

ORIGINAL

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

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)

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To: Association for East End Land Mobile Coverage, LMR 900 Association of Suffolk, and NY LMR Association

WIRELESS TELECOMMUNICATIONS BUREAU'S
RESPONSE TO ASSOCIATIONS'
JOINT MOTION TO DEEM MATTERS ADMITTED

The Chief, Wireless Telecommunications Bureau ("Bureau"), by his attorneys and pursuant to Section 1.246(b) of the Commission's Rules, hereby responds to the Motion to Deem Matters Admitted filed by the Association for East End Land Mobile Coverage, the LMR 900 Association of Suffolk, and the NY LMR Association ("The Associations") on February 5, 1999.

1. The Associations' Motion to Deem Matters Admitted is an improper pleading that should be stricken. Section 1.246 of the Commission's Rules, 47 C.F.R. § 1.246, does not provide an opportunity for objections to a party's determination it can neither admit nor deny requested admissions. While the rules provide for motions to compel in the case of interrogatories, no such opportunity is provided in the case of requested admissions. In any event, even if the Bureau's determinations that it could neither admit nor deny requested admissions were not well taken, the proper action would be to order the Bureau to respond to the interrogatories instead of deeming the matters admitted.¹

2. In their request for admissions of fact and genuineness of documents, the Associations sought admissions of the genuineness of certain documents which would ordinarily be contained in the Commission's license files. The Bureau was unable to admit or deny the genuineness of some of those documents because the information needed to determine their genuineness was contained in files which were destroyed by a flood at the Commission's Gettysburg, Pennsylvania, facility in 1996. The Associations question this explanation because the Bureau did admit the genuineness of other documents which were

¹ It is instructive to point out that, unlike Norcom's Motion to Deem Matters Admitted, the motion to deem matters admitted which the Bureau filed in this proceeding was based on a total failure to respond.

also part of the files destroyed by the 1996 flood. The Bureau was able to admit the genuineness of those documents because it had alternative sources of information through which it was able to confirm their genuineness. The Bureau was not able to determine the genuineness of the remaining documents through alternative sources of information and, therefore, was unable to admit or deny the genuineness of those documents.

3. If the Presiding Judge considers the Associations' pleading on the merits, the Bureau should be given the opportunity to respond to objections so that the Presiding Judge can consider both sides' views before him when he rules on the objections.

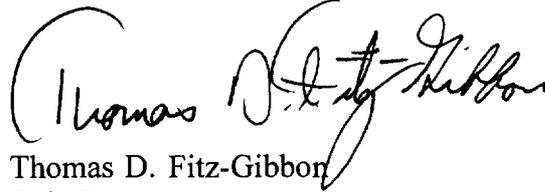
4. In summation, the Associations' Motion to Deem Matters Admitted should be denied and, if the Presiding Judge considers the Associations' pleading on the merits, the Associations' objections to the Bureau's determination it can neither admit nor deny certain

requested admissions should be overruled, and the Bureau should be given the opportunity to respond to objections.

Respectfully Submitted,
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February 11, 1999

Certificate of Service

I, Arlene Cook, certify that, on February 11, 1999, a copy of the foregoing Response to Joint Motion to Deem Matters Admitted, filed on behalf of the Chief, Wireless Telecommunications Bureau, was sent by facsimile and first class mail to:

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