

**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 )

WTB DOCKET NO. 98-181

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FEB 11 1999

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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To: Administrative Law Judge John M. Frysiaik

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**WIRELESS TELECOMMUNICATIONS BUREAU'S**  
**RESPONSE TO NORCOM COMMUNICATIONS CORPORATION'S**  
**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 Norcom Communications Corporation ("Norcom") on February 5, 1999.

1. Norcom's to Motion to Deem Matters Admitted is an improper pleading that should be stricken. Section 1.246(d) of the Commission's Rules, 47 C.F.R. § 1.246(d), provides that "written objections to the requested admissions may be ruled upon the presiding officer without additional pleadings." 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 objections were not well taken, the proper action would be to order the Bureau to respond to the interrogatories instead of deeming the matters admitted.<sup>1</sup>

2. In any event, if the Presiding Judge considers the pleading on the merits, the Bureau's objections are well taken and should be sustained:

**Item 7** The problem here is with the form of the requested admission. Norcom specifically requested a "single admission relating to multiple documents." The Bureau could not make a "single admission relating to multiple documents" because -- even though the Bureau was able to admit the genuineness of some documents -- it was unable to admit or deny the genuineness of others. Now, in its Motion to Deem Matters Admitted, Norcom is, in effect, recasting its requested admission to seek a separate response as to each document. Since it is well past the deadline for submitting requested admissions, Norcom cannot recast its requested admission now.

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<sup>1</sup> 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.

**Items 8-11** Item No. 8 calls for a legal conclusion; Norcom does not dispute this in its Motion to Deem Matters Admitted. Norcom contends that items 8-11 are relevant because of its belief that Norcom's and the Associations'<sup>2</sup> regulatory status affects the standard used to determine whether an unauthorized transfer of control has occurred. As pointed out in the Bureau's Consolidated Opposition to Motions to Delete filed December 21, 1998, the Commission has definitively determined that the *Intermountain Microwave* standard applies to both PMRS and CMRS stations. Even if there were different standards for PMRS stations and CMRS stations, only the Associations' regulatory status would be relevant to transfer of control questions regarding stations licensed to the Associations, and the Bureau has admitted that the Associations are not CMRS licensees.

**Items 18-20** These requested admissions (that entities such as Spectrum Resources of the Northeast, Inc., and Nextel Communications, Inc., are authorized to use Business and Industrial/Land Transportation ("B/ILT") channels to offer for-profit communications service) have nothing to do with Norcom's qualifications. The potentially relevant question would be whether Norcom was eligible, at the time the Associations' applications were under consideration, to obtain B/ILT channels for the purpose of offering for-profit communication service. The answer to this question does not depend on whether entities other than Norcom could have obtained B/ILT channels for the purpose of offering for-profit communication service. Rather, it depends solely upon: (1) the Commission's rules and policies during the relevant period and (2) the relevant facts as they relate to Norcom.

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<sup>2</sup> As used in this pleading, "the Associations" means 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.

**Items 37-41** There is no inconsistency between (1) the Bureau's request that the LMR 900 Association of Suffolk admit that Lawrence Blass stated, in a telephone conversation with Thomas D. Fitz-Gibbon, that he was no longer affiliated with the LMR 900 Association of Suffolk; and (2) the Bureau's objection to Norcom's requested admissions that Mr. Fitz-Gibbon telephoned Mr. Blass and others without notifying George Petrutsas. While the Bureau's requested admission relates to the content of any telephone conversation between Mr. Fitz-Gibbon and Mr. Blass, Norcom's requested admissions relate to whether Mr. Fitz-Gibbon contacted counsel before allegedly talking to persons indicated in items 37-41. Norcom's requested admissions have no bearing upon the issues of this proceeding and, therefore, are irrelevant. Moreover, Norcom's argument is apparently based on the astonishing premiss that the Bureau must presume an attorney who represented a licensee during the application process also represents that licensee in enforcement matters which arise years later.

**Item 47** Norcom claims that this requested admission (that the Commission never obtained the approval of the Office of Management and Budget to routinely collect information about sharing arrangements on B/ILT channels above 800 MHz) is relevant because the question of whether Norcom and the Associations made full disclosures at the time of the Associations' applications "is inescapably connected with the FCC's power to require those disclosures." There is no requirement that the Commission obtain any clearance before obtaining information needed to determine whether applications should be granted. In fact, if Norcom and the Associations possessed any information indicating that Norcom would control the Associations' stations, they had an affirmative duty to disclose that information without being asked

for it. See RKO General, Inc. v. FCC, 670 F.2d 215, 239 (D.C. Cir. 1981).

Thus this requested admission is irrelevant because it has no bearing upon the issues of this proceeding, whose purpose is to determine whether Norcom and the Associations are qualified to be licensees and whether monetary forfeitures should imposed against them.

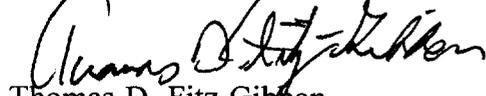
3. If the Presiding Judge considers Norcom's pleading on the merits, the Bureau should also be given the opportunity to respond to objections so that the Presiding Judge can consider both sides' responses to objections before he rules on the objections.

4. In summation, Norcom's Motion to Deem Matters Admitted should be denied; and, if the Presiding Judge considers Norcom's pleading on the merits, the Bureau's objections to Norcom's request for admissions should be sustained and the Bureau should also be given the opportunity to respond to Norcom's objections

Respectfully Submitted,  
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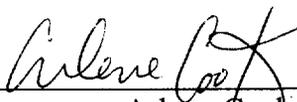
Certificate of Service

I, Arlene Cook, certify that, on February 11, 1999, a copy of the foregoing Response to 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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