

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

In re Application of
AWI Spectrum Co., LLC
Assignor;
and
ACI 900, Inc.
Assignee,
For Consent to Assignment of
Specialized Mobile Radio Licenses

DA 01-499
File No. 0000370897

ORDER

Adopted: May 25, 2001

Released: May 25, 2001

By the Chief, Wireless Telecommunications Bureau:

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**I. INTRODUCTION**

1. In this Order, we grant the above-referenced application to assign various Specialized Mobile Radio (“SMR”) licenses from AWI Spectrum Co., LLC, a subsidiary of Arch Wireless, Inc. (“Arch”), to ACI 900, Inc. (“ACI 900”), a subsidiary of Nextel Communications, Inc. (“Nextel”).<sup>1</sup> We deny the request of Southern LINC (“Southern”) that we reject this assignment.<sup>2</sup>

**II. BACKGROUND**

2. On February 16, 2001, pursuant to section 310(d) of the Communications Act of 1934, as amended (“the Communications Act”),<sup>3</sup> Arch and Nextel filed an application seeking Commission consent for Arch to assign 149 900 MHz SMR licenses and 1 800 MHz SMR license to Nextel.<sup>4</sup> Nextel has a nationwide licensed-area footprint and is the largest provider of mobile telephony services using SMR frequencies, with approximately 7.2 million subscribers in the United States at the end of the first quarter of 2001.<sup>5</sup> Nextel uses its facilities in the 900 MHz

<sup>1</sup> Application of Arch for Consent to Assign Licenses to ACI 900, Inc., filed Feb. 16, 2001, ULS File No. 0000370897 (“Application”).

<sup>2</sup> See Comments of Southern LINC, filed Mar. 21, 2001 (“Southern Comments”).

<sup>3</sup> 47 U.S.C. § 310(d).

<sup>4</sup> The “900 MHz” SMR band refers to spectrum allocated in the 896-901 and 935-940 MHz bands. The “800 MHz” SMR band 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”).

<sup>5</sup> See *Nextel Reports First Quarter 2001 Results*, News Release, Nextel Communications, Inc. (May 1, 2001). 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 SMR frequencies is Southern with approximately 200,000 subscribers. See Southern website

band for analog dispatch service.<sup>6</sup> Nextel also offers a variety of services over a digital, wide-area SMR network using 800 MHz SMR licenses, on a single handset. Nextel's digital offering is a bundled service that provides customers with interconnected mobile voice along with trunked dispatch service (marketed together under the brand name "Direct Connect<sup>®</sup>") that allows instant, real-time conferencing on a one-to-one or one-to-many basis.<sup>7</sup> Customers may also subscribe to other optional services, including paging and wireless Internet access.<sup>8</sup> In addition to its 800 MHz and 900 MHz SMR licenses, Nextel holds licenses in the 220 MHz band and Guard Band manager licenses in the 700 MHz band.<sup>9</sup> 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.<sup>10</sup>

3. Arch provides paging and messaging services on a local, regional, and nationwide basis, using spectrum that is not the subject of this transaction.<sup>11</sup> Of the 900 MHz licenses that Arch seeks to assign to Nextel, 134 are Major Trading Area (MTA) licenses, while 15 are Designated Filing Area (DFA) licenses.<sup>12</sup> The MTA licenses are not yet operational.<sup>13</sup> The DFA licenses and the 800 MHz license are managed by various third parties and are being used to provide trunked dispatch service in urban areas.<sup>14</sup>

4. On February 21, 2001, by delegated authority,<sup>15</sup> the Wireless Telecommunications

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at [www.SouthernLINC.com](http://www.SouthernLINC.com), Press Release (Aug. 29, 2000).

<sup>6</sup> "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. See *In re Applications of Motorola, Inc.*, 2001 WL 388253 (WTB rel. Apr. 17, 2001) ("*Motorola Order*") at ¶ 13 for further detail.

<sup>7</sup> Direct Connect<sup>®</sup> provides trunked dispatch customers with an expanded dispatch service area, higher voice quality, and extra security than analog trunked dispatch. Application, Attachment 2 ("Public Interest Statement") at 6. Upon request, the Direct Connect<sup>®</sup> service may be purchased separately from interconnected mobile voice.

<sup>8</sup> *Id.* at 6.

<sup>9</sup> *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).

<sup>10</sup> See Strategis Report, SMR at 47; see also 47 C.F.R. § 20.6(d)(2).

<sup>11</sup> Public Interest Statement at 4-5. Arch also provides these services in Canada, the Caribbean, Mexico, and Puerto Rico. See Arch website at <http://content.arch.com/about/>. These services include numeric and alphanumeric paging, two-way messaging, and mobile information, including wireless e-mail and Internet access. Public Interest Statement at 5, and Arch website at <http://content.arch.com/about/>.

<sup>12</sup> See *In the Matter of Implementation of Sections 3(N) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, 9 FCC Rcd 7998 (rel. Sept. 23, 1994) for additional information regarding DFAs and MTAs.

<sup>13</sup> Public Interest Statement at 24.

<sup>14</sup> Letter from Kathryn A. Zachem and Carolyn W. Groves, counsel for Arch, to Monica Desai, Commercial Wireless Division, F.C.C. (May 10, 2001) ("Arch Supplemental Submission") at 2. See also Public Interest Statement at 24.

<sup>15</sup> 47 C.F.R. § 0.331.

Bureau (“Bureau”) reported that the Application had been accepted for filing.<sup>16</sup> On February 26, 2001, the Bureau issued a Public Notice to establish a pleading cycle to enable interested parties to comment on the proposed transaction.<sup>17</sup> In response to this Public Notice, Southern filed comments requesting that we deny the Application.<sup>18</sup>

### III. DISCUSSION

5. As explained below, we find that the assignment of these 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 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 ACI 900 would serve the public interest. We therefore deny the request of Southern and grant the Application.<sup>19</sup>

#### 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.<sup>20</sup> Section 310(d) further requires that we consider the application as if the proposed assignee were applying for the licenses directly under section 308.<sup>21</sup> Thus, our review includes Nextel’s qualifications to hold licenses. In discharging these statutory responsibilities, we weigh the potential public interest harms of the proposed transaction against the potential public interest benefits to ensure that, on balance, the assignment serves the public interest and convenience.<sup>22</sup>

#### 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

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<sup>16</sup> WTB Assignment of Authorization and Transfer of Control Applications, Accepted for Filing, Rpt. No. 786 (Feb. 21, 2001).

<sup>17</sup> See Arch Wireless, Inc. and Nextel Communications, Inc. Seek Consent to Assign 900 MHz SMR Licenses, *Public Notice*, DA 01-499 (rel. Feb. 26, 2001).

<sup>18</sup> See Southern Comments.

<sup>19</sup> Our approval of this transaction is consistent with the position of the U.S. Department of Justice, which has not challenged Nextel’s proposed acquisition of the licenses at issue. See Arch Supplemental Submission at 1.

<sup>20</sup> 47 U.S.C. § 310(d).

<sup>21</sup> 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.*

<sup>22</sup> *Motorola Order at ¶ 6*, note 22 (and additional citations therein).

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.<sup>23</sup>

In this case, Southern has not challenged the basic qualifications of Arch, and we find no independent reason to review Arch's qualifications in the context of this proceeding.

8. By contrast, as a regular part of our analysis, we determine whether the proposed assignee is qualified to hold a Commission license.<sup>24</sup> 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,<sup>25</sup> we find 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 the Application is not in the public interest. To analyze Southern's claims, we first determine the markets potentially affected by the proposed transaction.<sup>26</sup> Second, we assess the effects that the transaction may have on competition in these markets.<sup>27</sup> Third, we consider whether the proposed transaction will result in transaction-specific public interest benefits.<sup>28</sup> 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.<sup>29</sup> Because, after this transaction, Nextel will hold only SMR

<sup>23</sup> *Id.* at ¶ 7, note 23 (and additional citations therein).

<sup>24</sup> *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). *See also Motorola Order* at ¶ 8.

<sup>25</sup> *See, e.g., Geotek Order* at ¶ 21; *Motorola Order* at ¶ 8.

<sup>26</sup> To determine the affected markets, we identify the Applicants' existing and potential product offerings. We may also identify which products offered by other firms compete or potentially compete with these offerings. *See, e.g., In re Applications of VoiceStream Wireless Corporation, Powertel, Inc., and Deutsche Telekom AG*, Memorandum Opinion and Order, IB Docket No. 00-187, FCC 01-142 (rel. Apr. 27, 2001) ("*DT/Voicestream Order*") at ¶ 81-82.

<sup>27</sup> *See, e.g., id.* at ¶¶ 78-115.

<sup>28</sup> *See, e.g., id.* at ¶¶ 116-124.

<sup>29</sup> *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).

spectrum, it is attributed with no more than 10 MHz in every market,<sup>30</sup> which does not exceed the limit. Southern nevertheless alleges that the transaction will result in undue harm to consumers that is unrelated to compliance with the spectrum aggregation limit. Therefore, we will analyze Southern's allegations of the competitive effect of the transaction.

## 2. Relevant Markets

11. We analyze this transaction with respect to its effects on an interconnected mobile voice market,<sup>31</sup> a trunked dispatch market,<sup>32</sup> and a paging and messaging market.<sup>33</sup> In defining the first two of these product markets, we adopt the analysis we used in the recent *Motorola Order*,<sup>34</sup> and we again reject Southern's more limited definition of a trunked dispatch market, which would confine our analysis solely to services being provided at 800 and 900 MHz.<sup>35</sup> In addition, because Arch's core business is paging and messaging, we also analyze the effect of this transaction on a paging and messaging market. We recognize that these product markets continue to evolve so that the dividing lines between them are becoming less clear. Although we do not foreclose the possibility that we may adopt an expanded market definition in a future transaction, we need not do so here because we approve these applications even under an analysis of these narrower markets.

12. Parties have raised no issues related to the exact dimensions of geographic markets. In addition, no competitive concerns have been raised related to either individual geographic markets or groups of markets such as all rural or all urban markets. As we have said in the past, geographic markets aggregate consumers that face similar choices regarding vendors of a particular product or service.<sup>36</sup> We have generally treated as predominantly local in nature

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<sup>30</sup> See 47 C.F.R. § 20.6(b).

<sup>31</sup> 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, Personal Communications Systems (PCS) providers, and interconnected trunked SMR carriers, such as Nextel and Southern. *Motorola Order* at ¶ 15.

<sup>32</sup> We include in a trunked dispatch market, at the very least, service providers at 800 MHz, 900 MHz, 220-222 MHz, 217-219 MHz (commonly referred to as Automated Maritime Telecommunications System spectrum), and 450-470 MHz. See *Motorola Order* at ¶¶ 17-24 for a detailed discussion of this issue.

<sup>33</sup> We include in this market firms offering commercial one-way or two-way paging and messaging services.

<sup>34</sup> See *Motorola Order* at ¶¶ 11-24.

<sup>35</sup> However, our analysis of a "trunked dispatch" market is more narrow than that advocated by the Applicants. Because we are able to approve the application based on the inclusion in a trunked dispatch market of only those services listed above (see note 21), we need not consider, at this time, Applicants' arguments that such a market should also include group calling plans offered by cellular and PCS providers, services to be provided using the recently auctioned 700 MHz guard band, or data dispatch services. See Public Interest Statement at 20-23; Reply of Nextel Communications, Inc., filed April 2, 2001, Attachment 1 ("Rosston Affidavit") at 14-15.

<sup>36</sup> Pittencrieff Communications, Inc., Transferor, and Nextel Communications, Inc., Transferee, For Consent to Transfer Control of Pittencrieff Communications, Inc. and its Subsidiaries, *Memorandum Opinion and Order*, 13 FCC Rcd 8935 (WTB 1997) at ¶ 37.

the markets for the mobile wireless services at issue here.<sup>37</sup> For purposes of analysis, we typically aggregate individual, local markets where they are similar, rather than examining each separately.<sup>38</sup> We follow those practices here and treat all geographic areas together.

### 3. Market Analysis

#### a. Interconnected Mobile Voice Services

13. Arch does not provide interconnected mobile voice services with its licenses, and therefore the number of competitors in this market will not be reduced due to the assignment. Consequently, the assignment will not harm competition in an interconnected mobile voice market.

#### b. Trunked Dispatch Services

14. We also find that Nextel's acquisition of these licenses will not result in competitive harms to markets for trunked dispatch services. The vast majority of these licenses are 900 MHz MTA licenses, which are not yet operational and therefore are not being used to provide service that competes with Nextel, or, indeed, any service at all. Accordingly, consumers will have the same access to alternative services and service providers after the transaction as they currently have. The remaining 16 licenses<sup>39</sup> are currently used to provide trunked dispatch service, and are operated and managed, pursuant to contractual agreements, by managers otherwise unaffiliated with Arch, including Nextel.<sup>40</sup> In those locations, the assignment of these licenses to Nextel will result in the loss of a competing trunked dispatch service provider. However, Nextel is unlikely to be able to exercise market power in any of these markets for several reasons: (1) there is competition provided by other firms offering trunked dispatch services in those locations;<sup>41</sup> (2) we expect near-term and long-term competitive entry into the trunked dispatch market;<sup>42</sup> and (3) for some consumers, traditional dispatch, private dispatch, or data dispatch are viable alternatives to trunked dispatch, providing additional constraint on

<sup>37</sup> See *id.* See also *Geotek Order* at ¶ 27, n. 64; *Motorola Order* at ¶ 25.

<sup>38</sup> *Id.*

<sup>39</sup> The remaining licenses include 1 800 MHz license and 15 900 MHz DFA licenses. The 800 MHz license is located in Portland, Maine. The 900 MHz DFA licenses are located in New York, Los Angeles, San Diego, Dallas, Detroit, Houston, and Seattle. Arch Supplemental Submission at 2.

<sup>40</sup> *Id.* Service is provided within the originally licensed field contour. 47 C.F.R. § 90.667.

<sup>41</sup> Application at Exhibit 1 (listing the major markets in which Arch currently holds 900 MHz licenses and all CMRS carriers within these markets).

<sup>42</sup> We expect there to be continued growth of trunked dispatch service at 220 MHz, 217-219 MHz, and 450 MHz. See *Motorola Order* at ¶¶ 18-20. Also cellular and PCS carriers are offering dispatch-like group calling services that appear to be encroaching on Nextel's Direct Connect® service. See *id.* at ¶ 22. Finally, additional capacity will also be available through 800 MHz Business and Industrial Land Transportation licensees, who may now assign or transfer their spectrum to CMRS licensees for use in CMRS operations, and modify their Private Mobile Radio Service licenses to allow CMRS use in their own systems. See *id.* at ¶ 31.

Nextel.<sup>43</sup> Furthermore, in those markets where Nextel operates as Arch's manager, the competitive impact will likely be even less significant.<sup>44</sup> Moreover, while Nextel will increase its capacity to provide trunked dispatch service, the licenses at issue are spread across the top 50 MTAs and the competitive impact of the additional capacity in any given market is de minimis.<sup>45</sup> Accordingly, we conclude that approval of these applications would not result in undue competitive harm in markets for trunked dispatch services.

c. Paging and Messaging Services

15. We also find that Nextel's acquisition of these licenses will not result in competitive harms to markets for paging and messaging services. The 900 MHz DFA licenses subject to this transaction are being used to provide limited trunked dispatch service, while the 900 MHz MTA licenses are unused. Accordingly, there will be no change in the choices available to consumers requiring paging and messaging services.<sup>46</sup> Also, Arch offers paging and related mobile services using its other licensed spectrum.<sup>47</sup> Therefore, the assignment will not harm competition in the paging and messaging markets.

#### 4. Analysis of Public Interest Benefits

16. Nextel contends that the assignments will result in the same benefits as claimed in the *Motorola* proceeding,<sup>48</sup> and the additional benefit of putting otherwise idle capacity to use.<sup>49</sup> We agree with Nextel's analysis of the potential public interest benefits of this transaction. We find that the assignment will result in the same benefits cited in the *Motorola* proceeding.<sup>50</sup> In addition, putting fallow spectrum to use introduces new capacity, which is in the public benefit.<sup>51</sup>

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<sup>43</sup> See *id* at ¶ 32.

<sup>44</sup> Nextel manages Arch's licenses in Los Angeles and Dallas. Letter from Carolyn Groves, counsel for Arch, to Monica Desai, Commercial Wireless Division, F.C.C. (May 21, 2001).

<sup>45</sup> See Application (listing licenses to be assigned), and Exhibit 2 to Application (listing the respective channel counts of Nextel and Arch in the top 50 MTAs). See also Public Interest Statement at 18.

<sup>46</sup> Spectrum capacity in the paging and messaging market appears sufficient to ensure a competitive market. See *Fifth CMRS Competition Report* at 63.

<sup>47</sup> Public Interest Statement at 4-5.

<sup>48</sup> See *Motorola Order* at ¶ 35 (assignment of the Motorola licenses to Nextel will result in more efficient use of spectrum by allowing Nextel either (1) to potentially create a 900 MHz iDEN service that will be integrated into Nextel's 800 MHz iDEN system, or (2) to use the 900 MHz spectrum to relocate willing 800 MHz incumbents, thereby freeing additional 800 MHz spectrum for Nextel's existing iDEN services); see also Public Interest Statement at 3-4 and 25; Rosston Affidavit at 5.

<sup>49</sup> Public Interest Statement at 24-25.

<sup>50</sup> See *Motorola Order* at ¶ 36.

<sup>51</sup> See *Geotek Order* at ¶ 48. These licenses, when built out may be used to provide paging, dispatch, mobile voice, facsimile, or combinations of these services. *Principles for Reallocation of Spectrum to Encourage the Development*



Commission policy permits flexible use of SMR spectrum, permitting the provision of paging, dispatch, mobile voice, mobile data, facsimile, or combinations of these services.<sup>52</sup> Accordingly, we find that there are positive public interest benefits from the proposed assignment.

#### D. Roaming

17. Southern also urges that, should the Commission grant these applications, Nextel should be required to provide it roaming on Nextel's digital SMR frequencies.<sup>53</sup> We deny this request for the same reasons articulated in the *Motorola Order*.<sup>54</sup>

#### E. Conclusion

18. We find that the proposed transaction is not likely to cause competitive harm in interconnected mobile voice, trunked dispatch, or paging and messaging markets, and that it is likely to produce 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.

### IV. ORDERING CLAUSES

19. 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.

20. 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 application filed by AWI Spectrum Co. LLC to assign licenses to ACI 900, Inc. IS GRANTED.

21. 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

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*of Telecommunications Technologies for the New Millennium*, Policy Statement, 14 FCC Rcd. 19868 (1999); see also *Geotek Order* at ¶ 25.

<sup>52</sup> *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.

<sup>53</sup> Southern Comments at 20-25.

<sup>54</sup> *Motorola Order* at ¶ 37.

Chief, Wireless Telecommunications Bureau