

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

FCC 99M-4

In the Matters of )  
 )  
 NORCOM COMMUNICATIONS )  
 CORPORATION )  
 )  
 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

RECEIVED  
 JAN 26 1999  
 FCC MAIL ROOM

MEMORANDUM OPINION AND ORDER

Issued: January 13, 1999 ; Released: January 15, 1999

1. Under consideration is the Motion For Permission To Appeal filed by Norcom Communication Corp ("Norcom") on January 11, 1999.
2. Memorandum Opinion and Order, FCC 99M-1, dated January 4, 1999 denied Norcom's Motion to delete the issues of (1) unlawful transfer of control and (2) Norcom's abuse of process.
3. Norcom argues that the unauthorized transfer of control issue should be deleted because the Commission's Wireless Telecommunications Bureau (Bureau) intends to rely on an incorrect standard in determining whether an unauthorized transfer of control occurred herein. The Bureau intends to rely on the standard enunciated in *Intermountain Microwave*. The Bureau stated in its Consolidated Opposition to Motions To Delete that the FCC in its rule making proceedings did not reach the question of whether the *Intermountain Microwave* standard applies to stations still classified as PMRS licensees. Norcom argues that the FCC has specified the Motorola test for Specialized Mobile Radio private radio system interpreting the control provisions of FCC rule Section 90.403.

4. Norcom also argues that the abuse of process issue should have been deleted because the failure to make a full disclosure does not constitute "a specific finding supported by the record, of abusive intent."

5. Section 1.301 (b) of the Commission's Rules specifies that a request for appeal from an interlocutory ruling of the presiding officer shall contain a showing that the appeal presents a new or novel question of law or policy and that the ruling is such that error would be likely to require remand should the appeal be deferred and raised as an exception.

6. No showing had been made that a remand would be required herein if the *Intermountain Microwave* standard is used. Nor has a showing been made that a remand would be required if a "full disclosure" test is relied upon in determining whether there was an abuse of process.

In light of the foregoing Norcom's Motion For Permission To Appeal IS DENIED.

FEDERAL COMMUNICATIONS COMMISSIONS

  
John M. Frysia  
Administrative Law Judge