

Attachment 10

Letter, dated March 10, 1992, from
the Federal Communications Commission to
Timothy J. Mangan, The Association for East End
Land Mobile Coverage, signed by
Terry L. Fishel, Chief, Land Mobile Branch

Federal Communications Commission

Gettysburg, PA 17326

MAR 10 1992

In Reply Refer To:

7110-16

Timothy J. Mangan
The Association for East End Land Mobile Coverage
70-C Corbin Ave.
Bay Shore, New York 11706

Dear Applicant:

Pursuant to the provisions of Rule 1.958, the Private Radio Bureau is dismissing your application bearing file number 532866.

Rule 1.958 states that an application not meeting the provisions of Commission Rules or other requirements may be dismissed as defective. The Association for East End Land Mobile Coverage requested a five channel trunked Business Radio Service system in Sag Harbor, New York. Rule 90.631(a) requires that trunked channels be assigned on the basis of a loading of 100 mobile units per channel. The Association provided a list of users which plan to use the system. When asked for signed agreements from these members, the Association stated that it actually has no members which have signed agreements to use the system. Because the Association therefore has no members with a requirement for radio communications, it does not justify the channels requested. Its application is therefore dismissed.

Sincerely,



Terry L. Fishel
Chief, Land Mobile Branch

cc: George Petrutsas

Attachment 11

Letter, dated April 3, 1992, from
George Petrutsas, Fletcher, Heald & Hildreth,
as counsel for The Association for East End
Land Mobile Coverage to Ralph H. Haller, Chief
Private Radio Bureau, Federal Communications
Commission, titled Request for Reconsideration
and referring to Application File No. 532866

April 3, 1992

VIA FEDERAL EXPRESS

Ralph A. Haller
Chief, Private Radio Bureau
Federal Communications Commission
1270 Fairfield Road
Gettysburg, PA 17325

Re: Application for The Association for
East End Land Mobile Coverage
File No. 532866

REQUEST FOR RECONSIDERATION

Dear Mr. Haller:

On behalf of the Association for East End Land Mobile Coverage (hereinafter referred to as the "Association" of "AEEL"), the Bureau is requested to reconsider and set aside the March 2, 1992 decision of the Chief, Land Mobile Branch, Licensing Division, dismissing its application for a five-channel trunked system on frequencies in the 800 MHz band. Briefly, it is respectfully submitted that the staff's decision to dismiss the application was improper in that it was based on requirements not sanctioned by the applicable rules.

By way of background, the applicant is a non-profit association organized under the laws of the State of New York. Its purpose is to provide trunked land mobile radio service to Part 90 eligibles on a cost-sharing basis. As such, AEEL is eligible for a trunked system pursuant to Section 90.603(b) of the Commission's Rules.¹ The application was fully coordinated

¹ See: Land Mobile Radio Service, 46 FCC 2d 752, 767 (1974) where the Commission observed:

"In the second license classification
. . . the licensee may be a non-profit corporation or association, formed for the purpose of providing radio facilities to

Mr. Ralph A. Haller
April 3, 1992
Page 2

and it was accompanied by an engineering statement supporting the selection of the frequencies requested. Some time later, in response to the staff's request, the applicant filed an amendment by which it increased the number of proposed mobile units to 500, furnished a copy of its Articles of Association, and a copy of the standard service agreement it plans to use, and expressly certified that a minimum of 70 units per channel would be placed in operation within five years. It is respectfully submitted that the foregoing satisfied all reasonable requirements of the applicable Rules.

The staff, nevertheless, dismissed the application and justified its decision as follows:

Rule 90.631(a) requires that trunked channels be assigned on the basis of a loading of 100 mobile units per channel. The Association provided a list of users which plan to use the system. When asked for signed agreements with these members, the Association stated that it actually has no members which have signed agreements to use the system. Because the Association has no actual members with a requirement for radio communications, it does not justify the channels requested. Accordingly, its application is hereby dismissed.

The staff's letter is in Attachment A. However, there is no requirement in Section 90.631, or elsewhere in Subpart S, for signed service agreements or that the Association justify the number of channels it has requested by signed agreements. See, also Section 90.607(c), for the supplemental information applicants for trunked systems must file. There is no such requirement in that rule. Section 90.631 requires only that the applicant "certify" that ". . . a minimum of 70 mobiles for each channel authorized will be placed in operation within five years of the initial license". The applicant has so certified. The staff's requirements for a written agreement is not only not required by Section 90.631, it is discriminatory and unreasonable, particularly since it has requested the minimum number of channels suitable for a trunked system.

It is discriminatory because such a requirement is not imposed on the other class of 800 MHz applicants who provide

qualified participants"

Mr. Ralph A. Haller
April 3, 1992
Page 3

service to users; specifically, applicants for SMR trunked authorizations. The only difference between SMR applicants and non-profit association applicants is that the former provide service to users on a for-profit basis, while the latter do so on a non-for-profit basis. Both classes of applicants are eligible for licenses in the 800/900 MHz bands under Section 90.603 of the Commission's Rules.

Requiring written service agreements is also unreasonable because such a requirement is practically impossible to comply with. Users, understandably, do not want (and should not be required) to commit to a service that does not yet exist and to purchase costly equipment for operation on a system that cannot be tested and, therefore, cannot assure that it would meet their requirements. That is, obviously, why the Commission abandoned long ago the requirement for the submission of equipment purchase orders. See Public Notice No. 6461, released September 13, 1983. See, also, Section 90.175(d) where applicants ". . . are strongly advised not to purchase radio equipment operating on specific frequencies until a valid authorization has been issued by the Commission." The same rationale applies here.

Moreover, there is no rule requirement that, to be eligible, association applicants must have members with radio communications requirements. Section 90.603(b) merely requires that any entity is eligible for 800/900 MHz licenses if it proposes to provide service ". . . to any person . . ." eligible under Subparts B, C, D or E ". . . on a not-for-profit, cost-shared basis." (Emphasis added). This applicant fully meets that requirement. See, also, Land Mobile Radio Service, 45 FCC 2d at 767.

Finally, AEEL has requested only five channels, the practical minimum number required for an efficient trunked system. Cf. Sections 90.621(a)(1)(iv), 90.627(a). See also, Part 90 Amended, 90 FCC 2d 1281, 1309 (1982).

The applicant is not unmindful of the provisions of Section 90.179(d). However, Section 90.179(d) is inconsistent with Section 90.631(b) and Section 90.601 provides that:

". . . in case of conflict, the provisions of this subpart (i.e., Subpart S) govern with respect to licensing and operation in these (i.e., 800/900 MHz) frequency bands."

Mr. Ralph A. Haller
April 3, 1992
Page 4

See also, Second Report and Order, Id., p. 782. Subpart S sets out in detail the regulations governing the licensing and operations of all land mobile systems in the 800/900 MHz bands. Section 90.631 sets out the same requirements for licensing all trunked systems; whether they are to be private, non-profit, or commercial.

The regulatory approach the Commission has adopted for the 800 MHz bands is to require licensees to construct their facilities within specific construction periods and to load them within the license term, otherwise the frequencies assigned, or some of them, are taken back. Section 90.179(d), which appears to impose pre-licensing showing of need requirements, is inconsistent with the Commission's approach for regulating 800 MHz systems. It makes no sense to require both a pre-grant showing of need and the "certification" prescribed by Section 90.631(b). The more rational construction of the Commission's Rules would be to require AEEL, and other Section 90-603(b) applicants, to comply only with the licensing rules in Subpart S. Such interpretation would be consistent with Public Notice No. 6461, referred to above, for example, where the Bureau announced, in effect, that it will rely on post-licensing enforcement of construction and loading requirements to assure against hoarding of frequencies and did away with pre-grant demonstration of need requirement.

Such policy has been applied to SMR applicants all along. They do not have to provide service agreements. It is discriminatory to treat non-profit applicants differently.

Finally, the staff's requirement that the applicant provide written service agreements with members is inconsistent with prior staff actions in similar situations. For example, in 1989, the staff granted a license to the Land Mobile Radio Association, Inc., call sign WNMG-573, without requiring the submission of written service agreements or membership lists. Indeed, the Articles of Incorporation of that association, a copy of which was furnished to the staff, specifically provided that the association will not have members. The action of the staff in that case was proper, fully consistent with the Commission's 800 MHz rules and should be followed here as well.

Mr. Ralph A. Haller
April 3, 1992
Page 5

For the foregoing reasons, the Bureau is requested to set aside the staff's action of March 2, 1992, and to grant the above-referenced application.

The Bureau is finally requested not to release the frequencies involved for reassignment until action is taken on this request for reconsideration.

Very truly yours,

FLETCHER, HEALD & HILDRETH

George Petrutsas
Counsel for the Association
for East End Land Mobile
Coverage

GP:cej
Attachments

cc: Mr. Terry Fishel (w/attachments)
Carol Foelak, Esquire (w/attachments)

Attachment 12

Letter, dated September 24, 1992, from
George Petrutsas, Fletcher, Heald & Hildreth,
addressed to Terry L. Fishel, Chief, Land
Mobile Branch, Federal Communications Commission
referring to six (6) applications, including
the application of The Association for
East End Land Mobile Coverage

September 24, 1992

VIA FEDERAL EXPRESS

Mr. Terry L. Fishel
Chief, Land Mobile Branch
Federal Communications Commission
1270 Fairfield Road
Gettysburg, Pennsylvania 17325-7245

Re: Applications of

- (a) Metro New York Assoc.
File No. 571588
Stamford, Connecticut
- (b) The Association for East End
Land Mobile Coverage
File No. 532866
Sag Harbor, New York
- (c) Wireless Association of Suffolk County
File No. 534390
Manorville, New York
- (d) Central Suffolk Association of
Land Mobile Users
File No. 532865
Riverhead, New York
- (e) New York LMR Association
File No. 566318
Plainview, New York
- (f) Land Mobile Association of Long Island
File No. 534391
Manorville, New York

Dear Mr. Fishel:

I represent the above-listed non-profit associations. Their applications are before the Commission on reconsideration. To resolve the issues raised by the staff and by the applicants in their respective reconsideration petition, I have had discussions looking towards reaching settlements with the staff of the

Mr. Terry L. Fishel
September 24, 1992
Page 2

Compliance Branch, Land Mobile and Microwave Division. There have been no objections filed by any third party and there are no competing applicants. Therefore, there are no ex parte issues raised by these discussions and by this letter. Based on the tentative agreement with the Compliance Branch, I am making the following proposal for settlement.

(1) First, the Association for East End Land Mobile Coverage (Sag Harbor) and Central Suffolk Association of Land Mobile Users (Riverhead) would reach an agreement under which Central Suffolk would withdraw its application and the Association for East End Land Mobile Coverage would agree to make its facilities available for use by those now planning to use Central Suffolk's proposed system;

(2) Wireless Association of Suffolk County (Manorville) and Land Mobile Association of Long Island (also, Manorville) would reach a similar agreement, so that the application of the Land Mobile Association of Long Island would also be withdrawn;

(3) The surviving applicants would accept grants with a requirement that their respective systems would achieve a loading of 70 units per channel by the third anniversary of their respective licenses;

(4) Each of the associations, including those who would withdraw their applications, and their principals would agree not to file any applications or seek additional frequencies directly or indirectly unless the channels assigned to it have met the current loading requirements; and

(5) Each association and its principals to receive a grant would agree not to assign its station license, directly or indirectly, to any other entity during the first term of the license.

(6) All remaining applicants would assure the Commission that service would be provided only to entities eligible in the Business Radio Service and only on a cost-sharing non-profit basis.

It is respectfully submitted that the agreed to settlement summarized above would be in the public interest. Associations, are, of course, eligible entities for trunked systems under Section

Mr. Terry L. Fishel
September 24, 1992
Page 3

90.603(b) of the Commission's Rules. Each applicant association has requested the minimum number of frequencies needed for a reasonable trunked operation in the area involved. The frequencies requested were "discovered" after extensive and expensive research; and they were "cleared" following engineering studies and after coordination by two coordinating entities (SIRSA and NABER). It should be noted that the co-channel licensees were notified during the coordination process and that they have voiced no objection. Because the applications were in effect "engineered-in", it is doubtful that the frequencies involved would be readily available to others. Therefore, grant of the applications would allow use of frequencies which might otherwise remain fallow.

The applicants are not speculators. Each application is the result of genuine efforts to meet communications requirements in areas where, because of the dominance of the New York City metropolitan area, very few frequencies have been made available. Because each application is a plan to meet genuine needs, each applicant association would agree to load its system in three rather than the customary five years and would agree not to assign its license before it is loaded. Two applications would be withdrawn as a result of system sharing agreements. Therefore, the Commission would be assured that the frequencies would be put to good use and without delay.

In summary, although some of the terms of the proposed settlement would be harsh, the applicants would be willing to accept them as the "price" for bringing this matter to a close and provide some frequency relief in their respective areas.

Mr. Terry L. Fishel
September 24, 1992
Page 4

Letters from each of the applicants agreeing to accept grants with the conditions agreed to for settlement are attached. Attached also is a joint letter from the principals of all applicant associations as requested by the Compliance.

Very truly yours,

FLETCHER, HEALD & HILDRETH

George Petrutsas
Counsel for Metro New York Assoc.,
The Association for East End Land
Mobile Coverage, Wireless
Association of Suffolk County,
Central Suffolk Association of
Land Mobile Users, New York LMR
Association, Land Mobile
Association of Long Island

GP:cej
Attachments

cc: Carol F. Foelak, Esquire (w/attachments)
Peter Daronco, Esquire (w/attachments)



Attachment 13

Letter, dated September 17, 1992,
addressed to Terry L. Fishel, Chief, Land
Mobile Branch, Federal Communications Commission
from six (6) associations, including The Association for
East End Land Mobile Coverage
referring to six (6) applications, including
the application of The Association for
East End Land Mobile Coverage

September 17, 1992

VIA FEDERAL EXPRESS

Mr. Terry L. Fishel
Chief, Land Mobile Branch
Federal Communications Commission
1270 Fairfield Road
Gettysburg, PA 17226

Re: Applications of

- (a) Metro New York Assoc.
File No. 571588
Stamford, Connecticut
- (b) The Association for East End
Land Mobile Coverage
File No. 532866
Sag Harbor, New York
- (c) Wireless Association of Suffolk County
File No. 534390
Manorville, New York
- (d) Central Suffolk Association of
Land Mobile Users
File No. 532865
Riverhead, New York
- (e) New York LMR Association
File No. 566318
Plainview, New York
- (f) Land Mobile Associate of Long Island
File No. 534391
Manorville, New York

Dear Mr. Fishel:

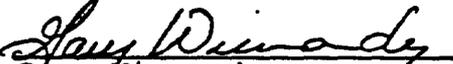
We the undersigned are each a principal in one of the above-referenced applications. We are represented by the same counsel. Counsel, at our request, is engaged in negotiations with the staff of the Commission's Private Radio Bureau looking towards reaching a settlement which might result in the grant of all or

Mr. Terry L. Fishel
Page 2

some of the above-referenced applications and towards resolving the concerns of the Commission's staff.

For the purpose of facilitating a settlement and for that purpose only, the undersigned would agree not to file any applications for additional systems in any of the markets involved in the above-referenced applications, through any non-profit association which they may control or in which they may have any direct or indirect interest, before the system or systems to be authorized as a result of the settlement to serve the relevant market has achieved a loading of at least seventy (70) mobile or ~~as~~ control units per channel. Each of the undersigned certifies that he is authorized to bind the association.

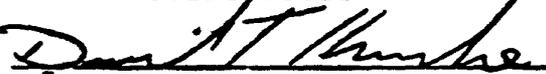
Respectfully submitted,

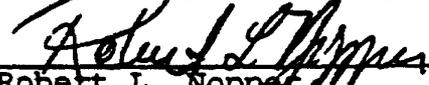

Gary Wicmandy
Metro New York Association


Timothy J. Mangan
The Association for East End
Land Mobile Coverage


Chris J. Allen
Wireless Association of Suffolk
County


Augustine Medina
Central Suffolk Association of
Land Mobile Users


Daniel T. Kunnecke
New York LMR Association


Robert L. Nopper
Land Mobile Association of Long
Island and for Norcom Communications
Corporation

cc: Carol F. Foelak, Esquire
Peter Daronco, Esquire

Attachment 14

Letter, dated September 17, 1992,
from Timothy J. Mangan, The Association for
East End Land Mobile Coverage address to Terry L.
Fishel, Chief, Land Mobile Branch, Federal
Communications Commission, referring to the
application of The Association for East End Land
Mobile Coverage, File No. 532866

September 17, 1992

VIA FEDERAL EXPRESS

Mr. Terry L. Fishel
Chief, Land Mobile Branch
Federal Communications Commission
1270 Fairfield Road
Gettysburg, PA 17226

Re: The Association for East
End Land Mobile Coverage
Sag Harbor, N.Y.
File No. 532866

Dear Mr. Fishel:

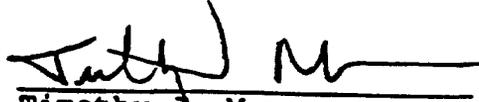
This is to advise the Commission that we would accept grant of our application referenced above with the following requirements.

- (a) That the system serve 350 mobile and control units by the third anniversary of our license term;
- (b) That our license would not be voluntarily assigned to any other entity during its first five-year term;
- (c) That applicant and its principals shall not seek additional channels in this market, directly or indirectly, until after the system has met minimum loading requirements (70 units per channel);
- (d) That we would provide service only to entities eligible in the Business Radio Service and then only on a non-profit cooperative basis; and
- (e) That Central Suffolk Association of Land Mobile Users withdraws its application (File No. 532865) and we would agree to make our facilities available for use by its members and by those planning to use Central Suffolk's proposed system.

Page 2

It is certified under penalty of perjury that, except as described in the pending application, there are no other parties in interest in the above referenced application.

Very truly yours,

A handwritten signature in black ink, appearing to read "Timothy J. Mangan", written over a horizontal line.

Timothy J. Mangan
The Association for East End
Land Mobile Coverage

Attachment 15

Letter, dated October 28, 1992, from
the Federal Communications Commission
addressed to George Petrutsas, Fletcher, Heald &
Hildreth, signed for Terry L. Fishel, Chief,
Land Mobile Branch, Federal Communications
Commission, by Michael J. Regic, referring to
six (6) applications, including the application,
File No. 532866, of The Association for East End
Land Mobile Coverage

Federal Communications Commission

1270 Fairfield Road
Gettysburg, PA 17325-7245

OCT 28 1992

In Reply Refer To:
7110-16

RECEIVED
NOV 05 1992

FLETCHER, HEALD
& HILDRETH

George Petrusas
Fletcher, Heald & Hildreth
1225 Connecticut Ave., NW, Suite 400
Washington, DC 20036

Dear Mr. Petrusas:

This concerns the six applications filed by non-profit associations to operate trunked radio systems. The applicants are Metro New York Association, file number 571588; The Association for East End Land Mobile Coverage, file number 532866; Wireless Communications Association of Suffolk County, file number 534390; Central Suffolk Association of Land Mobile Users, file number 532865; New York LMR Association, file number 566318; and Land Mobile Radio Association of Long Island, file number 534391. Four of these applications were dismissed for failure to satisfy the provisions of Rule 90.631(a), while two remain pending. Petitions for reconsideration have been filed for the four applications which were dismissed.

The applicants have submitted for review by the Land Mobile Branch an agreement which was negotiated with the Compliance Branch. The agreement indicates:

- 1) Two of the applications, file numbers 532865 and 534391 will be withdrawn.
- 2) The four remaining applications would be granted with a loading requirement of 70 units per channel at the end of the first three years of the license term.
- 3) All the applicants involved, including those which withdrew their applications, agree not to file any applications or seek additional frequencies either directly or indirectly until the present channels are loaded to 70 units per channel.
- 4) Each entity receiving an authorization would not assign the authorization either directly or indirectly to any other entity during the first license term.
- 5) All remaining applicants would assure the Commission that service would only be provided to eligible parties and only on a non-profit cost shared basis.

George Petrutsas

In light of Compliance Branch's support for this agreement, the Land Mobile Branch will grant the applications bearing file numbers 571588, 532866, 534390, and 566318 for a three year term to allow it to assess loading at the end of that period as agreed in item 2 above. Applications bearing file numbers 532865 and 534391, which were previously dismissed, will not be reinstated and no further petitions will be filed. The petitions on file are granted to the extent described in this agreement and otherwise denied. Further, it is understood that acceptance of this agreement does not modify Rule 90.631(a) which requires that trunked systems be assigned based on a loading requirement of 100 units per channel.

Sincerely,



for Terry L. Fishel
Chief, Land Mobile Branch

cc: Peter Daronco

WTB Docket No. 98-181

Attachment 16

Management Agreement Between
the Association for East End
Land Mobile Coverage and
Norcom Communications Corp.

MANAGEMENT AGREEMENT

This Agreement is made and entered into by and between The Association For East End Land Mobile Coverage whose principal place of business is 77 Suffolk Street, Freeport, Nassau County, New York 11520 (hereinafter referred to as "THE ASSOCIATION"), and Norcom Communications Corp., a New York corporation whose principal place of business is 70-C Corbin Avenue, Bay Shore, New York 11706. (hereinafter referred to as "NORCOM").

W I T N E S S E T H

WHEREAS, THE ASSOCIATION has applied to the Federal Communications Commission ("FCC" or "Commission") to become the licensee of a Trunked Mobile Radio Station ("TMR or "Station"), to operate in or near the Hamlet of Sag Harbor, Suffolk County, New York;

WHEREAS, THE ASSOCIATION desires to provide for the construction, management, and operation of the Station by NORCOM on the terms and conditions hereinafter set forth; and

WHEREAS, both parties desire that the agreement provided for herein be subject to and consistent with the rules and regulation of the FCC;

NOW THEREFORE, in consideration of the promises and mutual representation contained herein, the parties hereby agree as follows:

1. Appointment of Manager. THE ASSOCIATION hereby appoints NORCOM as its manager and exclusive agent for the purposes of constructing, operating, and managing the station and NORCOM accepts such appointment.

2. Managers Responsibilities.

(a) NORCOM will assist Licensee in obtaining the equipment necessary for the construction and operation of the Station and secure the transmitter site and all other facilities and services necessary or appropriate for the operation of the Station.

(b) NORCOM will assume the responsibility to construct the Station in accordance with the terms of the license therefor and within the time period required by the Rules of the FCC. NORCOM shall provide THE ASSOCIATION with copies of the installation documents and shall insure that such work is performed in compliance with all applicable laws, rules and regulations.

(c) NORCOM will assume the responsibility to service and maintain the Station. NORCOM shall provide Licensee with copies of servicing and maintenance documents and shall be responsible that such work is performed in compliance with all applicable laws, rules and regulations and in accordance with industry practices.

(d) Under the overall supervision of THE ASSOCIATION, NORCOM shall manage and shall conduct the day-to-day operations of the Stations and shall perform all necessary and