹⁹ Id. at p. 10. The Commission and the Department of Justice have approved such mergers and acquisitions precisely because they have strengthened competition among providers of CMRS services. All CMRS carriers offer substitutable, untethered communications for people on the go; Southern’s attempt to carve out a separate digital SMR or **trunked** dispatch SMR service for roaming purposes is factually inaccurate and misleading.

¹⁰⁰ Comments of Southern at p. 19.

In making this statement, Southern implies there is no spectrum -- other than this limited block of 19 MHz -- on which to provide "SMR" services. This is incorrect. The Commission has allocated 14 MHz of 800 MHz spectrum and 5 MHz of 900 MHz spectrum specifically to "SMR services;" however, this 19 MHz is not the only spectrum on which the Commission permits SMR services. For example, Southern's own SMR operations have limited use of channels from this 19 MHz. Nearly all of the channels on which Southern's system operates are 800 MHz channels allocated to the Business and Industrial/Land Transportation ("B/ILT") service pools for use by Business or Industrial/Land Transportation eligibles for internal employee communications."

— Southern also ignores the 150 General Category channels (7.5 MHz) at 800 MHz that are currently used for the provision of SMR services." Additionally, nowhere does Southern recognize that SMR services can be provided on the 50 MHz of cellular and 120 MHz of PCS spectrum, or on the new 700 MHz Guard Band channels, the 700 MHz commercial allocation, or at 220 MHz and 450 MHz. The Commission also is currently considering permitting commercial interconnected and dispatch service on the five MHz of 900 MHz B/ILT channels.¹⁰³

The fact is that the services Nextel, Southern, AT&T Wireless, Verizon, among others, provide the general public can be legally and technically offered using any of the more than 200 MHz of CMRS spectrum as well as the 700 MHz commercial and Guard

¹⁰¹ Comments of Southern Company, filed March 27, 2000, in PR Docket No. 93-144, at p. 5 (it is "crystal clear that the Southern LINC system is composed of more than 95% converted B/ILT channels.")

¹⁰² These channels were recently licensed on a geographic area basis in the 800 MHz SMR General Category Service Auction. Public Notice, "800 MHz Specialized Mobile Radio ("SMR") Service General Category (85 1-854 MHz) and Upper Band (861-865 MHz) Auction Closes," DA 00-2037, released Sept. 6, 2000.

¹⁰³ See Report and Order and Further Notice of Proposed Rulemaking, FCC 00-403, released November 9, 2000.

Band channels. All it takes is a licensee willing to undertake the attendant entrepreneurial risks and make the investments needed to do so. Carriers like Sprint PCS, Nextel, Verizon and Cingular have and continue to do so. Southern – despite having perhaps the most financial resources – has not and apparently will not. Southern appears to invest only when it gets favored monopoly utility treatment and a guaranteed return on investment. Faced with vigorous competition in the CMRS industry, it has turned to the next best thing: what CTIA calls a “free ride” for its customers on a competitor’s network.

Southern Claim: *In discussing Nextel’s relationship with Nextel Partners, Southern references Nextel’s “majority-owned affiliate, Nextel Partners” and Nextel Partners’ “presumably Nextel-controlled Board. . .”*¹⁰⁴

Fact: Nextel does not control Nextel Partners.

Southern boldly makes this claim about Nextel’s controlling “majority” interest despite having stated just eight pages earlier that Nextel Partners is “approximately 32% owned by Nextel . . .”¹⁰⁵ As Southern knows, Nextel does not own a majority interest in Nextel Partners, and Nextel does not have “control” over Nextel Partners. Had Southern checked any of the numerous public documents available regarding Nextel Partners, it would have found that Nextel holds only one of the five seats on Nextel Partners’ Board of Directors. Accordingly, Nextel does not control Nextel Partner’s roaming decisions.

Nextel and Nextel Partners created their affiliation for the purpose of deploying advanced CMRS services to rural and secondary markets more quickly than Nextel alone could have achieved. Nextel Partners is rapidly deploying services in a number of areas of the country, including rural areas of the Southeastern United States, areas previously

¹⁰⁴ Comments of Southern at p. 10 (emphasis added).

¹⁰⁵ *Id.* at p. 3.

covered by only a handful of CMRS carriers including Southern. To expand its network and enhance the quality and availability of its services, Nextel concluded that an investment in Nextel Partners would be an economic and pro-competitive avenue to achieving those goals. Thus, unlike Southern, Nextel's business arrangement with Nextel Partners demonstrates Nextel's commitment to the mobile telecommunications industry and its increasing competitiveness.

Southern Claim: *Southern suggests that Nextel has prevented it from achieving roaming agreements with iDEN and Global System for Mobile ("GSM") operators throughout the world.*¹⁰⁶

Fact: Southern can provide its customers the dual mode iDEN/GSM phone, negotiate its own roaming agreements with worldwide carriers and thereby enhance the competitiveness of its service.

By making a significant investment in technology development, Nextel worked with its chief infrastructure vendor, Motorola, to produce the i2000 iDEN mobile handset. The i2000 handset is a dual mode iDEN/GSM phone that can operate on many iDEN and GSM systems around the world. In conjunction with developing this new handset, Nextel, on its own initiative, negotiated roaming arrangements with over 100 iDEN and GSM operators worldwide to provide significant additional coverage for its customers and, conversely, provide new and expanded coverage areas for those foreign operators. As a result of Nextel's investment in technology development, Southern can offer the i2000 dual mode handset to its customers without incurring the costs, development time and risks that Nextel undertook. There is no reason that Southern cannot offer the i2000 handset on its network and initiate roaming discussions with any

¹⁰⁶ *Id.* at p. 13.

number of iDEN and GSM providers around the world. In fact, Southern can once again enjoy a “free ride” on Nextel’s accomplishments, without any governmental intervention.

Southern Claim: *Southern asserts that Nextel is in some way depriving Southern’s customers of access to 711 service.*¹⁰⁷

Fact: 711 access to Telecommunications Relay Services (“TRS”) is a contractual relationship between the carrier and its customer, and potential users have the ability to choose their wireless provider based on, among other things, where it can provide 711 access to TRS Centers.

Southern’s contention regarding 711 access is a red herring intended to inflate the legitimacy of its legal arguments. The Commission’s recent decision mandating that wireless providers offer 711 access to TRS Centers created a new contractual obligation between every wireless carrier and its customers.¹⁰⁸ Once 711 is fully deployed on Nextel’s system, every Nextel customer will have the right to expect that 711 will connect to that state’s TRS center. However, those customers will purchase Nextel’s service knowing that they will reach TRS centers via 711 only in those areas of the country where Nextel has coverage. They do not expect, and the Commission did not require, that they reach 711 in any city or state where Nextel does not provide service. A hearing-impaired person or a person who regularly uses a TRS center to reach a hearing-impaired person, therefore, will choose their wireless provider based on many factors, including the areas in which he or she will be able to reach a TRS center by dialing 711. Just as Nextel, AT&T Wireless, Sprint PCS, Voicestream and the rest offer different coverage footprints – which prospective TRS users consider in selecting a wireless carrier – prospective Southern TRS users will consider coverage in making their choice. Nextel

¹⁰⁷ *Id.* at p. 15.

¹⁰⁸ See *Use of 911 Codes and Other Abbreviated Dialing Arrangements*, Second Report and Order, FCC 00-257, released August 9, 2000.

is not responsible for remedying any shortcomings in Southern's strategic coverage decisions.

IV. CONCLUSION

The above sampling of major factual inaccuracies is the foundation of Southern's blatant effort to enhance its own competitive position at the expense of competition in the overall CMRS marketplace. The facts support an entirely different conclusion; i.e., that Nextel and Southern are both competitors in the broader CMRS market and that all CMRS carriers are legally and technically free to develop and offer substitutable untethered wireless communications for people on the go. Attempting to put one sub-set of CMRS provider at a competitive disadvantage by forcing it into potentially uneconomic roaming arrangements -- while the remainder of the CMRS industry is free to make only economic market-based business decisions -- creates an enormous regulatory disparity.

The Commission's job is to protect competition; not competitors. As the record in this proceeding aptly demonstrates, competition is flourishing in the CMRS marketplace. The proposed governmental intervention is not necessary to protect or in any way enhance that competition. On the contrary, such regulation would protect certain competitors at the expense of wireless consumers. An automatic roaming mandate would create disincentives for carriers to build out networks and deploy unique, differentiated products. Additionally, consumers would be saddled with otherwise unnecessary costs as a result of carriers entering into uneconomic roaming arrangements in a competitive marketplace. Accordingly, this mandate is contrary to the public interest.

For all of the reasons stated herein, the Commission should not intervene in the competitive CMRS marketplace and impose a roaming mandate on any CMRS carrier.

Respectfully submitted,

NEXTEL COMMUNICATIONS, INC.

By, 

Robert S. Foosaner
Senior Vice President – Government Affairs

Lawrence R. Krevor
Vice President – Government Affairs

Laura L. Holloway
Director – Government Affairs

James B. Goldstein
Regulatory Counsel

2001 Edmund Halley Drive
Reston, VA 20191
703-433-4141

Date: February 5, 2001

EXHIBIT A

SOUTHERN REQUEST FOR ROAMING – NOV. 14, 2000

TROUTMAN SANDERS LLP

A T T O R N E Y S A T L A W
L I M I T E D L I A B I L I T Y P A R T N E R S H I P

BANK OF AMERICA PLAZA
600 PEACHTREE STREET, N.E. • SUITE 5200
ATLANTA, GEORGIA 30308-2210
www.troutmansanders.com
TELEPHONE 404-885-3000
FACSIMILE 404-885-3000

Robert P. Edwards Jr.
robert.edwards@troutmansanders.com

Direct Dial 404-885-3134
Direct Fax 404-982-8550

November 14, 2000

Morgan E. O'Brien
Vice Chairman
Nexrel Communications, Inc.
2001 Edmund Halley Drive
Reston, Virginia 20191

Re: Request of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, Savannah Electric and Power Company, Southern Communications Services, Inc., and Southern Company Services, Inc. (collectively "Southern") that Nexrel (1) Implement Manual Roaming and (2) Implement Automatic Roaming

Dear Mr. O'Brien:

Thank you for meeting with us last Wednesday, November 3, 2000, at which time the Southern electric system commercial mobile radio service customers of Southern Communications identified above and Southern Communications requested that Nextel Communications (1) implement manual *roaming* -procedures that customers of Southern Communications may use and (2) make automatic roaming available to customers of Southern Communications. These requests pertain to the 800 MHz Motorola iDEN interconnect service feature offered by Nextel and Southern alike. In brief, our clients request that Nextel immediately make manual roaming available to the customers of Southern Communications and also undertake to implement automatic roaming as soon as is possible.

Among the many reasons it is important that Nexrel comply with the law and make these services available to Southern Communications and its customers, the Southern electric system electric utilities have an immediate need for the ability to roam onto Nextel's systems in areas outside the footprint of the Southern Communications system. An example outlined in our meeting was, if an ice storm strikes a neighboring electric utility system which would require aid and assistance from Southern, manual roaming would be critical to such assistance.

Last August the Federal Communications Commission denied Nextel's request to be exempted from the manual roaming requirement, and Nexrel elected not to appeal the

Morgan E. O'Brien
November 14, 2000
Page 2

Commission's decision. As a commercial mobile radio service operator operating an 800 MHz Motorola iDEN system subject to those regulations, Nextel has an obligation to proceed to implement a manual roaming procedure that can be used by the 800 MHz Motorola iDEN system customers of Southern Communications.

Our clients also request that Nextel undertake to implement automatic interconnect roaming with the Southern Communications system. It is unlawful for the Nexrel Partners joint venture pa&pants to create what Nextel Partners characterizes as a "exclusive" automatic roaming relationship with Nexrel. Federal law prohibits Nextel from engaging in an unreasonable refusal to deal with others and undue discrimination of that nature. Implementation of automatic roaming in cooperation with Southern Communications ought to proceed as soon as possible.

Southern opposes any delay in implementing roaming prehcated upon the pending frequency auctions. Nexrel knows well that ir can comply with the applicable auction regulations while complying with its common carrier obligations.

You also indicated that Nextel might want to make a proposal to Southern Company that would be more advantageous TO Nexrel than a simple roaming arrangement. Southern opposes Nextel conditioning performance of Nexrel's roaming obligations upon entry into extraneous business arrangements favorable to Nextel.

To summarize:

- Manual roaming is needed now and ought to be implemented immediately by Nextel, particularly with respect to the Southern electric system utilities;
- Automatic roaming is also needed and ought to be Implemented by Nexrel as soon a possible in cooperation with Southern Communications; and
- Roaming implementation ought to proceed now.

TROUTMAN SANDERS LLP
ATTORNEYS AT LAW
A LIMITED LIABILITY PARTNERSHIP

Morgan E. O'Brien
November 14, 2000
Page 3

Once again, we appreciate your availability to receive this request, understand that you are undertaking to get an answer and await your reply.

Sincerely,



Robert P. Edwards, Jr.

RPEjr:chj

EXHIBIT B –
CMRS MOBILE-TO-MOBILE CALLING PLANS

Exhibit B – CMRS Mobile-to-Mobile Calling Plans¹

	Plan	Cost per Month	Group Size
AT&T Wireless	Unlimited mobile-to-mobile calls to all group members and five fixed locations in Group Calling Area	base plan	2-200
Verizon Wireless	Unlimited mobile-to-mobile calls to all Verizon wireless users in local area	base plan + \$10	All Verizon wireless users in local area
Cingular Wireless²	Unlimited mobile-to-mobile calling and text messaging to all Cingular wireless users in local area	Cingular home plan (\$29 or greater)	All Cingular wireless users in local area
VoiceStream Wireless	Unlimited mobile-to-mobile calls to all VoiceStream wireless users in local area	base plan + \$5	All VoiceStream wireless users in local area
Sprint PCS	Five hundred nationwide mobile-to-mobile calling minutes.	base plan + \$10	All Sprint wireless users nationwide

¹ Information is based on companies' Internet web sites.

² Cingular Wireless is the combined wireless property of BellSouth and SBC Telecommunications.

CERTIFICATE OF SERVICE

I, Rochelle L. Pearson, hereby certify that on this 5th day of February 2001, caused a copy of the attached Reply Comments of Nextel Communications, Inc. to be served by hand delivery to the following:

Chairman Michael Powell
Federal Communications Commission
445 12th Street, SW
Room 8-B115
Washington, D.C. 20554

Commissioner Susan Ness
Federal Communications Commission
445 12th Street, SW
Room 8-B115
Washington, D.C. 20554

Commissioner Harold Furchtgott-Roth
Federal Communications Commission
445 12th Street, SW
Room 8-B201
Washington, D.C. 20554

Commissioner Gloria Tristani
Federal Communications Commission
445 12th Street, SW
Room 8-C302
Washington, D.C. 20554

Peter Tenhula, Legal Advisor to
Chairman Michael Powell
Federal Communications Commission
445 12th Street, SW
Room 8A-204
Washington, D.C. 20554

Mark Schneider, Legal Advisor to
Commissioner Susan Ness
Federal Communications Commission
445 12th Street, SW
Room 8B-115
Washington, D.C. 20554

Brian Tremont, Legal Advisor to
Commissioner Harold Furchtgott-Roth
Federal Communications Commission
445 12th Street, SW
Room 8B-201
Washington, D.C. 20554

Adam Krinsky, Legal Advisor to
Commissioner Gloria Tristani
Federal Communications Commission
445 12th Street, SW
Room 8C-302
Washington, D.C. 20554

Thomas J. Sugrue, Bureau Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Room 3-C207
Washington, D.C. 20554

William Kunze
Deputy Division Chief
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Room 4-C216
Washington, DC 20554

Lauren Kravetz
Policy and Rules Branch
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Room 4-A163
Washington, D.C. 20554

Monica DeSai
Policy and Rules Branch
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

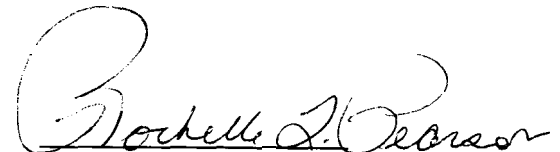
John Branscome
Policy and Rules Branch
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Room 4-A163
Washington, D.C. 20554

Pieter T. van Leeuwen
Chief Economist
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Room 3-C254
Washington, DC 20554

Neil A. Dellar, Legal Advisor
Office of General Counsel
Federal Communications Commission
445 12th Street, SW
Room 8-C8 18
Washington, DC 20554

Susan Singer, Economist
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Room 4-C121
Washington, D.C. 20554

Paul Murray, Esq
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Room 4-A267
Washington, D.C. 20554



Rochelle L. Pearson