

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

FCC 99M-1

In the Matters of)
)
 NORCOM COMMUNICATIONS)
 CORPORATION)
)
 Business Radio Station License WNQF836)
 SMR Radio Stations WZA770, WNBW505,)
 WNAJ380, WNRU218 and WNJU965)
 New York, New York/Long Island Area)
)
 Application to Modify Business Radio Station)
 License WNQF836, New York, New York/)
 Long Island Area)
)
 Application to Modify SMR Radio Station)
 License WZA770, New York, New York/)
 Long Island Area)
)
 Application to Modify SMR Radio Station)
 License WNBW505, New York, New York/)
 Long Island Area)
)
 ASSOCIATION FOR EAST END LAND)
 MOBILE COVERAGE)
 Business Radio Station License WPAT918)
 New York, New York/Long Island Area)
)
 LMR 900 ASSOCIATION OF SUFFOLK)
 Business Radio Station License WNXT323)
 New York, New York/Long Island Area)
)
 METRO NY LMR ASSOCIATION)
 Business Radio Station License WPAZ643)
 New York, New York Area)
)
 NY LMR ASSOCIATION)
 Business Radio Station License WPAP734)
 New York, New York/Long Island Area)
)
 WIRELESS COMMUNICATIONS)
 ASSOCIATION OF SUFFOLK COUNTY)
 Business Radio Station License WPAT910)
 New York, New York/Long Island Area)

WTB Docket No. 98-181

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FCC MAIL ROOM

File Number A008053

File Number C002479

File Number C002480

MEMORANDUM OPINION AND ORDER

Issued: January 4, 1999 ; Released: January 6, 1999

1. Under consideration are the Motion to Delete and/or Change Issues filed December 9, 1998 by Norcom Communications Corp. ("Norcom") ; Consolidated Motion to Delete and/or Change Issues filed December 9, 1998 by the Association for East End Land Mobile Coverage, LMR 900 Association of Suffolk, Metro NY LMR Association, NY LMR Association, and Wireless Communications Association of Suffolk County (the "Associations") ; Wireless Telecommunications Bureau's Consolidated Opposition to Motions to Delete filed December 21, 1998 ; Reply to Consolidated Opposition filed December 28, 1998 by ("Norcom") and the Consolidated Reply to Opposition to Motion to Delete and/or Change Issue filed December 29, 1998 by the ("Associations").

2. The above named petitioners request deletion of the unauthorized transfer of control issue specified in the Order to Show Cause/Hearing Designation Order. It is argued that the Commission used the wrong legal standard in specifying that issue. Petitioner Norcom also requests the deletion of the abuse of process issue specified against it on the grounds that its relationship to the Associations was disclosed when the Associations' applications were granted.

3. The Petitioners' requests must be denied on procedural grounds. The Order to Show Cause/HDO indicates that the Commission considered the question of what standard is applicable in determining whether there was an authorized transfer of control and determined that the test in *Intermountain Microwave*, 24 RR 983 (1963) was applicable. The Presiding Judge lacks the authority to modify or reconsider the Commission's explicit ruling. 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. Petitioners' requests also are denied on substantive grounds. The Bureau convincingly argues that the Petitioners' reliance on the ruling in *Motorola, Inc.*, Application File No. 507505, et al. (Chief, Private Radio Bureau 1985) notwithstanding, the existence of an unauthorized transfer of control depends upon the facts of the relationship between Norcom and the Associations. The Bureau points out that if the specified issue herein as to whether the Associations' stations were being used to provide for-profit service to paying customers were to be found against the Petitioners, that would be an indication that the stations were operating in a manner virtually indistinguishable from a for-profit station.

5. As for Norcom's claim on the abuse of process issue that the Commission has overlooked key facts which would indicate that Norcom did make full disclosure, the Bureau disputes it and states that it intends to offer evidence at the hearing that Norcom did not make a full disclosure of its relationship with the Associations at the time the Associations' original applications were filed.

Accordingly, in light of the foregoing, Petitioners requests to delete the unauthorized transfer of control and abuse of process issues ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSIONS


John M. Frysiak
Administrative Law Judge