

2. Not Enough Spectrum. Because the proposed realignment plans do not account for the total amount of spectrum currently held by Southern and Nextel, they do not allot enough spectrum to the CMRS classification to accommodate both Southern and Nextel in the markets where they compete with each other. Additionally, because Southern utilizes equipment that maximizes frequency separation, moving Southern to contiguous spectrum could result in a loss of capacity.

3. Forced Relocation Beyond 800 MHz. Concern that Southern will be required to vacate the 800 MHz band, which Southern cannot do because iDEN, its technology platform, is not designated to operate at full functionality outside the 800 MHz band.

4. Problematic Technology Restrictions. Concern that the Commission will adopt a plan containing technology/system restrictions, *e.g.*, no "cellular-like technology," that will prohibit Southern from operating its particular type of system in the interleaved Business and I/LT portion of the 800 MHz band. That could effectively force Southern out of its current licensed channels, which could result in Southern losing much (and perhaps all) of the functionality of its system, including its ability to provide dispatch.

5. Reduction in Effective Capacity on Existing System. Concern that the Commission will adopt a plan that reduces the effective capacity of Southern's system. Because the configuration of Southern's system was designed to take advantage of the channel separation of its existing holdings, a block of contiguous spectrum providing an identical number of channels will result in diminished system capacity, in turn limiting Southern's ability to serve additional customers and possibly impacting the quality of service provided to existing customers.

Thus, if the Commission adopts a realignment plan, Southern requests that it ensure that the plan encompasses Southern and provides an amount of suitable spectrum on the 800 MHz band *at least* equal to that which it currently holds in both number of channels and effective capacity.

The *NPRM* and the realignment proposals discussed therein generally contemplate that all CMRS licensees are "low-power, low-site, cellular architecture systems that are potential sources of interference to 800 MHz public safety systems."⁶⁸ The Commission acknowledges,

⁶⁸ *NPRM* at n.20.

however, that this characterization "is somewhat imprecise because not all CMRS systems employ cellular architecture."⁶⁹ The Commission's use of "somewhat imprecise" terminology in the *NPRM* is troubling to Southern, given that its system is not easily categorized and the extremely high stakes of this rulemaking. Accordingly, to avoid placing Southern in an improper realignment category or excluding it from eligibility for any realignment category, the Commission must to be mindful of its attributes and distinguishing characteristics.

Based on the band realignment proposals that have been put forth so far, there is a high likelihood of Southern being left without a spectrum home. For example, the NAM plan proposes realigning the 800 MHz band to create allotments for (1) Public Safety; (2) Conventional SMR, Business, and I/LT; (3) Cellular Architecture Digital SMR; and (4) Cellular.⁷⁰ Southern clearly does not fit into the "Conventional SMR" designation, at least as defined in the *NPRM*, because it provides digital SMR.⁷¹ But the "Cellular Architecture Digital SMR" designation does not provide enough spectrum for both Southern and Nextel to relocate. Consequently, Southern would not have a readily apparent spectrum home under the NAM plan.

With regard to the Nextel plan, Nextel proposes realigning the 800 MHz band to create allotments for (1) Public Safety; (2) Guard Bands; (3) Low-Power, Low-Site Digital SMR; and (4) Cellular.⁷² While Southern provides digital SMR, it does not generally operate a low-site system, so it would not clearly be included under the "Low-Power, Low-Site Digital SMR" designation. An additional concern with the Nextel plan is that even if Southern could remain at

⁶⁹ *NPRM* at n.20.

⁷⁰ *NPRM* at ¶ 21.

⁷¹ In the *NPRM*, conventional SMR is defined as "SMR stations that do not employ digital cellular architecture configurations." *NPRM* at n.36.

⁷² *NPRM* at ¶ 23.

800 MHz, there might not be enough spectrum for it. That could occur because the plan might prohibit Southern from remaining on the General Category, Lower 80 SMR and interleaved Business and I/LT channels, its current primary spectrum home, and require it to relocate to the Upper 200 SMR channels where it currently has very little spectrum holdings. Those channels are currently occupied primarily by Nextel, and there would not be enough channels to accommodate both Southern's and Nextel's current spectrum holdings in the areas of the country where they compete with each other. That would be the case even if the Upper 200 SMR channel block is expanded by 6 MHz by including the NPSPAC channels.

For example, in Birmingham, Southern has approximately 10 MHz of useable 800 MHz spectrum and Nextel has approximately 15 MHz of useable 800 MHz spectrum, for a total of 25 MHz.⁷³ In this market there would be a shortage of approximately 9 MHz in trying to accommodate Southern and Nextel. There would be similar shortfalls in every urban area Southern and Nextel both serve. In rural markets, Southern has taken advantage of current technology and the current band plan by employing more sites which utilize cavity combiners ("cavity sites"). Cavity sites allow greater geographic coverage for single cells but require more channel separation. Therefore, even in rural markets where Southern and Nextel might both be accommodated because Southern has less spectrum, relocation to a more contiguous spectrum block creates a different set of problems for Southern. Southern would be less able to use cavity combiners, which would reduce the capacity provided by its existing network, in turn constraining its ability to grow its customer base and even negatively impacting the quality of

⁷³ "Useable 800 MHz spectrum" constitutes site-specific licenses or EA-based licenses with no incumbents. EA-based licenses with incumbents restricts the usability of those licenses.

service provided to its existing customers. Ironically, cavity combiners have been identified as a good technology for interference prevention.⁷⁴

In light of the foregoing, if the Commission adopts a band realignment plan, it must ensure that the plan encompasses Southern and provides an amount of suitable spectrum on the 800 MHz band at least equal to that which Southern currently holds.

B. Any Realignment Plan Must Minimize Costs And Disruptions To Incumbents

The Commission has a responsibility to carefully measure the cost of compliance with its mandates against any benefits that may be gained from implementing them.⁷⁵ Also, the Commission has long sought to avoid imposing requirements that may have inflationary consequences on private industry.⁷⁶ Congress, as well, has formally recognized the issue of inflationary consequences and the general need to avoid imposing excessive costs upon local

⁷⁴ For example, in Albany, Georgia, Southern requires channel separation because it utilizes solely cavity combiners in this area. Its current spectrum is spread over many bands (Business, ILT, Lower 80, and General Category), providing this spectrum with natural channel separation. If condensed down to an equal amount of contiguous channels, Southern's capacity in Albany would be reduced because it could not place in service the number of channels it had in service prior to the change. It would be able to place fewer channels into service because the contiguous spectrum would lack the necessary channel separation found in the same number of more widely separated channels.

⁷⁵ FCC Chairman Michael Powell recently recognized this problem in connection with formulating a national broadband deployment policy, stating, "The government sometimes acts like an indignant customer demanding to be served, but who has no intention of paying. We place orders for public policy widgets and expect them to be delivered at provider expense. This in some ways is like an unfunded mandate." Remarks of Michael K. Powell, Chairman, FCC at the National Summit on Broadband Deployment, Washington, D.C. (Oct. 25, 2001) (As prepared for delivery) *available at* <http://www.fcc.gov/Speeches/Powell/2001/spmcp110.html>.

⁷⁶ In re Amendment of Part 76 of the Commission's Rules and Regulations Relative to Postponing or Canceling the March 31, 1977 Date by which Major Market Cable Television Systems Existing Prior to March 31, 1972 Must be in Compliance with Section 76.251(a)(1)-(a)(8), Docket No 20363, *Report and Order*, 54 FCC 2d 207 (1975).

governments and the private sector.⁷⁷ The Unfunded Mandates Reform Act ("UMRA"), for example, was enacted to respond to growing concerns that the federal government was imposing enforceable duties on other levels of government and the private sector without adequately considering the nonfederal costs that would result from complying with those duties. Although the Commission is an independent agency and hence not technically subject to the UMRA's provisions, its principles are instructive.

Congressional concern over the impact of agency action on private industry can also be found in the Regulatory Flexibility Act ("RFA"), the Contract with America Advancement Act of 1996 ("CWAAA"), and the Small Business Regulatory Enforcement Fairness Act ("SBREFA").⁷⁸ The guidelines established by these acts emphasize the importance of the Commission's consideration of the economic impact of its regulations.⁷⁹ The language and requirements of these acts vividly illustrate Congress' concern with avoiding agency requirements that fail to adequately address the involved ramifications or fully consider more cost-effective alternatives.

In this proceeding, the costs and effects that could be caused by a widespread relocation of 800 MHz licensees could far exceed even that which was contemplated in the CWAAA, the

⁷⁷ *Unfunded Mandates Reform Act*, Pub. L. No. 104-4, 109 Stat. 48 (1996).

⁷⁸ *See Regulatory Flexibility Act*, 5 U.S.C. §§ 601-612, amended by the *Contract with America Advancement Act of 1996*, Pub. L. No. 104-121, 110 Stat. 847 (1996) ("CWAAA") (codified in relevant part at 5 U.S.C. §§ 801-808). Title II of the CWAAA is the SBREFA.

⁷⁹ Recent reports by the Small Business Association identify the Commission as one of the least compliant agencies in fulfilling its statutory mandates under the amended RFA. *See, Agency Compliance with the Small Business Regulatory Enforcement Fairness Act (SBREFA) Before the U.S. House of Representatives Committee on Small Business*, 107th Cong. (Mar. 6, 2002) (Testimony of Thomas M. Sullivan, Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration); U.S. Small Business Administration Office of Advocacy, *Annual Report of the Chief Counsel for Advocacy on Implementation of the Regulatory Flexibility Act, Fiscal Year 2001* at 35-38 (Feb. 2002).

RFA, or the UMRA. Projected costs to licensees forced to relocate without full compensation could be in the billions of dollars and could drastically impact the sectors of the economy and society in which they play a role. For example, Nextel's proposed realignment plan could force energy utilities to vacate the 800 MHz band, a proposition that could cost upwards of \$100 million dollars *to a single utility*. Imposing such a financial burden on an energy utility would run a high risk of negatively impacting the utility and its ratepayers. Due to the uncertain spectrum allocations Southern would receive under the Nextel or NAM plans, it is impossible to accurately calculate the financial impact of the plans upon it. However, they could obviously jeopardize its entire investment of over \$330 million dollars.

C. Incumbent Licensees Must Be Reimbursed For Forced Relocations

If the Commission adopts a realignment proposal of any form, it must ensure that incumbent licensees that are forced to relocate are reimbursed for their relocation costs. Such a policy would be fully consistent with the manner in which the Commission has previously handled forced relocations. For example, in the rulemaking in which the Commission reallocated 220 MHz of spectrum between 1.85 and 2.20 GHz for emerging technologies, new licensees that forced incumbents to relocate were required to "guarantee payment of all relocation expenses, build the new microwave facilities at the relocation frequencies, and demonstrate that the new facilities are comparable [to the old ones]."⁸⁰ Likewise, in a subsequent rulemaking in which the Commission opened the Upper 200 portion of the 800 MHz band to EA overlay auction winners, the Commission required incoming EA auction winners to

⁸⁰ In the Matter of Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, ET Docket No. 92-9, *First Report and Order and Third Notice of Proposed Rulemaking*, 7 FCC Rcd 6886, 6890 (1992).

fully compensate incumbent licensees that they displaced.⁸¹ Also, when the Commission reallocated the 2 GHz band for Mobile-Satellite Service ("MSS") use, new licensees were required to guarantee payment of all relocation expenses to displaced incumbents.⁸²

In the *NPRM*, the Commission notes that it has "on occasion" required incumbents to bear their own relocation costs. In providing support for this proposition, the Commission reached back to an order published over 35 years ago, in 1965. In that proceeding, the Commission relocated microwave facilities serving cable television ("CATV") systems in order to make way for a community antenna relay service.⁸³ Although the Commission required CATV incumbents to bear their own relocation costs, it stated that requiring them to do so under the circumstances of that proceeding would not impose an economic hardship on them.⁸⁴ That conclusion could not be reached under the circumstances of that present rulemaking. Here, incumbent licensees stand to incur billions of dollars in relocation costs.

Another problem with using the CATV microwave relocation order as precedent is that it was issued in 1965. A refusal to provide cost reimbursement in a reallocation proceeding held in

⁸¹ In the Matter of Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, *First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rule Making*, 11 FCC Rcd 1463, 1510 (1995).

⁸² In the Matter of Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service, *First Report and Order and Further Notice of Proposed Rulemaking*, ET Docket No. 95-18, 12 FCC Rcd 7388, 7402 (1997); *Memorandum Opinion and Order and Third Notice of Proposed Rulemaking and Order*, 13 FCC Rcd 23949, 23955 (1998).

⁸³ In the Matter of Amendment of Parts 2, 21, 74, and 91 of the Commission's Rules and Regulations Relative to the Licensing of Microwave Radio Stations Used to Relay Television Signals to Community Antenna Television Systems, Docket No. 15586, *First Report and Order and Further Notice of Proposed Rulemaking*, 1 FCC Rcd 897 (1965).

⁸⁴ *Id.* at 910.

1965 can hardly be cited as general policy today, when, during the intervening 37 years, the Commission has provided for cost reimbursement in rulemaking after rulemaking.

D. Forced Relocation May Result in A Taking Of Private Property

If the Commission does not ensure that incumbent licensees that are forced to relocate are reimbursed for their relocation costs, it may, for certain incumbents, trigger the takings clause of the Fifth Amendment to the United States Constitution. If the takings clause is implicated, the incumbent will be entitled to just compensation.

When the government institutes rules or regulations that destroy the beneficial use of property, the owner is entitled to compensation under the Fifth Amendment.⁸⁵ Although a licensee does not have an ownership right in the spectrum it utilizes, relocation can directly impact the equipment the licensee employs to make use of the spectrum. Certain relocations may render that equipment virtually useless and with little or no salvage value. For example, Southern's equipment is designed solely for use in the 800 MHz band, specifically 851-866 MHz paired with 806-821 MHz. If Southern is forced to relocate off of the 800 MHz band, its equipment will essentially become worthless.

In the context of land use regulation, the Supreme Court has recognized that there is a compensable taking *per se* if a regulation destroys all economically viable use of the land or if the owner has been called upon "to leave his property economically idle."⁸⁶ If the destruction is less than complete, the court engages in an essentially ad hoc factual inquiry that includes analysis of three factors: (1) the extent to which the governmental action interferes with distinct, investment backed expectations; (2) the character of the governmental action; and (3) the extent

⁸⁵ *American Pelagic Fishing Co. v. United States*, 49 Fed. Cl. 36, 46 (2001).

⁸⁶ *Lucas c. South Carolina Coast Council*, 505 U.S. 1003, 1019 (1992); *Penn Cent. Transp. co. v. City of New York*, 438 U.S. 104 (1978).

of economic impact on the claimant.⁸⁷ This three-part analysis also applies in the context of personalty, such as the wireless equipment that would be at issue here.⁸⁸

In this case, Southern has been building its 800 MHz system since the mid-1990s. The effort and expense Southern put into building this network was tremendous; in dollar terms alone, it has spent over \$330 million. Its system consists of, among other things, approximately 500 base stations and several regional and major switching offices with associated equipment. With this system, Southern supports over 250,000 users. Furthermore, Southern has used its frequencies according to the terms of its licenses and the Commission's Rules. It has sought and received renewals when necessary and reasonably expected that it would be able to do so in the future.

The Commission's adoption of a realignment plan, depending on its specific terms, could significantly reduce the value of Southern's equipment or even render it entirely valueless. Such action would severely interfere with Southern's distinct, investment backed expectations and could be economically devastating. In terms of the degree to which the Commission's action would be targeted to a particular party, the action would, at the least, be targeted to the discrete group of licensees in which the realignment plan categorized Southern. Given Southern's uniqueness, the Commission's action might even be seen as targeting Southern individually. Thus, a realignment plan adopted by the Commission may result in a taking requiring the payment of just compensation to Southern.

⁸⁷ *Penn Cent.*, 438 U.S. at 124. The mere fact that an industry is regulated does not mean that an investor can never form a reasonable expectation of return on an investment.⁸⁷ Moreover, the Fifth Amendment limits the actions that the government can take in regard to regulatory schemes without compensating those who have reasonably relied upon the schemes. *American Pelagic Fishing*, 49 Fed. Cl. at 50.

⁸⁸ *Eastern Enterprises v. Apfel*, 524 U.S. 498 (1998); *Andrus v. Allard*, 444 U.S. 51 (1979).

E. Only Parties That Directly Benefit From Public Safety Licensees' Relocation Can Be Required To Reimburse Their Costs

In the *NPRM*, the Commission asks "whether a direct benefit must accrue before the Commission may require a licensee to pay for the relocation of another licensee."⁸⁹ The answer is yes. In fact, the Commission lacks authority to require parties to reimburse public safety licensees' relocation costs if those parties do not benefit from the relocation. In past proceedings, the Commission has emphasized the importance of not burdening new licensees with relocation costs unless they benefit from the relocation. For example, in the proceeding in which microwave licensees were relocated to clear spectrum for PCS licensees, the Commission designed a system under which PCS licensees would share the relocation costs.⁹⁰ The Commission emphasized that:

Under the plan, these licensees will be required to pay reimbursement obligations *only when they have benefited from the spectrum-clearing efforts of another party*. Moreover, . . . , we are adopting limits on reimbursement to ensure that licensees subject to the plan do not bear a disproportionate cost. We conclude that these provisions amply protect the interests of such licensees.⁹¹

The forgoing principle is eminently applicable to the current proceeding. Here, requiring public safety licensees to relocate could cost billions of dollars. Yet, only the entities that are causing interference to public safety licensees will benefit from the relocation. If not for the interference that those entities are causing, the Commission would not need to consider relocation at all. Currently, only a handful of entities have been identified as causing public

⁸⁹ *NPRM* at ¶ 44.

⁹⁰ In the Matter of Amendment of the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, WT Docket No. 95-157, *First Report and Order and Further Notice of Proposed Rule Making*, 11 FCC Rcd 8825, 8860-64 (1996) (emphasis added).

⁹¹ *Id.* at 8862.

safety interference.⁹² Also, with the exception of nationwide carriers, most 800 MHz licensees have very limited coverage areas and, thus, could not possibly derive any benefit from the relocation of public safety entities that reside outside of those areas. A cost sharing plan that contemplated, for example, an 800 MHz licensee with operations solely in Miami contributing to a fund designed, in part, to reimburse public safety licensees in Los Angeles would be profoundly inequitable and beyond the Commission's authority to impose.

Southern, for its part, would not currently derive any benefit from the relocation of public safety licensees. Its system is primarily high-site, which is not known to cause public safety interference. Southern has been named in only one interference report, and that report has yet to be confirmed (Southern has contacted the public safety entity and is waiting for it to provide additional information). Also, its coverage, while extensive, does not extend beyond Georgia, Alabama, the southeastern quarter of Mississippi, and the panhandle of Florida. Therefore, while Southern strongly supports the mitigation of interference to public safety licensees, it should not be required to contribute to the costs of their relocation when the interference is not directly attributable to it.

In the *White Paper*, Nextel contends that the Commission should require all commercial SMR and cellular providers to "make a substantial contribution" to the cost of relocating public safety licensees because they will "benefit significantly" from the relocation by not having to concern themselves with "the burdens . . . necessary to safeguard public safety communications systems from interference."⁹³ This argument ignores the fact that some commercial providers are not causing interference to public safety licensees and may never cause such interference.

⁹² Nextel appears to be the licensee primarily responsible for causing public safety interference.

⁹³ *Nextel White Paper* at 39-40.

This suggestion primarily benefits Nextel by spreading the cost of its mitigation efforts to other licensees. The Commission simply has no authority to order certain select entities to pay such costs.

F. Forcing Economic Area Licensees To Relocate To Different Bands Would Be Contrary To The Public Interest And Sound Spectrum Policy

Numerous licensees in the 800 MHz band obtained many of their licenses through overlay auctions conducted, at most, just four and one-half years ago.⁹⁴ Some of those licensees bid millions of dollars just to obtain rights to the spectrum, and then they had to spend significant additional sums to move incumbents so that they could actually use the spectrum. Southern, for example, participated in every SMR spectrum auction the Commission held and spent over \$52.8 million to acquire auction licenses. While it would be harmful enough for the Commission to force site-by-site licensees to relocate, the prospect of forcing auction winners to relocate is even more troubling. Aside from the fact that doing so would be extraordinarily inequitable to companies that dedicated enormous amounts of resources to purchasing the spectrum, it will also seriously undermine the integrity of the auction process.

The Commission is well aware of the effort and expense that goes into a winning auction bid. Among other things, a company must: (1) determine whether bidding for spectrum is worthwhile; (2) conduct due diligence; (3) budget for the spectrum; (4) prepare for and participate in the auction; and (5) pay for the spectrum it manages to win. The amount of effort and expense is significant for every participating party. This includes smaller wireless

⁹⁴ Of the three auctions for 800 MHz spectrum, one was conducted approximately four and one-half years ago and the others were conducted less than two years ago. See 800 MHz SMR Auction Closes, *Public Notice*, 12 FCC Rcd 20417 (1997); 800 MHz Specialized Mobile Radio (SMR) Service General Category (851-854 MHz) and Upper Band (861-865 MHz) Auction Closes, *Public Notice*, 15 FCC Rcd 17162 (2000); 800 MHz SMR Service Lower 80 Channels Auction Closes, *Public Notice*, 16 FCC Rcd 1736 (2000).

companies that, despite the often very high prices commanded at auctions, choose to take the risk of purchasing spectrum in the interest of bringing their services to market and enhancing competition. For the Commission to largely render all that for naught by relocating licensees against their will would be highly inequitable.

Some may argue that auction licensees are equally well off when they are relocated because they have simply been moved to a different frequency. That argument, however, ignores the fact that in carefully analyzing their needs, calibrating the amount they were willing to bid, and participating in auctions, licensees sought to obtain an *exclusive right to particular spectrum*. Those exclusive rights include: (1) the right to construct and operate stations on particular frequencies that are compatible with their equipment and technology; (2) the right to relocate or otherwise work with incumbents on particular frequencies; (3) the right to have clear use of their chosen frequencies if the incumbents forfeit their licenses; and (4) the right to renewal of their chosen frequencies so long as they meet the renewal criteria. Spectrum to which auction licensees may be relocated may not have the same mix of incumbents, equipment compatibility, and other characteristics as the spectrum for which licensees originally bargained. As such, forced relocations could destroy the benefit of licensees' bargains, devalue their investments, and jeopardize their business plans.

In addition to the impact that relocating auction winners will have on individual licensees, it will also seriously undermine the integrity of the auction process. Companies that purchase spectrum desire certainty. When planning the amount of money they will invest, they anticipate that their rights to the spectrum will not change. When potential participants for upcoming auctions see those rights yanked away or significantly altered, they will be given pause when it is their turn to bid, and they will bid less. A company's lack of certainty regarding the future usability of an auction item translates directly into a reduction in the amount it is

willing to pay for it. It may also affect the willingness of outside investors to help fund spectrum purchases. The Commission itself declared, in the context of secondary markets, that, "Licensees should generally have clearly defined usage rights to their spectrum, including frequency bands, service areas, and license terms of sufficient length, with reasonable renewal expectancy, *to encourage investment.*"⁹⁵

Also, realignment of the 800 MHz band would constitute imposition of an impermissible secondarily retroactive rule to the extent that it forces licensees that obtained their licenses at auction to relocate. Rules are secondarily retroactive if they affect past transactions but have a purely future effect.⁹⁶ Such rules are valid "only to the extent [they are] reasonable - both in substance and in being made retroactive."⁹⁷ In this case, realignment of the 800 MHz band would fall squarely within the definition of a secondarily retroactive rule, as it would affect a past transaction (the spectrum purchase) but have a purely future effect (taking from licensees the particular spectrum they purchased). For the reasons discussed above, realignment that forces licensees that obtained their licenses at auction to relocate would not be reasonable in substance nor in being made retroactive, *i.e.*, in encompassing licenses already purchased at auction.

V. NEXTEL'S REALIGNMENT PLAN MUST NOT BE ADOPTED

Nextel's draconian realignment plan must not be adopted because it is contrary to the public interest, sound spectrum allocation policy, and principles of equity. Nextel would have the Commission nearly completely change the 800 MHz band. The change would essentially

⁹⁵ In the Matter of Principles for Promoting the Efficient Use of Spectrum by Encouraging the Development of Secondary Markets, *Policy Statement*, 15 FCC Rcd 24178, 24186 (2000) (emphasis added).

⁹⁶ U.S. Airwaves, Inc. v. FCC, 232 F.3d 227, 233 (D.C. Cir. 2000).

⁹⁷ *Id.*

require all current licensees except Nextel, Nextel Partners (a very close affiliate of Nextel), public safety, and cellular either to accept secondary status or to vacate the band without reimbursement. In addition to these expenses, companies like Southern would be asked to help fund costs incurred by public safety agencies.⁹⁸ These choices are unacceptable; few licensees currently operating on primary status can afford to change to secondary status, and the 700 and 900 MHz bands Nextel offers for relocation purposes are unacceptable relocation homes for these users, including Southern.

Most importantly, even Nextel admits that even after all this enormous expense is incurred, its plan will not correct the public safety interference problem.

A. Forcing Licensees Other Than Nextel To Bear The Burden Of Resolving A Problem Primarily Caused By Nextel Would Be Inequitable

Public safety interference has been significantly related to Nextel's operations. However, under Nextel's plan, Nextel would enjoy unique benefits, including access to significant additional contiguous spectrum. On the other hand, other 800 MHz licensees, who have no demonstrated involvement in causing public safety interference, would be required to relocate and almost certainly suffer significant hardship. Accordingly, Nextel's plan would constitute an extraordinarily inequitable solution.

B. Nextel's Plan Is Inconsistent With The FCC's Current Approach To Reallocating Spectrum Bands

No recent Commission precedent supports Nextel's concept of an unfunded, wholesale, and essentially mandatory relocation of entire classes of users to a new spectrum band. In the *Emerging Technologies* proceeding cited by Nextel in the *White Paper*, which was begun in 1992, the Commission recognized the need for a different approach to spectrum allocations than

⁹⁸ *NPRM* at ¶ 23.

the "band clearing" method applied in the 1970s.⁹⁹ The Commission noted that by the 1990s spectrum had become much more heavily used than it was in the 1970s and, as a result, any plan for the use of spectrum between 1.85 and 2.2 GHz would have to include "specific provisions for minimizing impact on existing services."¹⁰⁰ The Commission ultimately adopted rules concerning the relocation of incumbents from the 2 GHz band that provided for compensated relocation by the Emerging Technology cost-causer or up to ten years of primary status before the incumbents would be reduced to secondary status.¹⁰¹ Thus, in light of contemporary spectrum use patterns, the Commission has previously rejected the band clearing that Nextel's proposal would establish. It should not go back on the conclusions it reached in the Emerging Technologies proceedings, especially now, when 800 MHz spectrum is more congested and irreplaceable than ever before.

Another recent proceeding concerned reallocation of the 3650-3700 MHz Fixed Satellite Service ("FSS") band. There, the Commission rejected mandatory relocation because licensees could employ technical restrictions to avoid interference problems.¹⁰² Because of the cost and disruption that relocation would impose on incumbents, the Commission grandfathered those operations and permitted licensees to negotiate for voluntary relocation.¹⁰³ Thus, the

⁹⁹ In the Matter of Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, ET Docket No. 92-9, *Notice of Proposed Rulemaking*, 7 FCC Rcd 1542, 1543 (1992).

¹⁰⁰ *Id.*

¹⁰¹ *See, e.g.*, 47 C.F.R. §§ 101.69 - 101.81 (2001).

¹⁰² *See* In re Amendment of the Commission's Rules with regard to the 3650-3700 MHz Government Transfer Band, ET Docket No. 98-237, *First Report and Order and Second Notice of Proposed Rulemaking*, 15 FCC Rcd 20488, 20500 ¶ 25 (2000).

¹⁰³ *See id.*

Commission implemented a less disruptive market-driven relocation plan instead of mandatory relocation.

In recent years, the Commission has frequently sought means to minimize disruption in proceedings involving the relocation of incumbent licensees,¹⁰⁴ the grandfathering of existing operations,¹⁰⁵ and the relaxation of technical and operational restrictions.¹⁰⁶ To that end, it often conducts an in-depth study of the band at issue before proposing a relocation in order to determine if such drastic action would cause excessive disruption for existing licensees.¹⁰⁷

¹⁰⁴ See *In re Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service*, ET Docket No. 95-18, *Second Report and Order and Second Memorandum Opinion and Order*, 15 FCC Rcd 12315, 12352 ("consider[ing] it essential that the [relocation] process not disrupt the communications services provided by the existing 2 GHz fixed microwave operations") (2000) ("*MSS Second Report and Order*").

¹⁰⁵ See *In re Amendment of the Commission's Rules with regard to the 3650-3700 MHz Government Transfer Band*, ET Docket No. 98-237, *First Report and Order and Second Notice of Proposed Rulemaking*, 15 FCC Rcd 20488, 20500 (2000).

¹⁰⁶ See *In re Amendment of the Commission's Rules Concerning Maritime Communications; Petition for Rule Making Filed by Regionet Wireless License, LLC*; PR Docket No. 92-257, *Fourth Report and Order and Third Further Notice of Proposed Rule Making*, 15 FCC Rcd 22585, 22615 (2000) ("disrupting incumbent operations and imposing transition costs in order to simplify Commission procedures would not be in the public interest . . ."); *In re Amendment of the Commission's Rules Regarding Multiple Address Systems*, WT Docket No. 97-81, *Report and Order*, 15 FCC Rcd 11956, 11967 (2000) ("limiting [the 928/956 MHz] bands to a particular type of service could unnecessarily disrupt incumbent operations").

¹⁰⁷ See Office of Engineering and Technology, *et al.*, *Spectrum Study of the 2500-2690 MHz Band: The Potential for Accommodating Third Generation Wireless Systems*, ET Docket No. 00-258, *Final Report* (Mar. 2001); Office of Engineering and Technology, *et al.*, *Spectrum Study of the 2500-2690 MHz Band: The Potential for Accommodating Third Generation Wireless Systems*, ET Docket No. 00-232, *Interim Report*, 15 FCC Rcd 22310 (2000).

C. Nextel's Plan Requires Licensees In The Interleaved Business And I/LT Portion Of The 800 MHz Band To Choose Between Three Unacceptable Spectrum Alternatives

Nextel's plan will enable public safety licensees, cellular licensees, Nextel, and Nextel Partners to remain on the 800 MHz band and operate with primary status. Current occupants of the Business and I/LT portion of the 800 MHz band will be allowed to remain in the band only if they accept secondary status. Otherwise, they will have to relocate to 700 or 900 MHz spectrum. None of these alternatives are acceptable.

1. Secondary Status Is Unacceptable

Pursuant to the Commission's Rules, licensees relegated to secondary status are not protected from interference from licensees accorded primary status, and they must accept interference from licensees accorded primary status.¹⁰⁸ Secondary status would be an intolerable alternative for Southern. It is a large commercial carrier with hundreds of thousands of customers who expect their mobile phone to be usable when they need it. There is not a commercial carrier in the country that would be willing to subject its customers to the uncertainties of secondary status. Additionally, Southern provides the primary mobile communications system for several large electric utilities, law enforcement agencies, local governments, ambulance services, and similar entities. None of those entities could tolerate interference to their highly important, time-sensitive mobile communications, which are critical to the public safety and welfare.¹⁰⁹

¹⁰⁸ 47 C.F.R. § 90.7 (2001)

¹⁰⁹ For example, the National Telecommunications and Information Administration recently documented the importance of electric utilities' mobile communications to the nation's economic security. Marshall W. Ross and Jeng F. Mao, *Current and Future Spectrum Use by the Energy, Water, and Railroad Industries*, U.S. Department of Commerce, National Telecommunications and Information Administration, at 3-3 (Jan. 30, 2002) (available at <http://www.ntia.doc.gov/reports.html>).

2. The 700 and 900 MHz Bands Are Not Adequate Substitutes For The 800 MHz Band

Nextel's plan contemplates 800 MHz licensees moving to the 700 and 900 MHz bands if they will not accept secondary status. These bands, however, do not constitute adequate replacement spectrum because their technical restrictions preclude certain operations, and they do not constitute a sufficient amount of spectrum.

With regard to the 700 MHz Guard Bands, they have stringent technical restrictions that differ significantly from the rules governing the 800 MHz band, including a total prohibition on cellular-type architecture.¹¹⁰ If the Commission were to relocate 800 MHz licensees to this band, they would be precluded from ever instituting digital systems with cellular-type architecture. Also, Southern's iDEN network, which could be deemed to have a cellular-like architecture, would be precluded from operation in these bands.

Additionally, the 700 MHz Guard Bands being offered by Nextel do not offer sufficient spectrum to accommodate services proposed to be relocated from the 800 MHz band. Nextel lacks 700 MHz Guard Band spectrum in nine of the fifty-two Major Economic Areas. Not only is the amount of spectrum insufficient, the 700 MHz Guard Bands are presently unavailable in certain areas of the country. This spectrum is encumbered by television broadcasters who are currently using it and do not have to vacate it until December 31, 2006, at the earliest.¹¹¹

The 900 MHz band also fails to provide suitable replacement spectrum for displaced 800 MHz licensees. From Southern's standpoint, the 900 MHz band is completely unusable because

¹¹⁰ In the Matter of Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, WT Docket No. 99-168, *Second Report and Order*, 15 FCC Rcd 5299, 5306 (2000).

¹¹¹ See 47 U.S.C. § 309(j)(14); see also In re Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, WT Docket No. 99-168, *Second Report and Order*, 15 FCC Rcd. 5299, 5346-47 (2000) (adopting protection rules for television broadcast services).

equipment for iDEN, its technology platform, is not fully functional in the 900 MHz band. More generally, Nextel does not possess enough nationwide 900 MHz spectrum to accommodate all of the 800 MHz licensees that may be displaced by its realignment plan.

D. Granting Nextel 10 MHz Of 2.1 GHz Spectrum Would Be Contrary To The Public Interest And Sound Spectrum Policy

Nextel's request for 10 MHz of contiguous, nationwide 2.1 GHz spectrum is an attempt to obtain highly valuable and desirable spectrum for free and prevent its competitors from applying for the spectrum themselves. To accomplish this bold grab, Nextel would have the Commission cast aside established spectrum allocation principles. Although Nextel couches its request as a "modification" of its existing licenses, the Commission should see its request for what it really is: a spectrum grab that is contrary to the public interest and far removed from sound spectrum policy.

The specific frequency blocks Nextel is seeking, 2020-2025 and 2170-2175 MHz, are currently used by Broadcast Auxiliary Service ("BAS") and Fixed Service ("FS") licensees.¹¹² However, they are in the process of being reallocated to Mobile-Satellite Service ("MSS") licensees.¹¹³ Additionally, the Commission recently proposed to further reallocate a portion of that spectrum to advanced mobile and fixed terrestrial wireless services ("advanced wireless services").¹¹⁴ That proposal largely stems from a petition by the Cellular Telecommunications &

¹¹² *Nextel White Paper* at 29 and 56.

¹¹³ *Nextel White Paper* at 56.

¹¹⁴ Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems, ET Docket No. 00-258, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 16043 (2001).

Internet Association ("CTIA"), which was jointly supported by AT&T Wireless Services, Cingular Wireless, Sprint PCS, and Verizon Wireless.¹¹⁵

In light of the foregoing, the 2.1 GHz spectrum requested by Nextel is highly coveted and would clearly result in mutually exclusive applications if the Commission made it generally available. Accordingly, it would not be in the public interest and would be against sound spectrum policy to simply give the spectrum to Nextel. In connection with the Multichannel Video Distribution and Data Service ("MVDDS"), Chairman Michael Powell and Commissioner Kathleen Abernathy issued a joint press statement emphasizing the importance of giving all eligible parties the opportunity to apply for new spectrum, even in the face of strong reasons to grant it to one party:

Many have claimed that Northpoint deserves a nationwide 500 MHz terrestrial license for free based on its regulatory and technical efforts to make this service a reality. . . . There is little question that had it not been for Northpoint, the MVDDS service would not be ready to move forward today. . . . While we understand the equitable basis for Northpoint's claims, we cannot support that equitable concern trumping the auction regime Congress created in the statute, or the value of allowing other competitors to vie for a chance to offer service to the public.¹¹⁶

An additional reason it would be contrary to the public interest to grant Nextel an exclusive allocation at 2.1 GHz is that the spectrum Nextel proposes to give up "in exchange" for

¹¹⁵ In the Matter of Petition for Rulemaking of the Cellular Telecommunications & Internet Association Concerning Reallocation of 2 GHz Spectrum for Terrestrial Wireless Use, *Petition for Rulemaking of the Cellular Telecommunications & Internet Association*, p. 1 (filed May 18, 2001); In the Matter of The Establishment of Policies and Service Rules for the Mobile-Satellite Service in the 2 GHz Band, IB Docket 99-81, *Letter to Chairman Michael Powell by AT&T Wireless Services, Cingular Wireless, Sprint PCS, and Verizon Wireless* (June 13, 2001).

¹¹⁶ FCC Affirms MVDDS Authorization and Adopts Service Rules for the 12.2-12.7 GHz Band, ET Docket No. 98-206, *News Release*, Joint Statement of Chairman Michael Powell and Commissioner Kathleen Abernathy at 2 (Apr. 23, 2002).

the 2.1 GHz spectrum - scattered 700, 800, and 900 MHz licenses - is far less valuable than 10 MHz of contiguous, nationwide 2.1 GHz spectrum.¹¹⁷ Giving Nextel the benefit of a vastly uneven "exchange" would hardly be in the public interest.

As explained below, the policies underlying the Ashbacker Doctrine and Section 309(j) militate strongly against the approach suggested by Nextel.

1. The Policy Underlying the Ashbacker Doctrine

Originally created by the Supreme Court in 1945,¹¹⁸ the Ashbacker Doctrine has evolved to mean that "in spectrum not subject to the competitive bidding provisions - such as public safety frequencies - competing applicants for station licenses for unused frequencies that are mutually exclusive with one another are generally resolved using comparative procedures."¹¹⁹ In modern application, the policy underlying the Ashbacker Doctrine should require that when mutually exclusive applications exist or are likely to exist for non-auctionable spectrum, the Commission must award that spectrum through its regular licensing process rather than simply giving it to one party.

The Ashbacker Doctrine has traditionally been limited to situations where two or more mutually exclusive applications are actually on file for a particular frequency.¹²⁰ However, the policy underlying it should be applied to situations such as this, where a party seeks to have the designated use of particular spectrum redesignated to fit its purposes and also to have that spectrum allocated solely to it before other parties even have the opportunity to place competing

¹¹⁷ Nextel is not truly "exchanging" its existing spectrum, because there is no indication that the incumbent BAS and FS licensees that Nextel would dislocate would get any of its spectrum. *See Nextel White Paper* at 57.

¹¹⁸ *Ashbacker Radio Corp. v. FCC*, 326 U.S. 327 (1945).

¹¹⁹ *NPRM* at ¶ 80.

¹²⁰ *See, e.g., Reuters Limited v. FCC*, 781 F.2d 946 (D.C. Cir. 1986).

applications on file. The Ashbacker Doctrine is premised on the ability of parties to file competing applications and is rendered virtually useless if a single party is able to simply demand that the Commission give it new spectrum before that type of spectrum is made available to similarly situated parties.

In this case, Nextel's request constitutes an opening of the 2.1 GHz spectrum it requests. Such an opening may be limited to Nextel only if it can establish that the policy underlying the Ashbacker Doctrine does not apply to its request or that the request qualifies for an exception to the doctrine. In the past, the Ashbacker Doctrine has not been applied to true channel exchanges or swaps because the Commission concluded that the channels were already occupied rather than open.¹²¹ As for exceptions to the doctrine, the Commission "can promulgate rules limiting eligibility to apply for a channel when such action promotes the public interest, convenience and necessity."¹²²

Nextel's request for 2.1 GHz spectrum does not constitute a true spectrum exchange between licensees of occupied channels. Under a true exchange, Nextel would receive the particular channels held by licensees currently at 2020-2025 and 2170-2175 MHz, and in return, Nextel would provide those licensees with channels that it holds. Nextel, however, proposes that it obtain all the spectrum at 2020-2025 and 2170-2175 MHz, while the current BAS and FS licensees on that spectrum receive no particular channels in return, let alone any of Nextel's channels.

¹²¹ *NPRM* at ¶ 80.

¹²² In the Manner of Amendment of the Commission's Rules to Permit FM Channel and Class Modifications by Application, MM Docket No. 92-159, *Report and Order*, 8 FCC Rcd 4735, 4739 (1993).

Nextel's request for 2.1 GHz spectrum also does not qualify for the exception to the Ashbacker Doctrine. Nextel claims that its request is in the public interest because it is "necessary to make Nextel whole in this spectrum swap and make implementing the 800 MHz realignment plan possible."¹²³ The problem with that argument is that it assumes that Nextel's overall plan should be implemented. As explained throughout these Comments, however, Nextel's plan should not be implemented. Even if the Commission were to implement the plan (which it should not) it is never, as explained above, in the public interest to open very large blocks of highly valuable spectrum to one applicant to the exclusion of all other potential applicants.

2. The Policy Underlying Section 309(j)

Nextel's request for 10 MHz of spectrum implicates Section 309(j) because simply giving it this massive amount of highly valuable spectrum would constitute an extraordinary modification of its licenses, and there is no doubt that making the spectrum generally available would result in mutually exclusive applications. Thus, if the spectrum sought by Nextel is deemed auctionable, the reallocation of it should only be accomplished through competitive bidding.

Section 309(j) provides that, with certain exceptions, an initial license must be allocated through competitive bidding whenever mutually exclusive applications are accepted for the license. The term "initial license" can include an application to modify a license if the modification is "so different in kind [than the existing license] or so large in scope and scale as to warrant competitive bidding if mutual exclusivity exists."¹²⁴ Accordingly, if a requested

¹²³ *Nextel White Paper* at 53-54.

¹²⁴ In the Matter of Implementation of Section 309(j) of the Communications Act - Competitive Bidding, PP Docket No. 93-253, *Second Report and Order*, 9 FCC Rcd 2348, 2355 (1994).

modification seeking an assignment of auctionable spectrum goes well beyond what may be deemed an ordinary modification, the Commission will consider whether the application, in substance, actually constitutes an initial application.

In this instance, Nextel styles its request as a modification of its licenses.¹²⁵ It is, in its words, "exchanging" scattered 700, 800, and 900 MHz frequencies for 10 MHz of contiguous, nationwide spectrum at 2020-2025 and 2170-2175 MHz. Although Nextel asserts that it will not technically gain any additional spectrum, the reality of the matter is that 10 MHz of contiguous, nationwide 2.1 GHz spectrum is far more valuable than scattered 700, 800, and 900 MHz frequencies. As such, the modification would result in spectrum holdings much different than Nextel's current holdings. Additionally, the scope and scale of this modification - 10 MHz of contiguous, nationwide spectrum - is exceptionally large. Thus, Nextel's modification request constitutes, in substance, an initial application.

With regard to mutual exclusivity, to Southern's knowledge there are no other applications on file from advanced wireless providers for the 10 MHz of spectrum that Nextel is seeking. However, this lack of applications exists only because this spectrum has not yet been made available for advanced wireless use. As explained above, mutual exclusivity will occur if the Commission opens this spectrum to such use. Thus, the policy underlying Section 309(j) clearly applies; otherwise, parties would be able to side-step the competitive bidding requirements by having the Commission deliver large blocks of highly valuable spectrum directly to them without ever initiating the opportunity for mutually exclusive applications.

In accordance with the foregoing, Nextel's request constitutes, in substance, a request for an initial license, and opening the spectrum to general availability would result in mutually

¹²⁵ *Nextel White Paper* at 55.

exclusive applications. Thus, Nextel's request clearly implicates the policy underlying Section 309(j). As such, if the Commission chooses to reallocate the spectrum requested by Nextel, and if it is deemed auctionable, it should be assigned through competitive bidding rather than simply given to Nextel.

E. Nextel's Plan Contains No Mechanism For Assuring Its Promised Payment Of Up To \$500 Million To Relocate Public Safety Licensees

A critical component of Nextel's plan is its promise to pay up to \$500 million toward the relocation expenses of public safety licensees.¹²⁶ If Nextel's plan is adopted, and it fails to make all or a portion of this payment, the entire realignment plan would be jeopardized. It is highly unlikely that public safety licensees would be willing to go forward with relocation without this funding, and it is also unlikely that any non-public safety licensees could be compelled or would be willing to provide such funding in Nextel's place. The Commission, then, would find itself in the tenuous position of having implemented a mandatory realignment plan with which it would be essentially impossible for licensees to comply.

Southern's concern is heightened by Nextel's disclaimer, which states that Nextel's responsibility to pay anything towards public safety relocation will be negated entirely unless the Commission gives it all the spectrum that it requests in the *White Paper*.¹²⁷ There is also the question of whether Nextel or a successor company would remain bound to the payment obligation if Nextel is sold or merged. To that end, there has recently been merger speculation about large CMRS carriers generally¹²⁸ and Nextel specifically.¹²⁹

¹²⁶ *Nextel White Paper* at 8. Nextel's offer of up to \$500 million would not be nearly enough to cover the cost of relocating the nation's 800 MHz public safety licensees, which is expected to cost in the billions of dollars.

¹²⁷ *Nextel White Paper* at 40, n. 52

¹²⁸ Peter J. Howe, *Consolidation Among Wireless Carriers Seen as Inevitable*, Boston Globe, Mar. 18, 2002.

A further source of concern is whether Nextel will retain the ability to pay \$500 million, especially in a lump sum or over a short period of time. Its ability to pay that amount one or two years into the future is less than certain given its enormous debt load and the general condition of the capital markets for telecommunications companies. Adding to this concern is the fact that market conditions are unpredictable and can adversely affect a company's ability to meet all its obligations. For example, according to trade press, NII Holdings, a Nextel subsidiary, failed to make a payment on a \$108 million credit facility in December 2001 and also failed to make a \$41 million payment on \$650 million dollars in outstanding notes in February 2002.¹³⁰ NII Holdings has apparently stopped making payments on its debts and is in restructuring discussions with creditors.¹³¹

In light of the foregoing, if the Commission were to adopt Nextel's proposal (which it should not), it should absolutely guarantee Nextel's payment of \$500 million. Such guarantee could be accomplished, for example, by requiring Nextel to place the full amount in escrow within thirty days of the report and order and prohibiting it from having access to the funds thereafter.

VI. NAM'S REALIGNMENT PLAN MUST NOT BE ADOPTED

Like Nextel's Plan, NAM's realignment plan would not solve the public safety interference problem as it is currently understood. At the same time, it would impose enormous

¹²⁹ Dan Meyer, *Now What? Carriers Study Options After Nextwave Telecom Spectrum Disappears*, RCR Wireless News, Jan. 21, 2002, at 6.

¹³⁰ Margo McCall, *Debt Restructuring is Becoming Increasingly Common for Wireless Companies in Latin America*, Wireless Week, Apr. 8, 2002, at 18.

¹³¹ *Id.*; Jeffrey Silva, *Enron Aftershock Rolls Through Wireless*, RCR Wireless News, Apr. 15, 2002, at 1.

burdens on incumbent licensees that operate Business, I/LT, and SMR systems in the 800 MHz band. Additionally, it would not provide Southern with a sufficient amount of spectrum.

The NAM plan proposes realigning the 800 MHz band to create allotments for (1) Public Safety; (2) Conventional SMR, Business, and I/LT; (3) Cellular Architecture Digital SMR; and (4) Cellular.¹³² Southern clearly does not fit into the "Conventional SMR" designation, because it provides digital SMR.¹³³ But the "Cellular Architecture Digital SMR" designation does not provide enough 800 MHz spectrum for both Southern and Nextel to relocate in areas of the country where they compete with each other. Thus, Southern could lose much of its spectrum.

The NAM plan is also overly broad. In response to an interference problem due in large part to Nextel, it would affect a substantial number of incumbent licensees that do not cause interference to public safety licensees. Although the NAM plan would not require the relocation of as many incumbent licensees as the Nextel plan, it would reallocate for public safety use the General Category channels and the interleaved Business and I/LT channels at 854.75-856/809.75-811 MHz. Accordingly, the licensees currently on those channels, some of which are not causing interference to public safety licensees, would be displaced.

Additionally, the complicated changes necessitated by NAM's proposed band relocation would require incumbent licensees to incur tremendous costs. While the cost of retuning or replacing their equipment would be high, a recall of their mobile equipment to implement such a change would also cause incumbent licensees to expend several man-hours per radio. Incumbent licensees may also have to renegotiate or modify site leases and management agreements in the event they are not able to replace this spectrum at the precise locations where they are currently

¹³² *NPRM* at ¶ 21.

¹³³ In the *NPRM*, conventional SMR is defined as "SMR stations that do not employ digital cellular architecture configurations." *NPRM* at n.36.

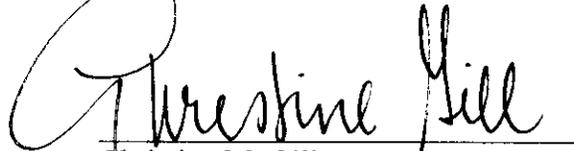
licensed. Relocation would also adversely affect the efficiency of operations designed to function at the specific authorized frequencies and could disrupt pending equipment purchases. The NAM plan offers no detail on the funding or cost allocation associated with such a massive relocation.

These serious considerations notwithstanding, the most compelling reason to avoid the disruption and expense of NAM's realignment plan is that it cannot be shown to significantly mitigate public safety interference.

VII. CONCLUSION

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Christine M. Gill". The signature is written in a cursive style and is positioned above a horizontal line.

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Dated: May 6, 2002

CERTIFICATE OF SERVICE

I, Gloria Smith, do hereby certify that on this 6th day of May 2002, a single copy (unless otherwise noted) of the foregoing "Comments Of Southern LINC" was hand-delivered to the following:

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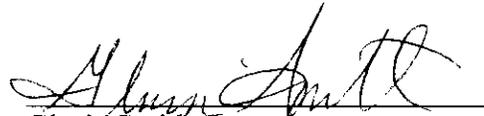
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