

June 14, 2004

BY ELECTRONIC FILING

Michael Wilhelm  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

Re: WT Docket No. 03-66  
*Ex Parte Presentation*

Dear Mr. Wilhelm:

This filing provides additional information to the Federal Communications Commission to ensure that Economic Area ("EA") licensees, including Nextel, are treated comparably and fairly in 800 MHz realignment.

The Consensus Plan resolves interference to public safety and private wireless licensees in the 800 MHz band by realigning the spectrum and relocating incumbent licensees to provide for one block of high-site, high-power use (the "non-cellular block") and a low-power, low-site block of spectrum for cellular uses (the "cellular block"). As this proceeding has conclusively demonstrated, separating non-compatible technologies into separate blocks of spectrum provides a radio frequency ("RF") environment that will prevent interference before it occurs.

The Consensus Plan provides a comprehensive definition of what is and is not the type of system that should be relocated to the 800 MHz cellular block.<sup>1</sup> This definition is designed to separate the types of systems that have the

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<sup>1</sup> See Consensus Parties filing of December 24, 2002. The Consensus Plan proposed that 800 MHz licensees offering services that are interconnected with the public switched telephone network on a system containing the architecture described below should be located (or retuned) to the cellular channel block under the Consensus Plan. The three factors in the test are conjunctive, as follows: (1) the system contains five or more linked base stations; i.e., it offers real-time hand-off of ongoing calls from site-to-site; and (2) these linked sites have antenna heights below 100 feet above ground with HAATs of less than 500 feet; i.e., they are not classic SMR/public safety "high sites;" and (3) the operator is using 20 or more channels at each site.

greatest potential to cause interference to their non-compatible neighbors in the 800 MHz band, while minimizing relocations and disruption.

As the Commission approaches a conclusion to this proceeding, certain incumbent licensees within the 800 MHz band are attempting to use this proceeding to dramatically improve their current spectrum holdings (apparently at Nextel's expense), in a manner that will not only harm Nextel, but will harm consumers and public safety licensees.

### **I. Southern Linc is Attempting to Misuse 800 MHz Realignment**

Over the course of this proceeding, Southern Linc has done little to constructively address the problem of public safety interference. Initially, it questioned whether there is a CMRS – public safety interference problem at all, and proposed “further study” to determine the causes of and cures for public safety interference,<sup>2</sup> even though these issues had been thoroughly assessed, analyzed, documented, affirmed, and reaffirmed in this proceeding. Subsequently it proposed relocating all 800 MHz public safety licensees to the 700 MHz band as a long-term solution,<sup>3</sup> while at the same time advocating so-called “market-based,” technical mitigation measures to manage interference.<sup>4</sup> Later it lined up in support of the utility-led “Balanced Approach Plan.”<sup>5</sup>

Southern Linc's comments on retuning its own network are continually changing and are inconsistent. Initially in May 2002, Southern Linc claimed that if the FCC adopts a realignment plan, it must receive “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.”<sup>6</sup> Three months later, in August 2002, Southern Linc argued that it should receive *more* spectrum to make up for alleged lost spectrum efficiencies, while eschewing the need for contiguous channels.<sup>7</sup> One month later, it confirmed it would not need contiguous spectrum

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<sup>2</sup> See Southern Linc August 7, 2002 Comments at 5.

<sup>3</sup> *Id.* at 27-30.

<sup>4</sup> *Id.* at 16-21.

<sup>5</sup> See May 28, 2003 *ex parte* filing by UTC and its member companies in addition to CTIA and its member companies.

<sup>6</sup> See Southern Linc May 6, 2002 Comments at 31. (Emphasis in original)

<sup>7</sup> See Southern Linc August 7, 2002 Comments at 31. (“[I]f Southern were relocated to a block of spectrum with contiguous channels, it could only maintain

in realignment.<sup>8</sup> Months later, however, Southern Linc reversed its position, requesting that its 800 MHz channels be *retuned in their entirety to a contiguous block* immediately *adjacent* to the cellular block.<sup>9</sup> One year later, Southern affirmed this position, stating that it should be retuned *below* 861 MHz due to the costly nature of retuning its system above 861 MHz.<sup>10</sup>

Now, in the final stages of this proceeding, Southern Linc appears to be trying to take advantage of the public safety interference problem by changing its position yet again to promote its own interests. Southern Linc now asserts that every channel in its network should be *retuned to the cellular channel block above 861 MHz on contiguous spectrum*, notwithstanding its previous comments that contiguous channels would result in lost capacity, and that moving above 861 MHz would cause operational difficulties, including a lack of control channels, and higher costs.<sup>11</sup>

Given Southern Linc's vastly inconsistent positions, the Commission should look carefully at the *bona fides* of its arguments to assure that it is relocated fairly without disadvantaging other competitors.

## **II. Southern Linc's System Should Not Be Wholly Relocated To the Upper-200 Cellular Band.**

Southern Linc is a competitor of Nextel (and Nextel's affiliate Nextel Partners) in the southeastern United States.<sup>12</sup> Like Nextel, Southern Linc uses Motorola's iDEN technology. Southern Linc, however, deploys its network infrastructure differently than does Nextel. Southern Linc's network is predominantly a "high-site" network covering larger amounts of rural and lesser-

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its current capacity if it were given *substantially more* channels.") (Emphasis added).

<sup>8</sup> See Southern Linc September 23, 2002 Comments at 12, 26.

<sup>9</sup> See Southern Linc February 10, 2003 Comments at 2, 34-49.

<sup>10</sup> See Southern Linc *ex parte* letter dated February 11, 2004 at 1.

<sup>11</sup> See Southern Linc *ex parte* letter dated April 5, 2004.

<sup>12</sup> Southern Linc's operational territory covers Alabama, Georgia, a small portion of Mississippi and the panhandle of Florida, and it serves approximately 260,000 customers. See <http://www.southernlinc.com/netcoverage.asp>. *In comparison, Nextel and Nextel Partners serve more than three times as many customers in the same territory.*

populated territories than Nextel's more localized commercially driven low-site deployment.<sup>13</sup> In the two larger cities within its territory, Birmingham and Atlanta, Southern deploys a mixture of "high-sites" and "low-sites." Even in those two cities, however, Southern Linc does not exclusively rely upon what the Consensus Plan definition describes as "low-site" architecture.<sup>14</sup> For these reasons, and based on Southern Linc's stated desire to not have its system relocated, the Consensus Plan parties proposed that Southern Linc should continue operating primarily in the high-site, high-power portion of the 800 MHz band.<sup>15</sup>

Given Southern Linc's and Nextel's respective spectrum positions in the southeastern U.S., there is not enough spectrum to relocate Southern Linc's *entire* system to the cellular portion of the 800 MHz band without dramatically impacting Nextel and its approximately 13 million customers. Attached at Exhibit A is a chart of cities in the southeastern U.S. and the total number of channels that Southern Linc and Nextel each are capable of operating in those cities. As this chart demonstrates, combining Southern Linc's and Nextel's total spectrum holdings does not fit within the Consensus Plan's 320 channels (861-869 MHz) that are designated for the low-site cellular block. Similarly, both parties cannot fit within the 280 channels that are designated for the "Enhanced Consensus Plan", which proposes to reduce the cellular block by 2 MHz to 862-869 MHz.<sup>16</sup>

Exhibit A shows that if Southern Linc were relocated *entirely* to the cellular portion of the band and Nextel were required to surrender the spectrum necessary to relocate the entirety of Southern Linc, Nextel would lose significant amounts of spectrum – all 180 of its upper-200 band channels in three cities and almost all of its upper-200 channels in three additional cities. *Nextel would be utterly unable to operate its network or provide service for its millions of customers who live, work or travel in the southeast.*

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<sup>13</sup> Southern Linc's high-site network deployment is due to its need for greater coverage across a wider territory of the relatively less densely populated southeast and to meet the internal communications needs of its parent company utility company.

<sup>14</sup> Southern Linc's high-site deployment, while using the same iDEN technology as Nextel, helps explain why, for the most part, Southern Linc has not been identified as a major contributor to public safety interference in its licensed territory.

<sup>15</sup> See Consensus Plan Comments dated December 24, 2002 at 44.

<sup>16</sup> See Letter from Robert S. Foosaner, Nextel, to Marlene H. Dortch, FCC Secretary (June 8, 2004).

In over a dozen additional markets, including Atlanta, Nextel's network would be drastically impaired, as Nextel would lose at least 100 channels per market. To make up for that significant loss in capacity and provide comparable service for its customers, Nextel would be forced to construct hundreds of additional cell sites in the southeast at a cost of hundreds of millions of dollars in an attempt to stretch the use of its remaining spectrum.<sup>17</sup> Obviously, being forced to cease operations, or deploy hundreds of millions of dollars worth of added infrastructure in these markets alone was not part of the balancing of interests sought by the Consensus Parties in proposing a comprehensive realignment of the 800 MHz band. It would be impossible for Nextel to support 800 MHz realignment under such circumstances.

### **III. Southern Linc's System is Predominantly Based on B/ILT Spectrum – Not EA-Auctioned Spectrum**

Southern Linc, as a subsidiary of the one of the nation's largest utility companies, the Southern Company, aggressively acquired vast amounts of free, non-auctioned spectrum due to its status as a Business and Industrial/Land Transportation ("B/ILT") licensee.<sup>18</sup> As the Commission is well aware, it has neither auctioned B/ILT spectrum nor licensed it on a geographic-wide area basis. B/ILT spectrum is licensed only on a "site-specific" basis and has different operational rights than EA spectrum.<sup>19</sup> Accordingly, Southern Linc's heavy reliance on B/ILT spectrum, and not EA spectrum creates an importance difference between Nextel's and Southern Linc's spectrum positions in the 800 MHz band for retuning purposes.

In contrast to B/ILT spectrum, in the past five years the Commission has held three separate auctions for 800 MHz spectrum. Licensees participating in those auctions arguably had an expectation that their EA block licenses could be used for wide-area cellular-like deployment. As a result, the Commission is

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<sup>17</sup> In Atlanta alone, Nextel estimates that it would require 177 sites to make up for a potential loss of 105 channels to Southern Linc at an estimated cost of \$53 million (using a conservative estimate of \$300,000/site).

<sup>18</sup> While Southern Linc has acquired 800 MHz spectrum at Commission auction, Southern Linc's Economic Area ("EA") auctioned spectrum holdings are far exceeded by its site-specific B/ILT licensed holdings, as described further below.

<sup>19</sup> While B/ILT spectrum can be used in a cellular deployment, because it is licensed differently, there are restrictions in how that spectrum can be used and the extent to which it can be re-used in a given market.

apparently considering solutions in the 800 MHz realignment context to account for EA licensees who need to be retuned within the 800 MHz band. The Southern Linc situation, however, demonstrates that not all holders of EA licensees should have their *entire systems* relocated to the cellular block and that EA spectrum that is relocated must only be relocated on a channel-for-channel basis based on what is clear and usable in a given market. EA licensees must not be permitted to exploit the public safety interference situation to upgrade their spectrum position.

To demonstrate this point, attached at Exhibit B is a chart comparing Southern Linc's spectrum holdings to Nextel's, broken out by their respective site-specific SMR, site-specific B/ILT spectrum and its SMR EA-auction authorized spectrum.<sup>20</sup> This chart shows that the *majority of Southern Linc's spectrum is B/ILT non-EA spectrum – as high as 77% in a given market and over 55% across its licensed territories.*<sup>21</sup> As a result, Southern Linc's spectrum position in a realigned 800 MHz band warrants treatment that properly accounts for this difference.

The Commission has two potential viable alternatives to accommodate Southern Linc in a manner that would not be harmful to either Southern Linc or Nextel. The optimum solution for addressing Southern Linc's network would be to grandfather its entire operations below the cellular block, as Southern Linc has previously advocated.<sup>22</sup>

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<sup>20</sup> Exhibit B's demonstration of EA-auction spectrum is EA spectrum that is clear and usable in a given EA block. It does not include channels that are encumbered. For example, Southern Linc owns the D Block in Augusta, GA, which consists of 25 channels. Southern Linc, however, can only use 4 of those 25 channels in Augusta due to incumbents on the remaining 21 channels, including Nextel who controls 15 channels. Accordingly, in any EA-relocation contemplated by the Commission, Southern Linc, or any other EA licensee, must only receive the amount of *usable* EA spectrum that it has today on a channel-for-channel basis. Implementing realignment in this manner would prevent any EA licensee from gaining more than it had acquired in the EA auction and would not unfairly penalize Nextel who already is surrendering significant amounts of spectrum in the 800 MHz band to make realignment possible.

<sup>21</sup> In comparison, Nextel's B/ILT holdings in those same cities are dramatically lower than Southern Linc's. In Birmingham Nextel has 0 B/ILT channels; in Montgomery 0; Mobile 1; Biloxi 2; Atlanta 4; Jacksonville 66; Augusta 8; Savannah 3; Tallahassee 23, Dothan 0; Albany 0; Macon 2; Columbus 1; Chattanooga 1, Huntsville 0; Tupelo 0, Jackson 0, Pensacola 0.

<sup>22</sup> Of course, in those markets where Southern Linc owns and operates an Upper-200 20 channel A block license, such as in Birmingham or Montgomery,

Alternatively, as explained in Nextel's recent *ex parte* submission of June 8, 2004,<sup>23</sup> the Commission could choose to relocate *all* non-Nextel EA licensee spectrum, including Southern Linc's EA spectrum, to the 861-862 MHz portion of the 800 MHz band, immediately adjacent to the cellular block at 862 MHz.<sup>24</sup> The 40 contiguous channels between 861-862 MHz would be sufficient to cover much of Southern Linc's clear, unencumbered EA spectrum today in most of its markets.<sup>25</sup> Southern Linc's non-EA channels can remain below 861 MHz.

Either alternative keeps Southern Linc, other non-Nextel EA licensees and Nextel whole, does not punish any party or its customers, and still provides for interference protection for public safety and private wireless licensees.

Pursuant to section 1.1206(b)(2) of the Commission's rules, 47 C.F.R. § 1.1206(b)(2), this letter is being filed electronically for inclusion in the public record of the above-referenced proceeding.

Sincerely,

[/s/ James B. Goldstein](#)

James B. Goldstein  
Senior Attorney – Government Affairs  
Nextel Communications

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its spectrum should begin at the upper edge of the Upper-200 A block and work downwards. Nextel sees no reason why Southern Linc should not be permitted to "straddle" the dividing line between the non-cellular and cellular spectrum blocks to account for its unique spectrum situation. To the extent Southern Linc is grandfathered below the cellular block, however, its licensed spectrum between 851-854 MHz would still be required to relocate to make room for the new-NPSPAC operations.

<sup>23</sup> See Letter from Robert S. Foosaner, Nextel, to Marlene H. Dortch, FCC Secretary (June 8, 2004).

<sup>24</sup> This approach would work for almost all 800 MHz EA licensees, taking into account their clear and usable EA spectrum and not including their site-specific SMR and site-specific B/ILT spectrum.

<sup>25</sup> In those markets where Southern Linc's clear EA spectrum exceeds the 40 channels between 861-862 MHz (such as in Montgomery, Alabama), the Commission could direct Nextel and Southern Linc to arrange a mutually satisfactory arrangement to account for their two systems.

Exhibit A - Combined Spectrum Totals of Southern Linc and Nextel and Inability to Fit Within Cellular Block

City	Southern Linc Total Channels	Nextel Total Channels	Total Combined	Total Available Under Consensus Plan (861- 869 MHz)	Total Available Enhanced Consensus Plan (862-869 MHz)
Birmingham, AL	218*	297	515	320	280
Montgomery, AL	204*	312	516	320	280
Mobile, AL	202*	276	478	320	280
Biloxi, MS	177*	307	484	320	280
Pensacola, FL	167*	301	468	320	280
Huntsville, AL	147*	341	488	320	280
Columbus, GA	133	366	499	320	280
Macon, GA	131	353	484	320	280
Dothan, AL	123	360	483	320	280
Albany, GA	119	387	506	320	280
Chattanooga, TN	105	374	479	320	280
Tallahassee, FL	105	354	459	320	280
Atlanta, GA	105	301	406	320	280
Tupelo, MS	102*	371	473	320	280
Savannah, GA	100	339	439	320	280
Jackson, MS	95	358	453	320	280
Augusta, GA	90	366	456	320	280
Jacksonville, FL	40	432	472	320	280

\* Includes Southern Linc's existing 20-channel A Block license in the Upper-200 Band

Exhibit B  
Comparison of Southern Linc's and Nextel's EA and B/ILT Spectrum Positions

Cities	Total Southern Channels	Amount of Southern Channels that are B/ILT	% of SoCo spectrum that is B/ILT spectrum	Amount of Southern Channels that Are Clear, Usable EA Channels	% of SoCo spectrum that is Clear, Usable EA spectrum	Number of Site-Specific SMR Channels on non-SoCo owned EA Licenses
Birmingham, AL	218	89	41%	120	55%	9
Montgomery, AL	204	90	44%	103	50%	11
Mobile, AL	202	72	37%	119	59%	11
Biloxi, MS	177	83	47%	84	47%	10
Pensacola, FL	167	82	49%	68	41%	17
Huntsville, AL	147	81	55%	57	39%	9
Columbus, GA	133	81	61%	41	31%	11
Macon, GA	131	87	66%	39	30%	5
Dothan, AL	123	96	78%	25	20%	2
Albany, GA	119	91	76%	21	18%	7
Chattanooga, TN	105	81	77%	19	18%	5
Tallahassee, FL	105	68	65%	31	30%	6
Atlanta, GA	105	45	43%	45	43%	15
Tupelo, MS	102	53	52%	49	48%	0
Savannah, GA	100	68	68%	25	25%	7
Jackson, MS	95	45	47%	37	39%	13
Augusta, GA	90	40	44%	44	49%	6
Jacksonville, FL	40	15	38%	19	48%	6
Cities	Total Nextel Channels	Amount of Nextel Channels that are B/ILT	% of Nextel spectrum that is B/ILT spectrum	Amount of Nextel Channels that Are Clear, Usable EA Channels	% of Nextel spectrum that is Clear, Usable EA spectrum	Number of Site-Specific SMR Channels on non-Nextel owned EA Licenses
Birmingham, AL	297	0	0	246	83%	51
Montgomery, AL	312	0	0	288	92%	24
Mobile, AL	276	1	<1%	241	87%	34
Biloxi, MS	307	2	<1%	256	83%	49
Pensacola, FL	301	0	0	263	87%	38
Huntsville, AL	341	0	0	303	89%	38
Columbus, GA	366	1	<1%	306	84%	59
Macon, GA	353	2	<1%	286	81%	65
Dothan, AL	360	0	0	292	81%	68
Albany, GA	387	0	0	324	84%	63
Chattanooga, TN	374	1	<1%	317	85%	56
Tallahassee, FL	354	23	6%	289	82%	42
Atlanta, GA	301	4	1%	273	90%	24
Tupelo, MS	371	0	0	305	82%	66
Savannah, GA	339	3	<1%	290	86%	46
Jackson, MS	358	0	0	326	91%	32
Augusta, GA	366	8	2%	306	84%	52
Jacksonville, FL	432	66	15%	327	76%	39

Red denotes that Southern Linc is the EA license holder and the number is the "clear", usable channel count for that EA. Other channels within its own EA licenses are unencumbered.  
Blue represents Nextel's Spectrum.