IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, 555 4th Street, N.W., Room 8104 Washington, D.C. 20001 Plaintiff, v. MOTOROLA, INC. 1303 East Algonquin Road Schaumburg, Illinois 60196 and NEXTEL COMMUNICATIONS, INC. 201 Route 17 North Rutherford, New Jersey 07070 Defendants.	CASE NUMBER 1:94CV02331 JUDGE: Thomas F. Hogan DECK TYPE: Antitrust DATE STAMP: 10/27/94

COMPLAINT FOR JUDGMENT AND INJUNCTIVE RELIEF (ANTITRUST)

The United States of America acting under the direction of the Attorney General, brings this civil action to obtain equitable and other relief against Nextel Communications, Inc. ("Nextel") and Motorola, Inc. ("Motorola") and complains and alleges as follows:

1. Nextel and Motorola are the nation's leading providers, and each other's principal competitors, of specialized mobile radio ("SMR") service, a form of radio dispatch service which enables a customer to communicate between and among a fleet of vehicles, such as delivery trucks, repair trucks and messenger services.

2. Nextel and Motorola have agreed to transfer control of substantial portions of Motorola's SMR service business to Nextel, both through Nextel's purchase of a substantial portion of Motorola's SMR frequencies and its assumption of management control of most of Motorola's remaining SMR

frequencies. As a result, Nextel will control virtually all of the frequencies currently used for SMR service in fifteen (15) of the largest cities in the United States. The agreement also contemplates transfer of twenty-four percent (24%) of Nextel's voting securities to Motorola and requires Nextel to purchase SMR radio equipment from Motorola.

3. Unless the execution of the agreement between Nextel and Motorola is blocked, competition in the SMR service business will be reduced substantially in fifteen (15) major cities in the United States. As a result, consumers will face increased prices for SMR service and decreased quality and availability of service. The agreement may also inhibit the deployment of alternative technologies.

I.

JURISDICTION AND VENUE

4. This complaint is filed under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, to prevent and restrain the violation by the defendants of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. This Court has jurisdiction of the subject matter of this action and each of the parties pursuant to Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. §§ 1331 and 1337.

5. Motorola transacts business and is found in the District of Columbia within the meaning of Section 12 of the Clayton Act, 15 U.S.C. § 22.

6. Nextel transacts business and is found in the District of Columbia within the meaning of Section 12 of the Clayton Act, 15 U.S.C. § 22.

7. Venue is properly based in the District of Columbia under 15 U.S.C. § 22 and 28 U.S.C. § 1391(b) and (c).

II.

DEFENDANTS

8. Motorola is a corporation organized and existing under the laws of the state of Delaware, with its principal office in Schaumburg, Illinois.

9. Nextel is a corporation organized and existing under the laws of the state of Delaware, with its principal office in Rutherford, New Jersey.

10. The activities of the defendants are within the flow of, and substantially affect, interstate commerce.

III.

TRADE AND COMMERCE

11. "SMR service" means land mobile communications services provided on a commercial basis pursuant to Part 90, Subpart S of the Rules of the Federal Communications Commission ("FCC"), 47 C.F.R. §§ 90.601 - 90.659.

12. Commonly referred to as "dispatch" service, SMR service is used for quick, reliable and private communications by operators of vehicle fleets, such as contractors, service companies and delivery services, to communicate with and within those fleets either on a one-to-one or one-to-many basis. Dispatch communications, unlike telephone conversations, are typically frequent in number and short in duration. For example, a dispatch communication could be used to determine a vehicle's location or to assign a service call. SMR service is also used

because customers find it unnecessary or undesirable to provide every truck in the fleet with cellular telephones, at least in part because cellular service is much more expensive.

13. "Trunked" SMR service allows customers to share radio frequencies, increasing the likelihood that any particular user will be able to gain access to a channel when that user needs to transmit a message. The specific channel used for a particular transmission is assigned automatically by computer when the customer pushes the button to talk. Once the SMR system has assigned a specific channel, the customer has exclusive and private use of that channel for the duration of the communication. In contrast, a conventional, or untrunked, dispatch system is akin to a multi-party telephone line. Conversations can be overheard by other persons and the use of the line is assigned by customers themselves on a first-come, first-served basis. A customer of a conventional dispatch system cannot always gain quick access to the system.

14. SMR systems have historically used high-elevation base stations to receive signals from transmitting radios, to allocate signals among available channels and to transmit the enhanced signal to the mobile units. In this deployment, SMR systems can cover a broad geographic area, allowing customers to communicate easily with their entire group over much, if not all, of a metropolitan area with only a single transmission from the high-elevation base station. In contrast, cellular telephone companies "reuse" spectrum by dividing a geographic area into groups of "cells" and using a frequency once per cell grouping

but many times within the single system; each cell covers only a portion of a metropolitan area, and a single cellular call can be passed from one cell to another as the mobile unit moves across the metropolitan area. Cellular design is not as well suited to provide SMR service, since several cells would have to transmit the communication in order to reach the entire group. Currently, the FCC prohibits cellular companies from providing one-to-many dispatch service.

15. There is a limited amount of spectrum available for SMR service. The FCC has allocated specific radio frequencies for SMR service. Those frequencies are located in the 800 MHz and 900 MHz radio bands. Within each frequency band there is a specified number of channels assigned to SMR service. Channels are assigned in pairs to permit two-way communication. From the late 1970's through 1988, the FCC allocated 280 channel pairs of 800 MHz bandwidth for SMR services. Those channels quickly reached their capacity of 100 to 150 customers per channel in most large cities. In 1986, the FCC allocated an additional 200 channel pairs in the 900 MHz bandwidth in the 50 largest metropolitan areas for SMR service. Even though the mobile radios used on 800 MHz and 900 MHz systems are not compatible with each other, 800 MHz and 900 MHz systems provide functionally similar service.

16. More recently, the FCC allocated 100 channel pairs in the 220 MHz bandwidth for local or regional trunked radio systems, including SMR systems. When implemented, SMR service in the 220 MHz band will be functionally similar to SMR services in the 800 MHz and 900 MHz bands. At present, however, the

only constructed 220 MHz SMR systems are in California. The scope of expected implementation varies by city. Further, 220 MHz service will require some time to gain commercial acceptance and to affect competition for 800 MHz and 900 MHz service, as 800 MHz and 900 MHz services required when they were first implemented.

17. Trunked SMR service on 800 MHz, 900 MHz and 220 MHz is a relevant product market. Conventional dispatch service is not a substitute because it affords lesser privacy and lower reliability. Mobile telephone service is not a substitute because it is significantly more expensive than SMR service, is significantly more difficult for customers to restrict communications to the defined fleet or group, and because it cannot be provided on a one-to-many dispatch basis.

18. The relevant geographic markets are the service areas in which the FCC has issued licenses for the provision of SMR service. There are fifteen cities -- including nine of the ten largest metropolitan areas in the United States -- where the effects of this transaction will be anticompetitive: Atlanta, Georgia; Boston, Massachusetts; Chicago, Illinois; Dallas, Texas; Denver, Colorado; Detroit, Michigan; Houston, Texas; Los Angeles, California; Miami, Florida; New York, New York; Orlando, Florida; Philadelphia, Pennsylvania; San Francisco, California; Seattle, Washington; and Washington, D.C.

19. The FCC's early licensing policies of 800 MHz spectrum led to an industry with numerous small SMR service providers. Applicants could apply for up to 20 (later reduced to five) trunked channel pairs per market. To retain a

trunked channel pair an SMR provider had to build its facilities within one year of receiving its license and have a certain number of subscribers. Systems not meeting the standards would have unloaded (unused) channels reassigned to applicants on a waiting list. Applicants for 900 MHz channels could apply for up to ten channel pairs per market. As with 800 MHz licensees, the 900 MHz SMR provider had to meet construction and loading requirements. Failure to do so caused the unconstructed or unloaded channels to revert to the FCC for future reallocation.

20. Initially, the FCC allowed radio equipment manufacturers, like Motorola, to own no more than one 20 channel trunked system. That restriction was later removed. The FCC did, however, permit Motorola and others to manage licenses held by other persons in exchange for a percentage of the revenues of the operation. Motorola took advantage of that rule and contracted to manage a large number of SMR systems. Those agreements are typically for ten years. In addition to assigning the managing company responsibility for daily operations, many of Motorola's management agreements grant it the right to select the base station equipment to be deployed by the system and the right of first refusal in the event the licensee receives an offer to purchase the system. While the FCC requires that management agreements technically leave control of the operations in the hands of the licensee, managing companies generally have effective control of the channels they manage.

21. In recent years, Nextel and other companies have been expanding their channel holdings by acquiring competing SMR service providers in the 800 MHz band. As a result, Nextel holds a dominant share of the 800 MHz SMR spectrum available for trunked SMR services in most of the largest markets in the country. Motorola is the second-largest provider of trunked SMR services in the United States.

22. Nextel's acquisitions were undertaken as part of a plan to replace the existing SMR systems with digital mobile networks. The FCC first authorized Nextel to implement digital networks in 1991. Digital mobile networks will employ the technology known as the Motorola Integrated Radio System, or "MIRS," developed by Motorola that employs a frequency reuse configuration much like that used for cellular networks. Nextel expects to become a major provider of mobile telephone services, in competition with the two cellular service providers, as well as to continue being a dispatch service provider. As part of its plan to establish digital mobile networks, Nextel entered into agreements to purchase two other companies that planned to establish regional digital mobile networks. On July 13, 1994, Nextel entered into an Agreement and Plan of Merger with OneComm Corporation, which accumulated 800 MHz spectrum in sixteen Western states. On August 5, 1994, Nextel entered into a similar agreement with Dial Page, Inc., which accumulated 800 MHz spectrum in twelve Southeastern states.

23. In addition to its 800 MHz owned and managed channels, Nextel owns and manages 900 MHz channels in a number of major cities. The 900 MHz channels may be used to provide SMR services, but current technology does not permit their utilization in conjunction with the planned MIRS digital mobile networks.

24. On August 4, 1994, Nextel and Motorola entered into an agreement by which Nextel will acquire Motorola's 800 MHz SMR systems and the right to manage Motorola's 900 MHz systems. Motorola will receive twenty-four percent (24%) of Nextel's voting securities and will sell Nextel MIRS equipment for its digital mobile networks.

25. In each of the fifteen markets, this agreement will substantially reduce competition in the market for trunked SMR service, as described below in paragraphs 26-40. In each of these markets the proposed acquisition will substantially increase concentration in already concentrated markets. Using a measure of market concentration called the "HHI" (defined and explained in Appendix A), the HHI is currently greater than 2200 in each of them, and the transaction will increase the HHI by more than 1400 points and leave Nextel with the ability to increase the prices of or decrease the quality or quantity of trunked SMR services.

26. In Atlanta, Georgia, Nextel will own or manage, upon closing of its agreement with Dial Page, approximately 250 800 MHz channels. Motorola is the largest remaining provider of SMR services in Atlanta; it owns or manages

approximately 50 800 MHz channels and 90 900 MHz channels there. Other providers of trunked SMR services currently hold, in total, licenses for approximately 105 800 MHz and 900 MHz channels on which they can provide trunked SMR service.

27. In Boston, Massachusetts, Nextel currently owns or manages approximately 200 800 MHz channels and 60 900 MHz channels. Motorola is the largest remaining provider of SMR services in Boston; it owns or manages approximately 30 800 MHz channels and 60 900 MHz channels there. Other providers of trunked SMR services currently hold, in total, licenses for approximately 200 800 MHz and 900 MHz channels on which they can provide trunked SMR service.

28. In Chicago, Illinois, Nextel currently owns or manages approximately 112 800 MHz channels and 50 900 MHz channels. Motorola is the largest remaining provider of SMR services in Chicago; it owns or manages approximately 77 800 MHz channels and 80 900 MHz channels there. Other providers of trunked SMR services currently hold, in total, licenses for approximately 115 800 MHz and 900 MHz channels on which they can provide trunked SMR service.

29. In Dallas, Texas, Nextel currently owns or manages approximately 190 800 MHz channels and 50 900 MHz channels. Motorola is the largest remaining provider of SMR services in Dallas; it owns or manages approximately 75 800 MHz channels and 70 900 MHz channels there. Other providers of

trunked SMR services currently hold, in total, licenses for approximately 62 800 MHz and 900 MHz channels on which they can provide trunked SMR service.

30. In Denver, Colorado, Nextel, upon closing of its agreement with OneComm, will own or manage approximately 160 800 MHz channels. Motorola is the largest remaining provider of SMR services in Denver; it owns or manages approximately 90 800 MHz channels there. Other providers of trunked SMR services currently hold, in total, licenses for approximately 165 800 MHz and 900 MHz channels on which they can provide trunked SMR service.

31. In Detroit, Michigan, Nextel currently owns or manages approximately 93 800 MHz channels. Motorola is the largest remaining provider of SMR services in Detroit; it owns or manages approximately 67 800 MHz channels and 30 900 MHz channels there. The several other providers of trunked SMR services currently hold, in total, licenses for approximately 50 800 MHz and 900 MHz channels on which they can provide trunked SMR service.

32. In Houston, Texas, Nextel currently owns or manages approximately 146 800 MHz channels and 40 900 MHz channels. Motorola is the largest remaining provider of SMR services in Houston; it owns or manages approximately 125 800 MHz channels and 100 900 MHz channels there. Other providers of trunked SMR services currently hold, in total, licenses for approximately 110 800 MHz and 900 MHz channels on which they can provide trunked SMR service.

33. In Los Angeles, California, Nextel currently owns or manages approximately 128 800 MHz channels and 30 900 MHz channels. Motorola is the largest remaining provider of SMR services in Los Angeles; it owns or manages approximately 36 800 MHz channels and 40 900 MHz channels there. Other providers of trunked SMR services currently hold, in total, licenses for approximately 130 800 MHz and 900 MHz channels on which they can provide trunked SMR service.

34. In Miami, Florida, Nextel, after the agreement with Dial Page is closed, will own or manage approximately 285 800 MHz channels and 6 900 MHz channels. Motorola is the largest remaining provider of SMR services in Miami; it owns or manages approximately 30 800 MHz channels and 71 900 MHz channels there. Other providers of trunked SMR services currently hold, in total, licenses for approximately 106 800 MHz and 900 MHz channels on which they can provide trunked SMR service.

35. In New York, New York, Nextel currently owns or manages approximately 144 800 MHz channels and 30 900 MHz channels. Motorola is the largest remaining provider of SMR services in New York; it owns or manages approximately 52 800 MHz channels and 120 900 MHz channels there. Other providers of trunked SMR services currently hold, in total, licenses for approximately 100 800 MHz and 900 MHz channels on which they can provide trunked SMR service.

36. In Orlando, Florida, Nextel, upon closing of the agreement with Dial Page, will own or manage approximately 266 800 MHz channels and 10 900 MHz channels. Motorola is the largest remaining provider of SMR services in Orlando; it owns or manages approximately 47 800 MHz channels and 20 900 MHz channels there. Other providers of trunked SMR services currently hold, in total, licenses for approximately 130 800 MHz and 900 MHz channels on which they can provide trunked SMR service.

37. In Philadelphia, Pennsylvania, Nextel currently owns or manages approximately 111 800 MHz channels. Motorola is the largest remaining provider of SMR services in Philadelphia; it owns or manages approximately 96 800 MHz channels and 100 900 MHz channels there. Other providers of trunked SMR services currently hold, in total, licenses for approximately 134 800 MHz and 900 MHz channels on which they can provide trunked SMR service.

38. In San Francisco, California, Nextel currently owns or manages approximately 209 800 MHz channels and 42 900 MHz channels. Motorola is the largest remaining provider of SMR services in San Francisco; it owns or manages approximately 45 800 MHz channels and 12 900 MHz channels there. Other providers of trunked SMR services currently hold, in total, licenses for approximately 35 800 MHz and 900 MHz channels on which they can provide trunked SMR service.

39. In Seattle, Washington, Nextel, upon closing of its agreement with OneComm, will own or manage approximately 135 800 MHz channels and 40 900

MHz channels. Motorola is the largest remaining provider of SMR services in Seattle; it owns or manages approximately 54 800 MHz channels and 40 900 MHz channels there. Other providers of trunked SMR services currently hold, in total, licenses for approximately 45 800 MHz and 900 MHz channels on which they can provide trunked SMR service.

40. In Washington, D.C., Nextel currently owns or manages approximately 139 800 MHz channels and 10 900 MHz channels. Motorola is the largest remaining provider of SMR services in Washington, D.C.; it owns or manages approximately 61 800 MHz channels and 90 900 MHz channels there. Other providers of trunked SMR services currently hold, in total, licenses for approximately 75 800 MHz and 900 MHz channels on which they can provide trunked SMR service.

41. Entry into local markets for the provision of trunked SMR services is difficult. All available 800 MHz and 900 MHz SMR spectrum has been licensed in the fifteen metropolitan areas, except for limited amounts of 900 MHz spectrum the FCC allocated, but later reclaimed when the systems were not constructed. The only new entry that will occur will be through the construction of the 220 MHz licenses and a limited number of new 900 MHz systems when reclaimed spectrum is reallocated. The scope of entry by 220 MHz license holders will vary by city, and the 220 MHz service will require some time to gain commercial acceptance. As a result, when 220 entry occurs, it will be insufficient to address the anticompetitive effects of this transaction.

IV.

VIOLATION ALLEGED

42. On August 4, 1994, Nextel and Motorola entered into an agreement by which Nextel will acquire Motorola's SMR service business in the 800 MHz radio band and manage Motorola's SMR service business in the 900 MHz radio band in exchange for twenty-four percent (24%) of Nextel's outstanding voting securities.

43. The effect of the proposed acquisition and management agreement may be substantially to lessen competition in violation of Section 7 of the Clayton Act in the following ways, among others:

(a) actual and potential competition between Nextel and Motorola (and the licenses they manage) in the sale of trunked SMR services in the geographic markets identified in paragraphs 26 to 40 above will be eliminated;

(b) competition generally in the sale of trunked SMR services in the geographic markets identified in paragraphs 26 to 40 above will be substantially lessened; and

(c) the deployment of alternative technologies will be inhibited.

PRAYER

WHEREFORE, plaintiff prays:

1. That the acquisition and management agreement between Nextel and Motorola be adjudged to be in violation of Section 7 of the Clayton Act;

2. That the defendants be permanently enjoined from carrying out any agreement, understanding, or plan, the effect of which would be to combine the trunked SMR service operations of Nextel and Motorola; and

3. That plaintiff have such other and further relief as the Court may deem just and proper.

DATED: October 27, 1994

ANNE K. BINGAMAN
Assistant Attorney General

GEORGE S. BARANKO

STEVEN C. SUNSHINE
Deputy Assistant Attorney General

KATHERINE E. BROWN

CONSTANCE K. ROBINSON
Director of Operations

J. PHILIP SAUNTRY, JR.

JONATHAN M. RICH
Assistant Chief
Communications & Finance Section

SUSANNA M. ZWERLING
Attorneys, Antitrust Division
U.S. Department of Justice
555 4th Street, N.W.
Washington, D.C. 20002
(202) 514-5640

APPENDIX A
DEFINITION OF HHI

"HHI" means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of thirty, thirty, twenty, and twenty percent, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). The HHI takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 are considered to be moderately concentrated and those in which the HHI is in excess of 1800 points are considered to be concentrated. Transactions that increase the HHI by more than 100 points in moderately concentrated and concentrated markets presumptively raise antitrust concerns under the Department of Justice and Federal Trade Commission 1992 Horizontal Merger Guidelines.