

**CORRESPONDENCE  
FILE**

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matters of	)	
	)	
<b>NORCOM COMMUNICATIONS CORPORATION</b>	)	WTB DOCKET NO. 98-181
	)	
Business Radio Station License WNQF836; SMR Stations WZA770, WNBW505, WNAJ380, WNRU218 and WNJU965, NY, NY/Long Island Area	)	
	)	
Application to Modify Business Radio Station License WNQF836, NY, NY/Long Island Area	)	File Number A008053
	)	
Application to Modify SMR Radio Station License WZA770, NY, NY/Long Island Area	)	File Number C002479
	)	
Application to Modify SMR Station License WNBW505, NY, NY/Long Island Area	)	File Number C002480
	)	
<b>ASSOCIATION FOR EAST END LAND MOBILE COVERAGE</b>	)	
Business Radio Station License WPAT918, NY, NY/Long Island Area	)	
	)	
<b>LMR 900 ASSOCIATION OF SUFFOLK</b>	)	
Business Radio Station License WNXT323, NY, NY/Long Island Area	)	
	)	
<b>METRO NY LMR ASSOCIATION</b>	)	
Business Radio Station License WPAZ643, NY, NY/Long Island Area	)	
	)	
<b>NY LMR ASSOCIATION</b>	)	
Business Radio Station License WPAP734, NY, NY/Long Island Area	)	
	)	
<b>WIRELESS COMMUNICATIONS ASSOCIATION OF SUFFOLK COUNTY</b>	)	
Business Radio Station License WPAT910, NY, NY/Long Island Area	)	

To: Honorable John M. Frysiak, Administrative Law Judge

**WIRELESS TELECOMMUNICATIONS BUREAU'S  
CONSOLIDATED OPPOSITION TO MOTIONS FOR EXTENSION  
OF TIME AND TO ESTABLISH DEADLINE FOR SERVING  
REQUESTS FOR ADMISSIONS**

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List A B C D E

1. On December 9, 1998, Norcom Communications Corporation ("Norcom") filed an "Expedited Motion to Extend Norcom's Response Period For Bureau's Request for Admissions; Motion to Establish Deadline for Service of Request for Admissions." On that same date, the Association For East End Land Mobile Coverage, the LMR 900 Association of Suffolk, the Metro NY LMR Association, the NY LMR Association, and the Wireless Communications Association of Suffolk County (collectively, the "Associations") filed a "Consolidated Motion to Extend the Associations' Response Period For Bureau's Request for Admissions; Consolidated Motion to Establish Deadline for Service of Request for Service of Request for Admissions." The Acting Chief, Wireless Telecommunications Bureau ("Bureau"), by his attorneys and pursuant to Section 1.246(b) of the Commission's Rules, hereby submits his consolidated opposition to both requests for relief.

2. On December 3, 1998, the Bureau timely served a separate Request for Admissions upon Norcom and upon each of the captioned Associations. Pursuant to Sections 1.246(b) and 1.4(h) of the Commission's Rules, Norcom and each of the Associations are required to respond to the Bureau's Request for Admissions by December 16, 1998. In their respective pleadings, Norcom and the Associations seek an extension of time within which to respond the Bureau's Request for Admissions until ten days after the Presiding Judge has ruled upon Norcom's "Motion to Delete and/or Change Issues" and the Associations' "Consolidated Motion to Delete and/or Change Issues," both of which were also filed on December 9, 1998.<sup>1</sup>

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<sup>1</sup> The Bureau intends to file a separate opposition to the referenced motions to delete within the time specified by the Commission's Rules.

Norcom and the Associations maintain that an extension of time to respond to the Bureau's Requests for Admissions is warranted because the Bureau seeks admissions of facts relating to issues that Norcom and the Associations seek to delete.

3. In their respective motions to delete, Norcom and the Associations request deletion of the unauthorized transfer of control and abuse of process issues specified in the *Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing for Forfeiture*, FCC 98-252 (released October 14, 1998) ("Order"). As the Bureau will show in its opposition to the motions to delete, these motions are, in reality, unauthorized requests for reconsideration and modification of a Commission action. The Presiding Judge is not authorized to reconsider or modify an action taken by the Commission. *See Atlantic Broadcasting Co.*, 5 FCC 2d 717, 721 (1966). Moreover, Section 1.106(a)(1) of the Commission's Rules prohibits petitions for reconsideration of hearing designation orders except to the extent that a party is denied the right to participate in a hearing.

4. Neither Norcom nor the Associations have a realistic prospect of prevailing on the merits of their motions to delete. Thus, the motions to delete should not serve as the basis for extending the time within which to respond to the Bureau's Requests for Admissions. Furthermore, the grant of extensions would unnecessarily delay the discovery phase of this proceeding and ultimately the evidentiary hearing itself. The Bureau requires prompt responses to the admissions in order to determine which individuals it will need to depose in this proceeding. If Norcom and the Associations receive the relief they seek, the time for

responding to the admissions could be delayed a month or more while the Presiding Judge considers and rules on the motions to delete. On the other hand, Norcom and the Associations have not alleged or shown that they would be unduly burdened or prejudiced by answering the requests for admissions within the time specified by the Commission's Rules. Therefore, Norcom and the Associations have not justified that any extension of time to respond to the Bureau's Requests for Admissions is warranted.

5. Norcom and the Associations also request the Presiding Judge to establish, as the deadline by which they must serve requests for admissions upon the Bureau, ten days after the Presiding Judge rules upon their motions to delete. There is no merit or justification for this request. Pursuant to Section 1.246(b) of the Commission's rules, the deadline for filing requests for admissions of fact was December 3, 1998 (20 days after the time for filing a notice of appearance has expired). Norcom and the Associations have already missed this important procedural deadline and failed to file timely requests for an extension. They have provided no justification for favorable consideration of their late-filed request for a waiver of section 1246(b).

6. Accordingly, the Bureau respectfully requests that the Presiding Judge deny the referenced requests filed by Norcom and the Associations for extensions of time to respond to the Bureau's Requests for Admissions and to serve requests for admissions on the Bureau. Additionally, the Bureau requests the Presiding Judge to so rule in an expedited

manner so that the procedural deadline of December 16, 1998 for responding to the Bureau's Requests for Admissions is maintained.

Respectfully Submitted,  
Gerald P. Vaughan  
Acting Chief, Wireless Telecommunications Bureau



Gary P. Schonman  
Chief, Compliance and Litigation Branch  
Wireless Telecommunications Bureau



Thomas D. Fitz-Gibbon  
Judy Lancaster  
Attorneys, Compliance and Litigation Branch  
Wireless Telecommunications Bureau

Federal Communications Commission  
2025 M Street, N.W., Suite 8308  
Washington, D.C. 20554  
(202) 418-0569

December 11, 1998

Certificate of Service

I, Arlene Cook, certify that, on December 11, 1998, a copy of the foregoing Wireless Telecommunications Bureau's Consolidated Opposition to For Extension of Time and to Establish Deadline for Serving Requests for Admissions" was sent by facsimile to:

Honorable John M. Frysiak  
Administrative Law Judge  
1250 Maryland Avenue, SW, Room 1-C860  
Federal Communications Commission  
Washington, D.C. 20554

Russell H. Fox, Esq.  
Gardner, Carton & Douglas  
1301 K Street, N.W.  
Suite 900, East Tower  
Washington, D.C. 20005

George Petrutsas, Esq.  
Fletcher, Heald & Hildreth  
1300 North 17th Street, 11th Floor  
Arlington, VA 22209-3801

  
Arlene Cook