Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of	)	
	)	
Motorola, Inc.; Motorola SMR, Inc.; and	)	DA 00-2352
Motorola Communications and Electronics, Inc.	)	
Assignors;	)	File Nos. 0000224876
	)	0000224877
	)	0000224878
and	)	
	)	
	)	
FCI 900, Inc.	)	
Assignee,	)	
	)	
	)	
For Consent to Assignment of 900 MHz	)	
Specialized Mobile Radio Licenses	)	

ORDER

Adopted: April 16, 2001 Released: April 17, 2001

By the Chief, Wireless Telecommunications Bureau:

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I. INTRODUCTION

1. In this Order, we grant the above-referenced applications to assign various 900 MHz Specialized Mobile Radio ("SMR") licenses from Motorola, Inc., Motorola SMR, Inc., and Motorola Communications and Electronics, Inc. (collectively, "Motorola") to FCI 900, Inc. ("FCI 900"), a subsidiary of Nextel Communications, Inc. ("Nextel").[1] We deny the request of Southern LINC ("Southern") that we deny these assignments.[2]

II. BACKGROUND

2. On September 25, 2000, pursuant to section 310(d) of the Communications Act of 1934, as amended ("the Communications Act"),[3] Motorola and Nextel filed applications seeking Commission consent for Motorola to assign 59 900 MHz SMR licenses to Nextel.[4] Nextel has a nationwide licensed-area footprint, and is the largest service provider using SMR frequencies, with approximately 6.7 million subscribers in the United States at the end of 2000.[5] Nextel uses

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1 Applications of Motorola for Consent to Assign Licenses to FCI 900, Inc., filed Sept. 23, 2000, ULS File Nos. 0000224876, 0000224877, 0000224878 ("Applications").

2 *See* Comments of Southern LINC, filed Nov. 20, 2000 ("Southern Comments").

3 47 U.S.C. § 310(d).

4 The "900 MHz" SMR band refers to spectrum allocated in the 896-901 and 935-940 MHz bands. *See* 47 C.F.R. §90.603. Other SMR frequencies are found in the "800 MHz" band, which refers to spectrum allocated in the 806-824 and 851-869 MHz bands. *See* 47 C.F.R. §90.603; *see also* 47 C.F.R. § 90.7 (defining "specialized mobile radio system").

5 *See* Nextel website at www.nextel.com/about/information/corporate/profile.shtml. *See also The State of the SMR Industry: Nextel and Dispatch Communications*, Strategis Report, September 2000 ("Strategis Report, SMR"), at 5; *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*, 15 FCC Rcd 17,660, (rel. Aug. 18, 2000) ("*Fifth CMRS Competition Report*"), at 70. The second largest service provider using

its facilities in the 900 MHz band for analog dispatch service. However, the vast majority of Nextel's subscribers purchase any of a variety of services over a digital, wide-area SMR network using Nextel's 800 MHz SMR licenses, provided by Nextel on a single handset. On this handset, Nextel offers a bundled service that provides a customer with interconnected mobile voice along with trunked dispatch service (marketed under the brand name "Direct Connect®") that allows instant, real-time conferencing on a one-to-one or one-to-many basis.[6] Customers can also subscribe to other optional services, including paging, text/numeric messaging, and wireless Internet access.[7] In addition to its 800 MHz and 900 MHz SMR holdings, Nextel holds licenses in the 220 MHz band and Guard Band manager licenses in the 700 MHz band.[8] Nextel also has an attributable interest in Nextel Partners, Inc., which provides digital wireless communications services on its own 800 MHz SMR frequencies in mid-sized and smaller markets throughout the United States.[9]

3. Motorola is the sole supplier of Nextel's wide-area SMR handsets[10] and owns approximately 15 percent of Nextel.[11] Motorola provides the iDEN[12] infrastructure and subscriber unit equipment used throughout Nextel's domestic markets and most of its international markets. Nextel works closely with Motorola to improve existing products and develop new technologies. In urban markets, Motorola, like Nextel, uses its 900 MHz SMR facilities to provide analog, non-interconnected dispatch services.[13] In non-urban markets, Motorola has not yet built out its 900 MHz systems.[14]

SMR frequencies is Southern with approximately 200,000 subscribers. *See* Southern LINC website at www.SouthernLINC.com, Press Release (Aug. 29, 2000).

6 Direct Connect® provides trunked dispatch customers with an expanded dispatch service area and higher voice quality and extra security than analog trunked dispatch. *See* Letter from Laura L. Holloway to Magalie Roman Salas, Secretary, Federal Communications Commission, dated March 8, 2000 ("Nextel March 8 *Ex Parte* Presentation") at Attachment 1, Affidavit of Greg Rosston ("Rosston Affidavit") at 14. Upon request, Direct Connect® may be purchased separately from interconnected mobile voice.

7 Applications, Exhibit B ("Public Interest Statement") at 2-3; *Nextel Reports Record Year 2000 Financial Results*, News Release, Nextel Communications, Inc. (Feb. 16, 2001).

8 *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*, 14 FCC Rcd 10,145, 10,176 ¶ 32 (citing *Nextel Reports 1998 Results*, News Release, Nextel Communications, Inc., Feb. 23, 1999).

9 *See* Strategis Report, SMR at 47; *see also* 47 C.F.R. § 20.6(d)(2).

10 Public Interest Statement at 1-2.

11 Nextel SEC Form 10K Statement (filed March 30, 2000) at 6 (providing information for period ending December 31, 1999).

12 Motorola developed iDEN, a digital technology that allows users to integrate, into one unit, the features of dispatch radio, interconnected mobile voice, short message service, and data transmission. This technology, which is currently available only on 800 MHz channels, allows service providers to have six times the capacity as on an analog SMR network. *See* www.motorola.com.

13 Public Interest Statement at 2.

14 *Id.* at 14.

4. On October 19, 2000, by delegated authority,[15] the Wireless Telecommunications Bureau ("Bureau") issued a Public Notice to announce that the applications for consent to assign licenses to Nextel had been accepted for filing and to establish a pleading cycle to enable interested parties to comment on the proposed transaction.[16] In response to this Public Notice, Southern filed comments requesting that we deny the Applications.[17]

III. DISCUSSION

5. As explained below, we find that the assignment of the licenses to Nextel does not pose an undue risk of harm to competition in U.S. telecommunications markets. In addition, we find that these assignments should result in certain public benefits. Accordingly, we conclude that, pursuant to section 310(d) of the Communications Act, grant of the pending requests for assignment of the licenses to FCI 900 would serve the public interest.[18] Hence, we deny the Southern Petition and grant the specified applications.

A. Statutory Authority

6. Pursuant to Section 310(d) of the Communications Act, the Commission must determine whether the proposed assignment will serve the public interest, convenience, and necessity.[19] Section 310(d) further requires that we consider the applications as if the proposed assignee were applying for the licenses directly under section 308.[20] Thus, we must examine

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15 47 C.F.R. § 0.331.

16 *See* Motorola, Inc. and Nextel Communications, Inc. Seek Consent to Assign 900 MHz SMR Licenses, *Public Notice*, DA 00-2352 (rel. Oct. 19, 2000).

17 *See* Southern Comments. In the course of this proceeding, we note that Nextel, Motorola, and Southern have each filed motions to dismiss or to strike certain submissions filed by the opposing party either as untimely or repetitious. *See* Motion to Dismiss of Nextel Communications, Inc., filed Jan. 17, 2001; Motion to Strike of Motorola, Inc.,, filed Jan. 18, 2001; and Southern LINC Motion to Strike Nextel Communications, Inc. Letter of March 8, 2001, filed Mar. 30, 2001). We consider the information in these submissions relevant to our public interest determination and helpful in developing a fuller factual record. We therefore exercise our discretionary authority to consider all of the information submitted in this proceeding. Southern further asserts that Nextel's service of its March 8 submission was improper because Nextel served only Southern's in-house counsel, and not its outside counsel concurrently. We find that Nextel's service complies with our rules. *See* 47 C.F.R. § 1.47(d). Finally, each of the parties has had ample opportunity to respond to the pleadings, and therefore has not been prejudiced. Accordingly, the three motions are denied.

18 We note that our approval of this transaction is consistent with the position of U.S. Department of Justice ("DOJ"), which has not challenged Nextel's proposed acquisition of Motorola's licenses.

19 47 U.S.C. § 310(d).

20 Section 310 provides that the Commission shall consider any such applications "as if the proposed transferee or assignee were making application under Section 308 for the permit or license in question." 47 U.S.C. § 310(d). Furthermore, the Commission is expressly barred from considering "whether the public interest, convenience, and necessity might be served by the transfer, assignment, or disposal of the permit or license to a person other than the proposed transferee or assignee." *Id.*

Nextel's qualifications to hold licenses. In discharging these statutory responsibilities, we weigh the potential public interest harms of the proposed transactions against the potential public interest benefits to ensure that, on balance, the assignments serve the public interest and convenience.[21]

B. Qualifications

7. In evaluating assignment and transfer applications under section 310(d) of the Communications Act, we generally do not re-evaluate the qualifications of the assignor or transferor unless issues related to their basic qualifications have been designated for hearing by the Commission or have been sufficiently raised in petitions to warrant the designation of a hearing.[22] In this case, Southern has not challenged the basic qualifications of Motorola.

8. By contrast, as a regular part of our analysis, we determine whether the proposed assignee is qualified to hold a Commission license.[23] Because Southern has not challenged the basic qualifications of Nextel, and because we have determined in prior proceedings that Nextel is qualified to hold Commission licenses,[24] we see no reason to conclude otherwise here.

C. Public Interest Impacts

1. Competitive Framework

9. Southern contends that the overall effect of this transaction will be to decrease competition in a trunked dispatch market such that approval of these applications is not in the public interest. To analyze Southern's claims, we first determine the markets potentially affected

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[21] *In the Matter of AT&T Corp., British Telecommunications, Plc, VLT Co., L.L.C., Violet License Co., L.L.C., and TNV [Bahamas] Limited Applications for Grant of Section 214 Authority, Modification of Authorizations and Assignment of Licenses in Connection with the Proposed Joint Venture Between AT&T Corp. and British Telecommunications, Plc*, 14 FCC Rcd 19410 (1999); *Applications of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control*, CC Docket No. 97-211, Memorandum Opinion and Order, 13 FCC Rcd 18,025, 18,030-33 at ¶¶ 9-12 (1998) ("*WorldCom/MCI Order*"); *Craig O. McCaw and American Telephone and Telegraph Company*, 9 FCC Rcd 5836 (1994), *recon. denied on other grounds, Memorandum Opinion and Order on Reconsideration*, 10 FCC Rcd 11,786 (1995), *aff'd sub nom. SBC Communications, Inc. v. FCC*, 56 F.3d 1484 (D.C. Cir. 1995).

[22] *See Mobilemedia Corporation et al.*, 14 FCC Rcd 8017 (rel. Feb. 5, 1999) (citing *Jefferson Radio Co. v. FCC*, 340 F.2d 781, 783 (D.C. Cir. 1964)); *see also* Stephen F. Sewell, "Assignments and Transfers of Control of FCC Authorizations Under Section 310(d) of the Communications Act of 1934," 43 Fed. Comm. L.J. 277, 339-40 (1991). The policy of not approving assignments or transfers when issues regarding the licensee's basic qualifications remain unresolved is designed to prevent licensees from evading responsibility for misdeeds committed during the license period. *Id.*

[23] *See In re applications of Various Subsidiaries and Affiliates of Geotek Communications, Inc. and FCI 900, Inc., Memorandum Opinion and Order*, 15 FCC Rcd 790 (WTB rel. Jan. 14, 2000) at ¶ 10 *("Geotek Order")* (citing *In re applications of AirTouch Communications, Inc. and Vodafone Group, Plc*, Memorandum Opinion and Order, DA 99-1200, 1999 WL 413,237 (WTB rel. June 22, 1999) at ¶¶ 5-9).

[24] *See, e.g., Geotek Order* at ¶ 21.

by the proposed transaction.[25] Second, we assess the effects that the transaction may have on competition in these markets.[26] Third, we consider whether the proposed transaction will result in transaction-specific public interest benefits.[27] Ultimately, we must weigh any harmful and beneficial effects to determine whether, on balance, the transaction is likely to enhance competition in the relevant markets.

10. In transactions involving the acquisition and aggregation of SMR spectrum through assignment or transfer of control of licenses, we focus our competitive analysis initially on whether the combination complies with our commercial mobile radio service ("CMRS") spectrum aggregation rule.[28] Because, after this transaction, Nextel will hold only SMR spectrum, it is attributed with no more than 10 MHz in every market,[29] which does not exceed the limit. Southern alleges that the transaction will result in undue harm to consumers that is unrelated to compliance with the spectrum aggregation limit. Therefore, we analyze Southern's allegations of the competitive effect of the transaction.

2. Relevant Markets

a. Product Markets

11. In evaluating the competitive effects of this transaction, the Applicants and Southern employ significantly different product market definitions.[30] As discussed further below,

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[25] Our determination of the affected markets requires us to identify the Applicants' existing and potential product offerings, and may require us to determine which products offered by other firms compete or potentially compete with these offerings. *In re Applications of Neoworld Holdings, Inc. and Hughes Electronics Corporation and Wilmington Trust Company, Liquidating Trustee*, Memorandum Opinion and Order, 15 FCC Rcd. 13,410 (WTB rel. Aug. 4, 2000) *("Neoworld Order")* at ¶ 16, n.30.

[26] Depending on circumstances, this step may include the identification of market participants and analysis of market structure, market concentration, and potential entry. *Neoworld Order* at ¶ 16, n.31.

[27] These include, but may extend beyond, factors relating to cost reductions, productivity enhancements, or improved incentives for innovation. *Neoworld Order* at ¶ 16, n.31 (citing *Applications of Aerial Communications, Inc. and VoiceStream Wireless Holding Corporation*, Memorandum Opinion and Order, 15 FCC Rcd 10,089, ¶ 30, n.82 (WTB/IB 2000); *In re Applications of Vodafone AirTouch PLC and Bell Atlantic Corporation*, 15 FCC Rcd. 16,507, ¶ 25, n.49 (WTB/IB 2000); Horizontal Merger Guidelines Issued by the U.S. Department of Justice and the Federal Trade Commission, 57 Fed. Reg. 41,552, §§ 2.1, 2.2, 4 (dated Apr. 2, 1992, as revised, Apr. 8, 1997) ("Revised Horizontal Merger Guidelines").

[28] *See* 47 C.F.R. § 20.6. As part of all applications for assignment or transfer of control of CMRS licenses, the assignee or transferee must certify that grant of the application would not cause the assignee or transferee to be in violation of the spectrum aggregation limit. *See* FCC Wireless Telecommunications Bureau Application for Assignments of Authorization and Transfers of Control (FCC Form 603).

[29] *See* 47 C.F.R. § 20.6(b).

[30] *See* Public Interest Statement; Southern Comments; *Ex Parte* Presentation submitted by Southern, Affidavit of Michael G. Baumann and Stephen E. Siwek of Economists, Inc. (Feb. 8, 2001) ("Baumann and Siwek Affidavit"); *Ex Parte* Letter from Laura L. Holloway, Director Government Affairs, Nextel to Lauren Kravetz, Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission, filed Feb. 22, 2001; Rosston Affidavit; *Ex Parte* Presentation submitted by Southern, Supplemental

Southern would limit the product market to trunked dispatch services being provided only by SMR operators at 800 MHz and 900 MHz.[31] By contrast, the Applicants would employ a product market definition encompassing all CMRS providers.

12. We will analyze this transaction with respect to its effects both on an interconnected mobile voice market and on a trunked dispatch market. We include, in this second market, at the very least, service providers at 800 MHz, 900 MHz, 220 MHz, 217-219 MHz, and 450-470 MHz. We find it unnecessary to reach the issue of whether it is appropriate to define a market that includes all CMRS providers because we conclude that the applications may be granted even assuming narrower market definitions. Nonetheless, we also recognize the increasing convergence of CMRS services and may well adopt a broader market definition in reviewing future transactions.

13. As background, we note that customers today may purchase any of a variety of dispatch services. The Motorola licenses that are in service involve spectrum and facilities currently being used to provide analog trunked dispatch service in the 900 MHz frequency band. The SMR service was originally created to provide businesses with commercial dispatch service. "Dispatch" is commonly understood to refer to service that allows two-way, real-time, push-to-talk voice communications between mobile units and fixed units, or between two or more mobile units.[32] Dispatch differs from mobile voice communications offered by personal communications services ("PCS") and cellular carriers because it is generally not interconnected with the public switched telephone network and allows instant, real-time conferencing with groups, including both one-to-many and many-to-one communications.[33] It has been described as "neither an industry nor a distinct technology," but instead, simply an application that can be provided by various technologies.[34] The term "trunked" refers to dispatch offered on systems allowing automatic sharing of multiple radio channels. Trunking may be employed either on analog or digital systems, and is more spectrally efficient than conventional channel use because the ability of equipment to choose one radio channel among many at the beginning of a call allows less blocking and provides service to more radios per channel. Because a trunked system is engineered so that other users wanting a radio channel will not break in on a channel already in use, it also provides customers a greater degree of privacy than non-trunked systems.

Affidavit of Michael G. Baumann and Stephen E. Siwek of Economists, Inc., filed March 20, 2001 ("Baumann and Siwek Supplemental Affidavit"). Nextel and Southern also presented their arguments during various *ex parte* presentations to the Bureau (Southern on February 8, 2001 and April 2, 2001; Nextel on March 14, 2001).

[31] Southern argues that trunked dispatch is the only market that need be considered in this transaction. Nevertheless, even adding in the interconnected mobile voice market would yield the same result, Southern contends, because the benefits to Nextel of gaining a minimal amount of additional spectrum to compete against other interconnected mobile voice service providers are vastly outweighed by the competitive harms in the trunked dispatch market. Southern Comments at 3 and 9.

[32] *Fifth CMRS Competition Report* at 69.

[33] *See* Strategis Report, SMR at 7; *Strategis Group, U.S. Dispatch Markets, Executive Summary,* January 2000 ("Strategis Report, Dispatch") at 1.

[34] *Id.*

14. Commission policy permits flexible use of 800 and 900 MHz SMR spectrum, permitting the provision of paging, dispatch, mobile voice, mobile data, facsimile, or combinations of these services.[35] Like Motorola, Nextel provides trunked analog dispatch services with its 900 MHz licenses. Nextel has applied a digital technology to its 800 MHz frequencies, allowing it to offer a bundled service on these frequencies that includes interconnected mobile voice, paging, and text messaging, as well as trunked dispatch communications that allow instant conferencing.[36] The digital technology (iDEN) allows Nextel to provide wide-area coverage and a nationwide network.[37] By contrast, the analog service being provided on the 900 MHz band consists primarily of localized instant group communications for small and mid-sized businesses, and is generally offered at lower prices than digital service.[38] The 900 MHz frequency band also is well suited technically for the provision of paging, dispatch, mobile voice, mobile data, or combinations of these services. Although technology is not presently available to provide the same digital services available at 800 MHz using the 900 MHz SMR frequency, Nextel indicates that it is developing a 900 MHz iDEN service with Motorola that will be integrated into its 800 MHz iDEN system.[39]

15. Our prior cases have analyzed similar transfers and assignments with respect to two product markets: interconnected mobile voice services and trunked dispatch services. Most recently, in the *Geotek Order*, [40] we stated that the relevant market participants in the interconnected mobile voice market are firms providing commercially available two-way, mobile voice services that access the public switched telephone network, such as those provided by cellular companies, PCS providers, and interconnected trunked SMR carriers, such as Nextel and Southern. We defined the relevant market participants in the trunked dispatch market as firms offering, on a commercial basis, both one-to-one and one-to-many calling services on either analog or digital trunked systems,[41] and noted that such services were provided primarily by

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35 *Principles for Reallocation of Spectrum to Encourage the Development of Telecommunications Technologies for the New Millennium*, Policy Statement, 14 FCC Rcd. 19868 (1999); *see also Geotek Order* at ¶ 25.

36 Public Interest Statement at 2-3.

37 Strategis Report, SMR at 45.

38 *Id.* at 25 and 45.

39 *See* Letter to Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, FCC, from Robert Foosaner, Senior Vice President, Government Affairs, Nextel Communications, filed Jan. 9, 2001 ("Nextel Waiver Request"); *see also* Rosston Affidavit at 5. Nextel is working with Motorola to develop a dual band iDEN system that will integrate both Nextel's 800 MHz and 900 MHz spectrum. Rosston Affidavit at 5.

40 *Geotek Order* at ¶ 30.

41 In the *Geotek, Order* we recognized "that legitimate questions can be raised about the suitability of [these] market definitions," and declared that the convergence of mobile data, mobile voice, digital trunked dispatch, paging, and messaging services suggests "that consumers may begin to use more of these wireless services interchangeably (and that carriers may increasingly market such services to the same set of consumers)." *Geotek Order* at ¶ 27. However, we decided, at that time, not to address the market definition question in detail because the applications could be approved even under this narrower approach, which was used in a prior order undertaking a similar analysis. *Geotek Order* at ¶¶ 26-28 (discussing *Pittencrieff Communications, Inc., Transferor, and Nextel Communications, Inc.,*

carriers operating at 800 MHz, 900 MHz, and 220 MHz, and also by qualified private land mobile operators.[42] The Applications now raise the issue whether the market definitions employed in our analyses of these earlier transactions are still valid.

16. The Applicants and Southern present diametrically opposite views of the product market. Southern urges us to limit our analysis to the competitive effects of the acquisition on a trunked dispatch market, and would confine this market to 800 and 900 MHz SMR licensees, which is narrower even than our analysis set forth in the *Geotek Order*.[43] By contrast, Nextel maintains that the time has come to broaden our product market analysis significantly in these types of transactions to the entire CMRS marketplace, which would include all spectrum used for commercial mobile services.[44] As explained below, for purposes of analyzing this transaction we do not agree entirely with either Southern or the Applicants.

17. In defining a product market, we generally include firms offering services competing with those offered by the assignor and assignee.[45] For the purposes of this transaction, we will analyze such competition narrowly, and will limit our review to an interconnected mobile voice market and a trunked dispatch market without foreclosing the possibility that we may adopt an expanded market definition in a future transaction. Motorola, the assignor, provides analog trunked dispatch services with its 900 MHz licenses. In the *Pittencrieff Order* and the *Geotek Order*, we described Nextel's services as straddling both the interconnected mobile voice and trunked dispatch markets,[46] and this description remains accurate.[47] Nextel is currently using its 900 MHz licenses to provide analog trunked dispatch services, but has indicated its intention to convert this spectrum to digital use so that it may offer additional services on this band.[48]

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

42 *See Geotek Order* at ¶ 32; *Pittencrieff Order* at ¶ 30. Private land mobile operators originally were focused on supporting the internal communication needs of various businesses and organizations. These include public safety, state and local governments, utilities, and business and industrial users. These systems may be trunked or non-trunked.

43 *Id.* at ¶ 32; Southern Comments at 4-6. Southern argues that, even if the Commission also considers an interconnected mobile voice market to be relevant, the end result would not change. *See* note 31 *supra*.

44 Public Interest Statement at 8; Rosston Affidavit at 9. However, Nextel also evaluates the acquisition's competitive effects on the trunked dispatch and interconnected mobile voice services markets for consistency with the Bureau's prior analyses in the *Pittencrieff Order* and the *Geotek Order*. Public Interest Statement at 5-6.

45 In order to determine which services are competitive, we look at relevant demand substitution factors. For this transaction, these factors include service availability and functionality, which have been the focus of comments made by Southern and the Applicants. Revised Horizontal Merger Guidelines at § 1. *See also Pittencrieff Order* at ¶ 18.

46 *See Pittencrieff Order* at ¶ 23; *Geotek Order* at ¶ 26; *see also Fifth CMRS Competition Report* at 70.

47 *See* ¶ 14 *supra*. The trunked dispatch service that Nextel offers using its 800 MHz licenses, Direct Connect®, is available separately to customers who do not desire any of Nextel's other services. *See* Rosston Affidavit at 14.

48 *Id.* at 5. We note that Nextel has also indicated that it may use some of its 900 MHz licenses to relocate other licensees operating in the 800 MHz bands, permitting Nextel to expand its service at 800 MHz. *See* Public Interest Statement at 16.

Therefore, we analyze the Applications as they affect both interconnected mobile voice and trunked dispatch services markets, but we do not foreclose the possibility that we may adopt an expanded market definition in reviewing a future transaction.

18. While we examine these Applications in the context of a trunked dispatch market, we reject, for several reasons, Southern's limited definition of such a market, which would confine our analysis solely to services being provided at 800 and 900 MHz. First, trunked dispatch service is now available on the 220 MHz band in addition to the 800 and 900 MHz bands.[49] Southern asserts that the 220 MHz spectrum is not a reasonable alternative to 800 MHz and 900 MHz SMR trunked dispatch services, arguing that the quality of the spectrum is poor, there is insufficient incentive to provide service on this frequency, and there is a chronic equipment supply problem.[50] We disagree. We have previously found that quality of this spectrum is not a concern.[51] Further, there is evidence that entry into a trunked dispatch market using the 220 MHz frequency band is continuing, primarily in major metropolitan areas.[52] Although growth of this segment has not been as rapid as initially expected,[53] we believe this is not due to a lack of incentive to provide service on this frequency or a chronic problem with the spectrum or equipment. While there is evidence that delivery of equipment necessary to provide trunked dispatch service at 220 MHz has experienced short-term delays, the pace of orders placed during 2000 indicates that there is continued demand for such equipment,[54] and we expect an increase in the provision of trunked dispatch services at 220 MHz as licensees continue to build out their licensed areas. Industry analysts also predict that growth will continue.[55] The present and anticipated development of the 220 MHz band for the provision of dispatch services therefore warrants its inclusion in a trunked dispatch market.

19. Second, trunked dispatch services currently are being provided on the 217-219 MHz frequency band, commonly referred to as Automated Maritime Telecommunications System ("AMTS") spectrum. The Commission in 1997 adopted a rule permitting current AMTS public

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49 The 220 MHz band refers to spectrum allocated in the 220-222 MHz band.

50 *See* Southern Reply at 9-10

51 *See Geotek Order* at ¶39; *see also* Strategis Report, SMR at 18.

52 For example, the SMR Advisory Group, one of the largest holders of 220-222 MHz spectrum, provides service in 19 states and 32 of the 50 largest cities. *See* SMR Advisory Group website at www.smradvisory.com. Other providers that are offering service, or plan to offer service soon, include Rush Network Corporation, Northwest Telecommunications Corporation, Comtran Associates, Inc., and Securicor Wireless. Although Southern alleges that Securicor is unable to deliver its planned 220 MHz dispatch system, *see* Baumann and Siwek Supplemental Affidavit at 9, it appears that Securicor is currently providing service in several markets, including San Diego, Los Angeles, San Francisco, and Boston. *See* Strategis Report, SMR, at 45.

53 Strategis Report, SMR at 3-5, 18 and 25.

54 *See* Datamarine International Inc., SEC Form 10K, for the fiscal year ended September 30, 2000 (January 16, 2001) and Datamarine International Quarterly Report, SEC Form 10QSB (Feb. 13, 2001) (reflecting that the company's backlog has increased).

55 Strategis Report, SMR at 5.

coast stations to serve units on land,[56] and land-based service is now becoming available on that spectrum.[57] Furthermore, the Commission is required to auction additional spectrum at 218-219 MHz by September 30, 2002.[58] AMTS signals propagate far inland and, therefore, may be able to serve major population centers located on or near the coast.[59] Though the service has certain technical constraints (*i.e.*, call times may be limited to short duration),[60] AMTS trunked dispatch is a viable alternative for at least some inland customers.

20. Third, some commercial providers in the 450 MHz frequency band[61] offer trunked dispatch service.[62] Nextel argues that 450 MHz spectrum should be included in an analysis of a trunked dispatch market because all 450 MHz licensees are authorized to provide commercial dispatch service.[63] While neither the Applicants nor Southern have provided us with specific information regarding how many 450 MHz systems have been trunked, we note that at least one industry report notes that migration by Nextel's former 800 MHz trunked dispatch customers has spurred growth in the 450 MHz band.[64] Trunked dispatch service has been slow to develop in the 450 MHz band because the band is licensed on a shared basis, meaning that multiple co-channel licenses may be granted in the same service area.[65] However, there has been a generally high rate of growth of dispatch subscribers on 450 MHz systems.[66] Subscribership increased by 49 percent

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56 *See* 47 C.F.R. § 80.123.

57 Mobex Communications, through its subsidiary Regionet Wireless LLC, holds AMTS licenses that currently provide land-based AMTS dispatch service on the East and West Coasts and in the Great Lakes area. *See* www.mobex.com; *see also* Kristen Beckman, "Regionet Uses Maritime Licenses to Offer SMR Service," Radio Communications Report (Aug. 16, 1999). Nextel intends to purchase a 15% equity interest in Regionet. *See* Application for Transfer of Licenses from Mobex Communications, Inc. to FCI 900, Inc., File No. 0000285336 at Attachment.

58 The Balanced Budget Act of 1997 requires the commission to complete all actions to permit assignment of this spectrum by Sept. 30, 2002. Pub. L. No. 105-33, Title III, 111 Stat. 251 (1997), § 3002(c)(1). *See also* www.fcc.gov/wtb/prs/ivds.html.

59 Propagation of AMTS signals, which can travel 150-200 miles on land, varies depending on site location.

60 *See* Baumann and Siwek Supplemental Affidavit at ¶ 103. We note there is no evidence in the record indicating that trunked dispatch customers demand significantly longer call times, making AMTS an unattractive alternative. Indeed, Southern acknowledges that a shorter call time can be a beneficial feature for employers. Baumann and Siwek Affidavit at ¶ 62.

61 The "450 MHz band" refers to spectrum allocated in the 450-470 MHz band.

62 There is not sufficient information in the record regarding how widespread trunking is at 450 MHz.

63 Rosston Affidavit at 15.

64 Strategis Report, Dispatch at 72.

65 In 1997 the Commission implemented a set of rules for trunking at less than 800 MHz. *See Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them,* PR Docket No. 92-235, *Second Report and Order,* 12 FCC Rcd 14,307 (rel. Mar. 12, 1997). In 1999 there was a rulemaking that changed the rules to permit additional trunking in the frequencies below 512 MHz. *See Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them,* PR Docket No. 92-235, *Third Memorandum Opinion and Order,* 14 FCC Rcd 10,922 (rel. Jul. 1, 1999).

66 Strategis Report, Dispatch at 71-74.

from 1999 to 2000, reflecting a continued demand for low-priced analog dispatch services.[67] It is reasonable to assume that, if there is an increase in demand for trunked dispatch services at 450 MHz, additional licensees may find it beneficial to trunk their systems. We therefore find that trunked dispatch service offered at 450 MHz is a viable substitute for some customers and should be included as part of our market analysis.

21. For these reasons, we believe that Southern's proposed product market analysis is too narrow, and thus we include, at the very least, trunked dispatch services provided at 220 MHz, 217-219 MHz (land-based AMTS), and 450 MHz in addition to those provided at 800 MHz and 900 MHz in an analysis of such a product market.[68]

22. For the following reasons, we do not include group calling plans offered by cellular and PCS carriers in a trunked dispatch market for purposes of this transaction.[69] There is evidence that dispatch-like group services to businesses are emerging in the service offerings of cellular and PCS carriers, and that some cellular and PCS companies appear to be positioning themselves to compete specifically with Nextel's Direct Connect® service.[70] We find that cellular and PCS group calling and conferencing features may appeal to some customers with dispatch needs,[71] even if these plans do not offer the same degree of one-to-many functionality found in dispatch services.[72] However, we do not have information in the record as to the nature of

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67 Strategis Report, SMR at 3 and 26.

68 *See also* Strategis Report, SMR at 1 (SMR and SMR-like services are provided in the 800 MHz, 900 MHz, 220-222 MHz, and 450-512 MHz bands).

69 Applicants urge us to include such group calling plans in a trunk dispatch market. Public Interest Statement at 13-14; Rosston Affidavit at 14. By contrast, Southern questions the ability and inclination of cellular/PCS providers to provide dispatch. Southern Comments at 7; Southern Reply at 5. Southern claims that cellular/PCS technology would need to be retrofitted in order to provide a push-to-talk dispatch feature and finds no evidence that a "true dispatch" (push-to-talk) feature is part of any interconnected mobile voice provider's business plans. *Id.*

70 For example, AT&T offers unlimited mobile-to-mobile calling between group members, for groups ranging in size from two to 200, as well as unlimited calls from the group to five fixed lines. *See* Radio Comm Report, Lynnette Luna, "Group Calling is Weapon in Wireless War," June 28, 1999; Radio Comm Report, "AT&T Wireless Offers Business Group Calling," June 14, 1999. AT&T claims that its group calling plan is designed for local, mobile businesses such as sales and service, delivery and distribution, dispatch and contractors that operate within a specific geographic area. *Id.* Qualcomm is developing its "Q-Chat" handset, which will allow push-to-talk group mobile conferencing. According to Southern, this service is expected to become available between 2002 and 2004. Baumann and Siwek, Supplemental Affidavit at ¶ 125. Qualcomm is also marketing its OmniExpress Mobile Communications System infrastructure, which will provide mobile instant group data dispatch conferencing over cellular and PCS networks, and also offer the option of access to Sprint's wireless voice services. *See* http://www.qualcomm.com, "QUALCOMM Announces Roadway Express to Purchase OmniExpress Mobile Communications System," News Release, January 31, 2001; *see also* Nextel March 8 *Ex Parte* Presentation at 7-8.

71 These services will most likely appeal to growing companies with dispatch needs, especially in urban markets, and will attract customers that want wide-area coverage, low start-up costs, interconnected services, and a rapid deployment time. *See* Strategis Group, U.S. Dispatch Markets, Executive Summary, January 2000 at 10.

72 According to Southern, the maximum group size permitted by cellular and PCS group calling plans for mobile conferencing is only four units, at this time. *See* Baumann and Siwek Supplemental Affidavit at ¶ 116. Our independent research indicates that AT&T offers mobile group conferencing with up to five units. *See* AT&T

customer dispatch usage to make a determination regarding the extent to which cellular and PCS group calling plans should be included in a trunked dispatch market.[73] We concluded in the *Geotek Order,* and continue to believe, that cellular and PCS firms have the ability to increase their presence in a trunked dispatch market easily and significantly because they hold spectrum licenses, have relevant physical assets in place, have expertise in wireless technologies and markets, are ongoing businesses with recognizable brand names, and have adequate capital resources to offer new products and services.[74] As explained below, therefore, such group calling plans, even though not in the product market, do place some constraints on possible exercise of market power by Nextel.[75]

23. The Applicants would also include services to be provided using the recently auctioned 700 MHz guard band spectrum in analyzing a trunked dispatch market.[76] However, none of the license holders of this spectrum is currently providing service, and Nextel anticipates that it will not be marketing its own services over this spectrum for 12 to 18 months after it places an order for equipment.[77] Furthermore, there are incumbent broadcasters on portions of this spectrum, and current FCC rules do not require these incumbents to move off the spectrum until December 31, 2006, at the earliest.[78] Accordingly, we do not believe that it is appropriate, at this time, to include services expected to be offered using the 700 MHz guard band spectrum in a trunked dispatch market.

24. Therefore, we will analyze the assignment of Motorola's 900 MHz licenses to Nextel for its effects on two separate markets: (a) interconnected mobile voice and (b) trunked dispatch, where trunked dispatch includes, at the very least, services provided at 800 MHz, 900

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website, at www.attws.com/business/lcorp/expl…ones/grp_calling/extend_wkgrp_comm.shtml. In either case, the maximum group size currently marketed by cellular and PCS carriers is significantly fewer than the group size available using dispatch services at 800 MHz, 900 MHz, 450 MHz, 220 MHz or 217-219 MHz, which can reach thousands of units.

73 For example, the more trunked dispatch service is used for groups fewer than six units, the more substitutable cellular and PCS group calling functions become. Also, the call set-up time using trunked dispatch is generally shorter than using interconnected mobile voice services. *See* Baumann and Siwek Affidavit at ¶¶ 61-62. The less important this call set-up time difference is to customers, the more substitutable for trunked dispatch the cellular and PCS group calling functions.

74 *Geotek Order* at ¶ 35.

75 *See* ¶ 31, *infra.*

76 Rosston Affidavit at 15. Licensing of the 700 MHz guard band spectrum has largely been completed. *See* DA 00-2882 (rel. Dec. 21, 2000) (granting 70 700 MHz guard band licenses) and DA 01-408 (rel. Feb. 14, 2001) (granting 26 700 MHz guard band licenses).

77 *Ex Parte* Letter from Laura L. Holloway, Director Government Affairs, Nextel to Susan Singer, Economist, Commercial Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission, filed Dec. 13, 2000.

78 *See In the Matter of Service Rules for the 746-764 and 776-794 MHz bands, and Revision to Part 27 of the Commission's Rules, Third Report and Order*, WT Docket 99-168 2001 WL 55614 (rel. Jan. 23, 2001); *see also* 47 U.S.C. § 309(j)(14).

MHz, 220 MHz, 217-219 MHz (land-based AMTS spectrum) and commercial 450 MHz. We recognize that these product markets continue to evolve so that the dividing line between these two markets is becoming less clear, but we need not consider a significantly expanded market definition in this transaction, because we approve these applications even under the narrower market analysis.

b. Geographic Markets

25. Properly defined geographic markets aggregate consumers that face similar choices regarding vendors of a particular product or service.[79] There is no dispute regarding Applicants' proposal to separate the geographic market into urban and rural areas for purposes of analyzing these Applications.[80] For an interconnected mobile voice market, urban areas tend to have a greater number of providers and, therefore, more competition than rural areas because most providers have chosen to build out urban areas first.[81] This means that the choices available to urban consumers differ from those currently available to rural consumers, therefore we agree with the Applicants that urban and rural areas may be viewed as separate geographic markets for purposes of analyzing the effect of this transaction on an interconnected mobile voice market. For trunked dispatch operators, the types of services that can be supplied economically also tends to vary between urban and rural areas. In urban areas, demand has been high relative to available capacity, which has resulted in limited dispatch service offerings.[82] In rural areas, by contrast, dispatch service providers do not face capacity shortages, and therefore, are able to offer a broader range of services *(i.e.,* interconnected mobile telephony service). [83] Therefore, dispatch consumers also have available different types of services in urban and rural areas, and we will analyze this product market also by separate urban and rural geographic markets.

3. **Market Analysis**

a. Interconnected Mobile Voice Services

26. U.S. interconnected mobile voice markets are characterized by six carriers with nationwide or near nationwide licensed areas: Verizon Wireless, Cingular Wireless, AT&T

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79 Revised Horizontal Merger Guidelines at § 1.21. *See also Pittencrieff Order* at ¶ 37 (citing *Tampa Elec. Co. v. Nashville Co.,* 365 U.S. 329 (1961)).

80 Public Interest Statement at 10; *see also Pittencrieff Order* at ¶¶ 37-41. Southern has not addressed this issue.

81 Rural markets have, however, begun to see an increase in service, which will continue as interconnected mobile voice providers build out their licensed areas. For PCS licenses, Commission rules require PCS licensees to construct their systems so that there is sufficient signal strength to provide adequate service to one-third of the population of the market within five years and two-thirds within 10 years. *See* 47 C.F. R. §§24.203(a) and (b). 900 MHz Major Trading Area ("MTA") licenses are required to build out their systems to cover one-third of the MTA population within three years and two-thirds of the MTA population within five years of the license grant. *See* 47 C.F.R. §90.665.

82 Strategis Report, SMR at 66.

83 *Pittencrieff Order* at ¶39; Strategis Report, SMR at 66.

Wireless, Sprint PCS, Nextel, and VoiceStream Wireless.[84] There are also a large number of regional carriers, including ALLTEL and U.S. Cellular, and medium or smaller regional carriers, such as Southern. Of the total U.S. population, 88 percent live in a county where at least three different providers offer interconnected mobile voice services.[85] Motorola, however, does not provide interconnected mobile voice services with its 900 MHz licenses. Therefore, our competitive analysis of this transaction yields the identical conclusion in both urban and rural interconnected mobile voice markets. The number of significant competitors will not be reduced due to the assignment of these licenses. Consequently, the assignment of Motorola's licenses to Nextel will not harm competition. Moreover, the transaction may have pro-competitive effects in interconnected mobile voice markets. Although Nextel is currently not offering interconnected mobile voice services with its 900 MHz licenses in either urban or rural areas, it has recently indicated that technology to make this possible will soon be available.[86] This transaction will increase, by a small amount, the capacity held by Nextel, a firm that currently has less spectrum than other large rivals providing interconnected mobile voice services,[87] enabling it to better compete in this product market. In sum, approval of these applications may further the development of competition in relevant interconnected mobile voice markets.

b. Trunked Dispatch Services

i. Urban Markets

27. We also find that Nextel's acquisition of these licenses will not result in competitive harms to urban markets for trunked dispatch services. For the competition analysis in urban areas, Southern provides calculations suggesting very highly concentrated trunked dispatch markets, while the Applicants provide calculations suggesting that concentration is not problematic.[88] As explained below, while we find the calculations offered by each side are flawed, we believe that the Applicants' approach is more reasonable. Even if the Applicants' calculations were adjusted to yield a more conservative estimate of market concentration, we find that the assignment of the Motorola licenses to Nextel will not unduly increase concentration or otherwise cause competitive harm in urban markets because there exist: (1) a number of alternatives for trunked dispatch service; (2) the potential for additional entry into this market fostered by recent Commission rule changes;[89] and (3) other dispatch-like services that we have not included in the market will nonetheless be effective competitive alternatives for some trunked dispatch consumers. As explained in more detail below, we find that all of these factors prevent Nextel from charging supracompetitive prices to customers or otherwise behaving anticompetitively.

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84 *Fifth CMRS Competition Report* at 10.

85 *Id.* at 18.

86 *See* Nextel Waiver Request at 2.

87 Public Interest Statement at 18-19.

88 Baumann and Siwek Affidavit at Tables EI_6.1-69 and EI_7.1-7.9.

89 *See* notes 56 (AMTS) and 65 *supra* (450 MHz); notes 107 and 108 *infra* (B/ILT).

28. We first find that Southern's analysis is flawed, yielding an unreasonably high picture of concentration. Southern maintains that the trunked dispatch market is already highly concentrated and will become even more dominated by Nextel should the Commission grant an assignment of Motorola's licenses.[90] Southern calculates market concentration at both the national and local levels using Herfindahl-Hirschman Indices ("HHIs"),[91] and shows very high market concentration for the top nine urban markets.[92] Southern's analysis adopts the trunked dispatch market definition from the *Geotek Order*, which included trunked dispatch services provided at 800 MHz, 900 MHz, and 220 MHz.[93] While Southern argues that we should not include the 220 MHz spectrum in the product market its HHI analysis includes that spectrum making the market appear less concentrated. Southern's analysis, however, does exclude 800 MHz site licensees, non-SMR 800 MHz licensees that are providing commercial trunked dispatch service, commercial trunked 450 MHz, and land-based AMTS at 217-219 MHz. Essentially, Southern argues that the trunked dispatch market should be limited to SMR spectrum at 800 and 900 MHz. Conversely, Southern overstates Nextel's position by including all of Nextel's 800 MHz spectrum in the trunked dispatch market. Because this spectrum is used for both trunked dispatch and interconnected mobile voice services, it is not appropriate to assign Nextel's 800 MHz capacity entirely to the trunked dispatch market as Southern urges.[94] Overall, we believe that Southern's HHI calculations are significantly inflated.

29. While the Applicants' analysis somewhat understates concentration in a trunked dispatch market, we find the Applicants' approach in analyzing trunked dispatch market concentration more defensible than that of Southern. The Applicants furnish HHI analyses that show a much lower level of concentration in the top nine urban markets under its trunked dispatch definition.[95] The Applicants' analysis shows an unconcentrated trunked dispatch market based on an estimate of Nextel's and Southern's portion of spectrum that is used for trunked dispatch service, other 800 MHz and 900 MHz spectrum, 220 MHz spectrum, 450 MHz spectrum, and

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90 Southern Comments at 6-9; Southern Reply at 6.

91 The HHI is used as an aid in evaluating market data to determine the degree of market concentration. The HHI is calculated by summing the squares of the individual market shares of all the participants in the relevant markets. In general, if the resulting number is: (1) below 1,000, the market is considered to be unconcentrated; (2) between 1,000 and 1,800, the market is considered moderately concentrated; (3) greater than 1,800, the market is considered to be concentrated. However, even a number above 1,800 may not raise competitive concerns, depending on the differential between the pre- and post-merger numbers. *See* Revised Horizontal Merger Guidelines at § 1.5. Southern calculates post-assignment HHIs ranging from 3,776 to 7,060 in the top nine urban markets. *See* Baumann and Siwek Affidavit at Tables EI_6.1-6.9 and EI_7.1-7.9.

92 Baumann and Siwek Affidavit at 12-14. Southern calculates post-assignment HHIs ranging from 3,776 to 7,060 in the top nine urban markets. *See id.*at Tables EI_6.1-6.9 and EI_7.1-7.9) (Nextel-Motorola calculations).

93 *Id.* at 7.

94 *See Fifth CMRS Competition Report* at 70. Nextel estimates that 47 percent of its minutes are used for dispatch. *See* Rosston Affidavit at 16.

95 The Applicants calculate post-assignment HHIs ranging from 530 to 759 in the top nine urban markets. Rosston Affidavit at Table 3.

700 MHz spectrum.[96] We generally agree that their approach on this point is reasonable. The Applicants' analysis, however, prematurely assumes that iDEN is available on the 900 MHz band and, consequently, allocates some portion of Nextel's 900 MHz licenses to an interconnected mobile voice market, when, at this time, the 900 MHz licenses are only being used to provide trunked dispatch services.[97] Further, the Applicants' analysis overstates the spectrum input markets by including the entire 220 MHz spectrum allocation and the entire 450-470 MHz spectrum allocation, both of which should only be included in part,[98] and the entire 700 MHz guard band spectrum, which should not be included at all.[99] On the other hand, Applicants did not include AMTS spectrum, which would have slightly lowered their market concentration calculation.[100]

30. Given our various adjustments to the Applicants' numbers, we conclude that their overall analysis is more reasonable than that of Southern. While we believe that the parties' HHI submissions have limitations as a means of analyzing the proposed transaction, we conclude that the Applicants' HHI calculations are more convincing than Southern's.[101] When we apply the same HHI methodology used by both parties to a trunked dispatch market as we have defined it above,[102] the result is that six of the affected markets show both pre- and post-transfer HHIs of

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96 *Id.* at Table 3.

97 *Id.* at 16 , Table 2 and Table 3

98 At the 220 MHz band, licensees have not fully entered the market and therefore only a portion of the 1.55 MHz allocated to this band is currently being used to provide trunked dispatch service. *See* ¶ 18 *supra.* At the 450 MHz band, although trunking is permitted, not all licensees have trunked their systems and are providing commercial trunked dispatch service. *See* ¶ 20 *supra.* Accordingly, only a portion of the 20 MHz of spectrum at this frequency should be considered in an analysis of the trunked dispatch market.

99 *See* ¶ 23 *supra*. However, we believe that in long term, the 700 MHz guard band spectrum may be another potential source of competition in the trunked dispatch market, since Commission rules preclude the provision of cellular services on this spectrum. *In the Matter of Service Rules for the 746-764 And 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, Second Report and Order*, WT Docket No. 99-168, FCC 00-90, 15 FCC Rcd 5299 at 5300 (rel. Mar. 9, 2000).

100 Rosston Affidavit at Tables 2 and 3. The AMTS spectrum would have added another 2 MHz of spectrum to the market analysis. However, not all 2 MHz of this spectrum is currently being used to provide land-based trunked dispatch, and therefore, only a portion of this spectrum should be included in a market concentration analysis.

101 The Revised Horizontal Merger Guidelines suggest using the variable that best indicates firms' future competitive significance, which may include sales, shipments, production, capacity, or reserves. Revised Horizontal Merger Guidelines at § 1.41. Both the Applicants and Southern use spectrum as the underlying variable for their market concentration analyses. Spectrum is an input in the provision of telecommunication services and a measure of capacity. For the trunked dispatch market, measures of output are unavailable. The choice of spectrum may be a reasonable alternative, but when, as here, extensive build-out has occurred, spectrum is a less accurate measure of the firms' future competitive significance, because other factors such as technology choice may affect subscribership and revenues. In the future, data on output measures may become available and this data could be used to assess the competitiveness of the trunked dispatch market. *See 1998 Biennial Regulatory Review, Spectrum Aggregation Limits for Wireless Telecommunications Carriers*, WT Docket 98-205, WT Docket 96-59, GN Docket 93-252, Report and Order at ¶ 29 (rel. Sept. 15, 1999).

102 Our analysis is based on the limited information in the record concerning the amounts of spectrum in the 450 MHz, 217-219 MHz, and non-SMR 800 and 900 MHz bands being used to provide trunked dispatch, and how ownership

less than 1000, indicating no market concentration either before or after the transaction. The three remaining markets show pre-and post-assignment HHIs in the 1000 to 1800 range, indicating moderate concentration levels, but in none of these cases does the HHI index rise by more than 100 as a result of the transaction, which is the threshold identified in the Revised Horizontal Merger Guidelines as indicating a significant increase in concentration.[103] Overall, these results are significantly closer to those presented by the Applicants than those presented by Southern.[104]

31. Based on this conclusion, we proceed to determine the likelihood of entry into a trunked dispatch market and the existence of services that, while not included in a trunked dispatch market, nevertheless constrain the potential for Nextel to exercise market power. With respect to entry, we expect that, in the relatively near future, there will be additional entry into a trunked dispatch market. First, we expect continued growth in service at 220 MHz, 217-219 MHz, and 450 MHz.[105] Second, current trends indicate that cellular and PCS carriers are offering dispatch-like group calling services that appear to be encroaching on Nextel's Direct Connect® service.[106] Third the Commission recently amended its rules to allow 800 MHz B/ILT licensees to (1) assign or transfer their spectrum to CMRS licensees for use in CMRS operations,[107] and (2) modify their Private Mobile Radio Service ("PMRS") licenses to allow CMRS use in their own systems.[108] Accordingly, existing private licensees in the 800 MHz band are now permitted to transfer their licenses to commercial SMR operators.[109] We conclude that entry from these

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of that spectrum is distributed. In addition, we have relied on estimates provided in the record of the percentages of Nextel and Southern spectrum holdings that are attributable to trunked dispatch, rather than interconnected mobile voice service.

[103] The Revised Horizontal Merger Guidelines identify changes of 100 or more points as potentially significant in moderately concentrated markets (markets with post-transaction HHI between 1000 and 1800), and changes of 50 or more points as potentially significant in highly concentrated markets (markets with post-transaction HHI above 1800). Revised Horizontal Merger Guidelines at § 1.51.

[104] We note that because there are now more providers of trunked dispatch service than was the case at the time of our *Geotek Order*, using spectrum bands that were not then being used as widely for provision of trunked dispatch, our calculation here actually results in lower concentration than we would have measured had we computed HHIs in the *Geotek Order*. Indeed, while we said in the *Geotek Order* that the trunked dispatch market was "concentrated," these results suggest that this may not be the case today. *See Geotek Order* at ¶¶ 31-34.

[105] *See* ¶¶ 18-20 *supra*.

[106] *See* ¶ 22 *supra*.

[107] *Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended*, WT Docket No. 99-87 (FCC 00-403), *Report and Order and Further Notice of Proposed Rule Making*, (rel. Nov. 17, 2000) ("*BBA Order*") at ¶ 110.

[108] *Id.* at ¶ 111. The Commission is currently considering whether to extend this rule to existing private licensees in the 900 MHz band, *id*. at ¶ 144, which may provide another potential source of future competition in the trunked dispatch market.

[109] Southern argues that there will be little incentive for private entities to convert B/ILT spectrum to commercial use given the prohibition against obtaining new B/ILT spectrum in the same location for one year after such conversion, and against making such a conversion until five years after the initial grant date of the license. *See* Baumann and Siwek Supplemental Affidavit at ¶¶ 19-31; *see also BBA Order* at ¶¶ 7, 114-115. The purpose of this rule change

sources can mitigate any potential for Nextel to exercise market power in this market.

32. Further, we believe that the ability of at least some consumers to use, in the alternative, traditional dispatch,[110] private dispatch,[111] and data dispatch provides additional constraint against the ability of Nextel to wield market power.[112] First, traditional dispatch services are likely to be viable competitive alternatives for customers who desire inexpensive dispatch service and do not have privacy concerns.[113] Second, owning and operating an in-house radio system or private dispatch system may be a competitive alternative for some large, trunked dispatch consumers.[114] Third, it appears that, for some customers, wireless data communications are increasingly becoming a satisfactory alternative to voice communications for dispatch applications.[115]

33. Based on our analysis of the current state of a trunked dispatch market, we believe that approval of these applications would not result in undue competitive harm in urban markets for trunked dispatch services. Given our expectations of near-term and longer-term future entry, we are satisfied that Nextel will remain constrained from exercising market power. On the basis of this record, we do not believe that this assignment will give Nextel the ability to charge supracompetitive prices or otherwise behave anticompetitively.

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was to increase the efficient use of spectrum through creating flexibility for PLMR licensees needing to fill their communications needs and CMRS licensees needing additional spectrum. *BBA Order* at ¶ 109. We do not believe these prohibitions, which were put in place to prevent trafficking in PLMR spectrum, will significantly chill the conversion of spectrum that is otherwise lying fallow. Southern further argues that for various reasons, it is unlikely that electric utilities will convert their current dispatch operations to a digital trunked system in order to offer commercial service. *See* Baumann and Siwek Affidavit at ¶¶ 32-61. Southern fails to consider the possibility that some electric utilities may choose to offer simple analog trunked dispatch service within their licensed area, if doing so would be profitable. While we cannot predict with certainty the extent to which B/ILT licenses will be converted to commercial use, there is no question that the potential of using this spectrum for trunked dispatch exists.

110 "Traditional dispatch" refers to non-interconnected, non-CMRS services provided on a for-profit basis (typically non-trunked analog systems). Traditional systems do not offer a comparable level of efficiency or privacy to commercial trunked systems.

111 "Private dispatch" refers to in-house systems operated by companies solely to support their own business operations.

112 *See Geotek Order* at ¶ 34; Strategis Report, SMR at 8, 27-28; Strategis Report, Dispatch at 10; *Fifth CMRS Competition Report* at 66-67.

113 *See Geotek Order* at ¶ 34.

114 *Id.*

115 Strategis Report, SMR at 27-28. Data services are spectrum efficient; permit group dispatch, and allow for wide area and nationwide coverage. Although data dispatch does not offer real-time, voice communications, such providers are offering increasingly sophisticated fleet management, automated scheduling, and dispatch communications capabilities. Strategis Report, Dispatch at 10; Strategis Report, SMR at 8. These services are provided by companies such as TeleTrac, HighwayMaster, and BellSouth Wireless Data. Strategis Report, SMR at 8. *See also Fifth CMRS Competition Report* at 66-67. Also, data dispatch features are increasingly being bundled with trunked dispatch, reflecting once again the fluidity of CMRS services.

ii. Rural Markets

34. Since Motorola generally has not provided dispatch services in rural areas,[116] the number of competitors in a rural trunked dispatch market will not be reduced due to the assignment of these licenses. Furthermore, our general policy is to permit the aggregation of CMRS spectrum and interests therein up to the limits permitted under the spectrum aggregation rule, provided that such aggregation neither reduces actual competition nor stymies the development of competition in any market.[117] We find no special circumstances here that warrant adopting a different view.

4. Analysis of Public Interest Benefits

35. Nextel contends that the assignments will result in more efficient use of spectrum by allowing it: (1) in the long term, to create a 900 MHz iDEN service that will build on Nextel's current 800 MHz iDEN system,[118] and (2) in the nearer term, to use the 900 MHz spectrum to relocate willing 800 MHz incumbents, thereby freeing additional 800 MHz spectrum for Nextel's existing iDEN services.[119] Nextel further states that the assignment will increase competition in the overall CMRS marketplace by enhancing Nextel's competitiveness by improving its lesser spectrum position vis-a-vis its CMRS competitors in the United States, and allow it to realize cost and operation economies similar to those of cellular and PCS providers.[120]

36. We agree with Nextel's analysis of the potential public interest benefits of this transaction. By creating a 900 MHz iDEN service that will be integrated into Nextel's 800 MHz iDEN spectrum,[121] Nextel, facilitated by the Commission's flexible use policies, will be in a position to make the highest valued use of the spectrum. Also, by deploying iDEN technology on the 900 MHz band, Nextel should be able to better facilitate global roaming for U.S. consumers, since mobile telephony services are offered in some countries on the 900 MHz band.[122] More immediately, using the 900 MHz spectrum to relocate 800 MHz incumbents and thereby freeing up additional spectrum for the digital iDEN technology is in the public interest. Accordingly, we find that there are some positive public interest benefits from the proposed assignments.

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116 Public Interest Statement at 18.

117 *See In re Applications of VoiceStream Wireless Corp. or Omniiiont Corp. and VoiceStream Wireless Holding Co., Cook Inlet/VS GSM II PCS, LLC, or Cook Inlet/VS GSM II PCS, LLC*, Memorandum Opinion and Order, 15 FCC Rcd. 3341, ¶ 26 (2000).

118 Public Interest Statement at 4.

119 *Id.* at 16.

120 *Id.* at 4.

121 *See* Nextel Waiver Request and Nextel March 8 *Ex Parte* Presentation at 10.

122 In 2000, Nextel began to offer international roaming using a dual mode/dual band handset (iDEN/GSM). *See* Nextel March 8 *Ex Parte* Presentatioan at 10.

D. Roaming

37. Southern also urges that, should the Commission grant these applications, Nextel should be required to provide it roaming on Nextel's digital SMR frequencies.[123] We deny this request. First, the alleged harm is not caused by the proposed transaction. Southern does not now have roaming agreements with Nextel or Motorola, and it will be in the same position after this transaction. Second, the remedy proposed does not address the harm claimed. There is no nexus between Southern's roaming proposal, which relates to Southern's interconnected mobile voice services, and a trunked dispatch market. Given that the current state of technology does not permit dispatch calling in a roaming mode, such a condition would not remedy any alleged harm to a trunked dispatch marketplace, which is the basis for Southern's expressed concerns about this transaction.[124] Third, if, as Southern asserts, Nextel is denying Southern manual roaming in contravention of our rules,[125] the appropriate remedy would be through an enforcement action,[126] and not a roaming condition on the grant of an unrelated set of applications. Finally, regulation of automatic and manual roaming services are the subject of a separate rulemaking proceeding,[127] and broader issues related to any proposed roaming requirements are more appropriately addressed in that proceeding.

E. Conclusion

38. We find that the proposed transaction is not likely to cause competitive harm in either the interconnected mobile voice or trunked dispatch markets and that it is likely to produce some public interest benefits. Therefore, on balance, we find that the proposed transaction is in the public interest. We also find that conditioning this grant on a roaming requirement is inappropriate.

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123 Southern Reply at 18-19. Southern argues that a mobile service that does not offer out-of-territory roaming is significantly less valuable. Baumann and Siwek Supplemental Affidavit at ¶ 43.

124 *See* Rosston Affidavit at 18.

125 *Id. See also In re Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Service; Notice of Proposed Rulemaking*, WT Docket No. 00-193, 15 FCC Rcd 21628 (rel. Nov. 1, 2000) *("Automatic and Manual Roaming NPRM*") at ¶¶ 5-7 (explaining current requirement) and Southern Reply, Exhibit A (Comments of Southern LINC submitted in response to the *Automatic and Manual Roaming NPRM*).

126 *See, e.g.,* 47 U.S.C. §§ 208, 202. We are not persuaded by Southern's statement in its comments in the Roaming Proceeding that available enforcement mechanisms are too cumbersome and risky. Comments of Southern LINC to Roaming Proceeding at 20-22. The fact that Southern has elected not to pursue its available remedies does not justify placing an extraneous condition on a separate and unrelated transaction.

127 *See Automatic and Manual Roaming NPRM*. In that rulemaking, the Commission has sought comment on whether to impose an automatic roaming rule for CMRS and/or to sunset the currently applicable manual roaming requirement.

IV. ORDERING CLAUSES

39. ACCORDINGLY, IT IS ORDERED, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 309, and 310(d), that the request of Southern LINC that we deny these applications IS DENIED.

40. IT IS FURTHER ORDERED, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 309, 310(d), that the Motion to Dismiss of Nextel Communication, Inc., Motion to Strike of Motorola, Inc., and Southern Communications Services, Inc., d/b/a Southern LINC Motion to Strike Nextel Communications, Inc. Letter of March 8, 2001, ARE DENIED.

41. IT IS FURTHER ORDERED, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 309, 310(d), that the applications filed by Motorola, Inc., Motorola SMR, Inc. and Motorola Communications and Electronics, Inc. to assign licenses to FCI 900, Inc. ARE GRANTED.

42. This action is taken on delegated authority under section 0.331 of the Commission's rules, 47 C.F.R. § 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Sugrue
Chief, Wireless Telecommunications Bureau