

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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IN THE MATTERS OF)	
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NORCOM COMMUNICATIONS CORPORATION)	
ASS'N FOR EAST END LAND MOBILE COVERAGE)	
LMR 900 ASSOCIATION OF SUFFOLK)	WTB DOCKET NO. 98-181
METRO NY LMR ASSOCIATION)	
NY LMR ASSOCIATION)	
WIRELESS COMM. ASSOCIATION OF SUFFOLK COUNTY)	

TO: HON. ADMINISTRATIVE LAW JUDGE JOHN M. FRYSIK

MOTION TO DEEM MATTERS ADMITTED

Norcom Communications Corp. ("Norcom"), by its attorneys and pursuant to section 1.246 of the rules and regulations of the Federal Communications Commission ("FCC" or "Commission"), 47 C.F.R. § 1.246 (1997), hereby moves the Presiding Judge to deem certain factual matters admitted by the Wireless Telecommunications Bureau ("Bureau") due to its defective response ("Response") to Norcom's request for admissions, which was filed by the Bureau on February 1, 1999.

The Bureau's Response fails to properly respond to Norcom's admissions, based largely on the Bureau's erroneous *self-determination* that certain matters are not "relevant" to this proceeding. In fact, Norcom believes that the factual matters that the Bureau deems "irrelevant" are matters for which a factual admission would be extremely useful to Norcom's case. Accordingly, the Bureau's self-determination of relevancy deprives Norcom of due process. Thus, Norcom urges the Presiding Judge to deem the following portions of the

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Bureau's Response admitted, or compel the Bureau to respond to the admissions within a specified time period.

Items 8-11. Items 8-11 require that FCC admit or deny certain facts which relate to Norcom's and the Associations' status as common carriers and/or commercial mobile radio service ("CMRS") providers. These are simple factual admissions. The FCC refuses, labelling the admissions "irrelevant." The Bureau's refusal is contrary to its own statements in this proceeding, which place the CMRS status of the stations directly at issue. See *Bureau Consolidated Opposition to Motions to Delete* at 4-5. The regulatory status of the stations licensed to the Associations was also implicated in the *Memorandum Opinion and Order*, FCC 99M-1, ¶ 4, released January 6, 1999. Norcom believes that an incorrect standard for determining whether an unauthorized transfer of control occurred is being employed in this case. Norcom expects to appeal any adverse decision based on the erroneous use of this standard. In order to adequately preserve Norcom's rights, the Bureau must be required to address this issue. Thus, the admissions are not only relevant -- they are central to Norcom's contentions.

In addition, Items 8-11 do not require "legal conclusions" as the Bureau suggests. The FCC authorizations issued to wireless licensees regulated under Part 90 (as well as the FCC's on-line database) typically bear a notation whether a station is licensed as CMRS or PMRS. Thus, Items 10 and 12 call for a similar, straight factual admission. Oddly, the Bureau answered Item 12, but objected to Item 10. Items 9 and 11 are similarly factual in nature. Accordingly, the Presiding Judge should compel a response.

Items 18-20. The Bureau believes that its prior actions specifically authorizing other entities to engage in for-profit use of Business/Industrial Land Transportation (“B/ILT”) channels are similarly “irrelevant.” See Bureau Response at Items 18-20. The Hearing Designation Order (“HDO”) in this proceeding targets Norcom and the Associations for the alleged “for-profit” use of the same channels. Thus, this matter is relevant because the HDO specifically alleges that the channels used by the Associations were not available for “for-profit” operations. The Bureau is reluctant to respond to these admissions because truthful answers will demonstrate the invalidity of its allegations. Accordingly, the Presiding Judge should not permit the Bureau to refuse to answer admissions 18-20.

Items 37-41. Items 37-41 seek factual admissions concerning counsel for the Bureau’s unfair and unlawful attempts to orally obtain information from persons the Bureau knew to be represented by counsel. The Bureau labels Items 37-41 as “irrelevant.” The Bureau’s claim is contradicted by its own request for admissions directed to the Associations, in which the Bureau specifically requested that at least one of the Associations recount a telephone conversation with FCC employee Thomas Fitz-Gibbon. Thus, on one hand the Bureau deems the conversations relevant because they are allegedly damaging to Norcom and the Associations, but on the other hand the conversations are irrelevant because they reflect badly on the Bureau’s staff. Accordingly, the Presiding Judge should not permit the Bureau to refuse to answer admissions 37-41.

Item 47. Item 47 seeks to verify the FCC’s compliance with the statutory requirement that it obtain Office of Management and Budget (“OMB”) authority to require certain disclosures relating to the type of applications specified in the HDO. The Bureau objects on

relevance grounds. However, the Bureau has also claimed that Norcom and the Associations did not make a "full disclosure" in their initial applications. The issue of whether Norcom and the Associations made full disclosures is inescapably connected with the FCC's power to require those disclosures. Thus, Item 47 is relevant and should be answered.

Item 7. Finally, the Bureau declined to verify the authenticity of any of the documents appended to Norcom's request for admissions, as indicated in Item 7. The Bureau's response is disingenuous. It acknowledges that it can "admit the genuineness of some of these documents," but refusing to do so because it is "unable to make a single admission." The Bureau fails to follow the plain wording of FCC rule section 1.246(b), which requires a good faith *partial* denial when necessary. The Bureau should have, as Norcom requested, admit the genuineness of some documents and deny the genuineness of others, on a document-by-document basis. Therefore, the Presiding Judge should require partial compliance as the rule requires, or simply deem the entire admission automatically admitted.

WHEREFORE, THE PREMISES CONSIDERED, Norcom requests that the Presiding Judge grant its Motion and take action consistent with the views expressed herein.

Respectfully submitted,

NORCOM COMMUNICATIONS CORPORATION

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Dated: February 5, 1999

CERTIFICATE OF SERVICE

I, Donna Fleming, a secretary in the law firm of Gardner, Carton & Douglas, certify that I have this 5th day of February, 1999, caused to be sent by facsimile and first-class mail, a copy of the foregoing Motion to the following:

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