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MCDERMOTT, WILL & EMERY

December 23, 2003

Via Email

Mr. John B. Muleta
Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Re: Southern LINC; 800 MHz Public Safety Interference Proceeding, WT 02-55; *Ex Parte* Presentation

Dear Mr. Muleta:

This is to follow up on our recent *ex parte* meeting in which we discussed Southern's concern with the discriminatory aspects of the plan put forth as the Consensus Plan by Nextel and other entities. In that meeting you asked that Southern provide you with follow-up information regarding its position on several issues, which we provide herein.

CMRS Carriers Must Receive Spectrum Equity

Should the Commission opt to reallocate frequency assignments in the 800 MHz band, which Southern continues to oppose, it must ensure that all competitors are treated fairly. The Commission should be aware that, given the current spectrum holdings of all 800 MHz CMRS providers (excluding cellular carriers), not every CMRS carrier can be accommodated above 861 MHz. If the FCC decides to relocate CMRS carriers to a "CMRS-only," "cellularized" portion of the band, Southern believes that portion of the 800 MHz band must be expanded in certain parts of the country to accommodate all carriers. Southern has made specific suggestions as indicated on the attached diagram concerning how its frequency holdings should be "translated" if moved to a "cellularized" portion of the 800 MHz band. The attachments to this letter summarize how this can be accomplished.

The arbitrary delineation of 861 MHz as the dividing line between cellularized and non-cellularized operations as designated by the Consensus Plan is solely for the purpose of accommodating Nextel's operations. The FCC should not feel constrained to this boundary line

and should instead seek to accommodate all CMRS entities in the band, subject to the same technical and operational rules. In Southern's case, this would require designation of clear contiguous spectrum below 861 MHz in certain areas of the country for use by "cellularized" commercial systems. This is the most practical, least disruptive and least costly alternative for accommodating Southern's spectrum. It is imperative that Southern's operations remain feasible if the Commission decides to take an approach that requires relocation of Southern's extensive operations. Although Southern could operate with a small number of channels allocated above 861 MHz, it is not practical to relocate the majority of its channels above 861 MHz. Doing so will greatly exacerbate technical and operational issues (such as the need to modify control channels—possibly necessitating a handset recall), which will greatly increase the expense and difficulty of any relocation.

Spectrum Characteristics

If rebanding occurs, all CMRS entities must receive contiguous, unencumbered spectrum with the same interference rules that Nextel seeks for itself under the Consensus Plan. (The Consensus Plan proposes that Nextel receive nationwide contiguous channels, cleared of incumbents, with preferential operational rules with respect to potential RF interference.) Competitors such as Southern and other CMRS entities would be left in interleaved, Guard Band and Lower 80 channels that are non-contiguous and encumbered. They would also be subjected to asymmetrical operational restraints and limited interference protection rights.

Cellular Restrictions/Technical Operational Rules

All CMRS entities must have the same flexibility to use cellular-like system architecture. They must be able to operate under the same technical and licensing rules as well. The FCC should not adopt any plan that has special rules applying to only one competitor. The Consensus Plan proposes that Nextel alone be entitled to complete flexibility to use cellular architecture and to take advantage of flexible technical and licensing rules for its CMRS system. All other competitors, including Southern, would be left in the portion of the band that is subject to a restriction prohibiting cellular system design.[1] Grandfathering of Southern's system, as proposed in the Consensus Plan, would be a totally unacceptable option and result in freezing Southern's network in a "special status" which would adversely affect its commercial and competitive viability. In addition, non-CMRS technical and operating standards (for example, power and emission restrictions) would apply. In addition, this spectrum would not be freely transferable as commercial spectrum. EA licensees who spent many millions of dollars purchasing commercial spectrum at auction, as well as entities that have invested millions in building a commercial system, would be left with spectrum holdings subject to technical and operational restrictions, thereby drastically devaluing the spectrum holdings of these entities. The Consensus Plan achieves this anti-competitive result while at the same time tremendously inflating the value of Nextel's spectrum holdings.

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[1] The Consensus Plan proposes to outlaw post-realignment, in perpetuity, those *systems* below 861 MHz with all of the following characteristics: (1) more than 5 overlapping, interactive sites featuring hand-off capability; (2) sites with antenna heights of less than 100 feet above ground level or HAATs of less than 500 feet; and (3) sites with more than 20 paired frequencies. Consensus Plan at 10 n. 39.

Vendor Support

Under the Consensus Plan, all other CMRS carriers except Nextel are left in a portion of the band designated as restricted for cellular type system architecture. Because of this, carriers risk losing vendor support for their equipment since their operations would be outside the portion of the band designated for commercial, cellularized operations. They may be left in a position where they are not able to take advantage of new system design and technology enhancements. On the other hand, a single competitor designated to operate in the "cellularized" portion of the band would be at a significant, and perhaps insurmountable, advantage vis-à-vis the equipment vendor, in this case Motorola. The net result would be tremendous stranded investment and intense consumer dissatisfaction.

RCC

Southern believes that the Relocation Coordination Committee (RCC) proposed under the Consensus Plan is unlawful and should not be adopted by the Commission. If the Commission proceeds with rebanding, it should do so only by giving all parties to the spectrum exchange transactions equal rights, similar to the mechanism used for 2 GHz relocation. Competitors, such as Nextel, should not be allowed to dictate the spectrum relocation process for other competitors or demand access to sensitive competitive information in the name of "rebanding."

* * * * *

Southern reiterates its opposition to rebanding and urges the Commission not to proceed in this direction. If it does, however, it should do so only by treating all participants fairly. The band plan Southern has proposed for its network on a number of occasions in this proceeding, and again herein, would provide the minimum amount of regulatory symmetry to achieve a legally viable result for Southern. The Consensus Plan does not do this and instead significantly advantages one competitor. The Commission cannot lawfully proceed to adopt the Consensus Plan as proposed .

Very truly yours,

/s/ Christine M. Gill

Christine M. Gill

Attachments

cc: Chairman Michael K. Powell
Commissioner Kathleen Q. Abernathy
Commissioner Jonathan S. Adelstein
Commissioner Michael J. Copps
Commissioner Kevin J. Martin
Edmond J. Thomas, Chief Engineer, Office of Engineering and Technology
Aaron Goldberger, Wireless Telecommunications Bureau
Marlene H. Dortch, Secretary