

*Original*

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

DOCKET FILE COPY ORIGINAL

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 )  
 )  
**NY LMR ASSOCIATION** )  
 Business Radio Station License WPAP734 )  
 New York, New York/Long Island Area )  
 )

WTB DOCKET NO. 98-181

**RECEIVED**  
**AUG 5 1999**  
 FEDERAL COMMUNICATIONS COMMISSION  
 OFFICE OF THE SECRETARY

File Number A008053

File Number C002479

File Number C002480

**WIRELESS TELECOMMUNICATIONS BUREAU'S COMMENTS ON**  
**JOINT MOTION FOR SUMMARY DECISION**

No. of Copies rec'd 044  
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1. The Chief, Wireless Telecommunications Bureau ("Bureau"), by his attorneys and pursuant to Section 1.251 of the Commission's Rules,<sup>1</sup> respectfully submits his comments upon the Joint Motion For Summary Motion ("Motion") filed by Norcom Communications Corporation ("Norcom"), Association for East End Land Mobile Coverage ("East End"), LMR 900 Association of Suffolk ("LMR 900"), and NY LMR Association ("NY") on July 22, 1999.<sup>2</sup>

2. The Movants seek an order of the Presiding Judge as to the following issues:

(a) Finding that the Movants violated Section 310(d) of the Communications Act of 1934, as amended<sup>3</sup> ("the Act), by engaging in unauthorized transfers of control of Stations WPAT918, WNXT323, WPAZ643, WPAP734, and WPAT910;

(b) Finding that the Movants violated Section 90.179(f) of the Commission's Rules<sup>4</sup> by operating Stations WPAT918, WNXT323, WPAZ643, WPAP734, and WPAT910 on a for-profit basis;

(c) Finding that Norcom did not abuse the Commission's processes in connection with the creation or control of the Associations or with the control or operation of the Associations' stations;

(d) Finding that Norcom is basically qualified to be a Commission licensee and that the qualification issue is moot as to the Associations;

(e) Finding that the captioned licenses of Norcom should not be revoked and that the issue is moot as to the captioned licenses of the Associations;

(f) Dismissing without prejudice the captioned applications associated with Norcom stations WNQF836, WZA770, and WNBW505;

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<sup>1</sup> 47 C.F.R. § 1.251.

<sup>2</sup> East End, LMR 900, and NY are collectively designated in these comments as the "Associations." Norcom and the Associations are collectively designated as the "Movants."

<sup>3</sup> 47 U.S.C. § 310(d)

<sup>4</sup> 47 C.F.R. § 90.179(f)

Movants also seek the following additional relief:<sup>5</sup>

- (g) Ordering Norcom to pay a \$110,000 monetary forfeiture;
- (h) Ordering East End, LMR 900, and NY LMR to each pay a \$3,000 monetary forfeiture;
- (i) Ordering Norcom to institute a compliance program; and
- (j) Ordering the WTB to process Norcom's pending applications.

3. The Bureau generally agrees with Movants' recommendations. Movants have offered substantial evidence that supports summary decision of the designated issues as proposed in Movants' motion. The Bureau believes that Movants have satisfied §1.251 of the Commission's Rules.<sup>6</sup> In this regard, the Bureau believes that Movants have adequately demonstrated that there is no genuine issue of material fact remaining for determination at the hearing. Consequently, Movants have satisfied their burden of showing that summary decision of the specified issues is warranted and would serve the public interest in this instance.

4. Notwithstanding the Bureau's general support of Movants' recommendations, the Bureau believes that recommendations (a) and (b), contained in the Summary section of the Motion, are incorrectly formulated. While Norcom was involved in the unauthorized transfer of control and for-profit operation of all five stations, each Association's involvement was limited to its own station.<sup>7</sup> Consequently, the Bureau believes that the Presiding Judge should enter an order

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<sup>5</sup> This additional relief is also requested in the Joint Request For Approval and Adoption of Settlement

<sup>6</sup> 47 C.F.R. §1.251

<sup>7</sup> See, generally, proposed Movants' Exhibits A and B.

as to the first two issues as follows:

(a) Finding that Norcom violated Section 310(d) of the Communications Act of 1934, as amended<sup>8</sup>, by engaging in unauthorized transfers of control of Stations WPAT918, WNXT323, WPAZ643, WPAP734, and WPAT910; and that East End, LMR 900, and NY violated Section 310(d) of the Act<sup>9</sup> by engaging in the unauthorized transfer of control of Stations WPAT918, WPAZ643, and WPAP734, respectively; and

(b) Finding that Norcom violated Section 90.179(f) of the Commission's Rules<sup>10</sup> by operating Stations WPAT918, WNXT323, WPAZ643, WPAP734, and WPAT910 on a for-profit basis; and that East End, LMR 900, and NY violated Section 90.179(f) of the Commission's Rules<sup>11</sup> by operating Stations WPAT918, WPAZ643, and WPAP734, respectively, on a for-profit basis.

With the foregoing revisions, the Bureau supports all of the Movants' recommendations and herein cites additional information in support of summary decision of the designated issues.

5. As additional evidence that Norcom and the Associations violated §310(d) of the Act<sup>12</sup> and §90.179(f) of the Commission's Rules,<sup>13</sup> the Bureau hereby submits to the Presiding Judge copies of "sublease agreements" between Norcom and intermediaries who resell communications service over the Associations' stations. Norcom forwarded copies of these agreements in response to an inquiry from the Bureau. These sublease agreements are additional evidence that Norcom acquired control of the associations' stations and used them to provide

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<sup>8</sup> 47 U.S.C. § 310(d)

<sup>9</sup> *Id.*

<sup>10</sup> 47 C.F.R. § 90.179(f)

<sup>11</sup> *Id.*

<sup>12</sup> 47 C.F.R. §310(d)

<sup>13</sup> 47 C.F.R. § 90.179(f)

communications services on a for-profit basis. Copies of the relevant portions of Bureau's letter of December 19, 1996; the relevant portions of Norcom's January 7, 1997 response; copies of the "sublease" agreements; and an authenticating declaration are attached as Bureau's Exhibit 1.

6. The Commission's *Order to Show Cause, Hearing Designation Order and Notice of Opportunity for Hearing for Forfeiture*<sup>14</sup> ("HDO") permits a maximum forfeiture penalty of \$185,000 against Norcom. The Commission's *Forfeiture Policy Statement*, which became effective on October 14, 1997, provides that cases arising from facts that occurred prior to the effective date of the *Forfeiture Policy Statement* shall be decided on a case-by-case basis.<sup>15</sup> Since the violations preceded the *Forfeiture Policy Statement*, the appropriate forfeiture should be determined using the case-by-case method. Section 503(b)(2)(D) of the Act<sup>16</sup> requires that the Commission consider "the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require" when assessing a forfeiture.

7. Norcom's violations of Section 310(d) of the Act<sup>17</sup> [unauthorized transfer of control] and Section 90.179(f) of the Commission's Rules<sup>18</sup> [for-profit use of nonprofit frequency] are serious offenses which, by their nature, call for a substantial monetary forfeiture. The

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<sup>14</sup> *Norcom, et al*, 13 FCCR 21493, 1998 WL 712890 (F.C.C.) at ¶14.

<sup>15</sup> *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Commission's Rules (Forfeiture Policy Statement)*, 12 FCC Rcd 17087, 17108-17109 (1997).

<sup>16</sup> 47 U.S.C. 503(b)(2)(D)

<sup>17</sup> 47 U.S.C. § 310(d)

<sup>18</sup> 47 C.F.R. § 90.179(f)

circumstances which must be considered in determining the amount of Norcom's monetary forfeiture include the multiple violations of Norcom (involving five trunked systems), the potential for substantial monetary gain by Norcom, and the long period of time during which Norcom's violations continued (beginning with the original license grants in 1992). The potential for substantial economic gain by Norcom, in particular, requires a very substantial forfeiture penalty in order to deter similar conduct by others. Considering all of these circumstances, the Bureau submits that \$110,000 is an appropriate forfeiture penalty in this instance.

8. The HDO specifies a maximum forfeiture liability of \$ 37,000 for each Association. Although Norcom violated the same rule sections as each Association; the forfeiture imposed against each Association should be significantly lower than Norcom's forfeiture. Norcom, which controlled the Associations, is primarily culpable for the violations. Each Association was involved in only a portion of Norcom's overall scheme. Furthermore, the Associations did not receive any revenue<sup>19</sup> from their stations and had no potential for substantial monetary gain. Considering these circumstances, the Bureau submits that \$3,000 is an appropriate forfeiture penalty for each Association in this instance.

9. In subparagraph (2), page 10, of their Motion, the Movants argue that, as the result of a 1996 flood, "certain evidence of the Commission's prior knowledge of Norcom's role in the Associations' stations was literally washed away" and, thus, the Commission's staff may not have been able to view documents containing exculpatory information. At footnote 57 of the Motion, the Movants cite three examples of lost documents. The Bureau submits that these documents do

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<sup>19</sup> Proposed Movants' Exhibit A, Attachment 16, pp. 4-5.

not contain significant exculpatory information.<sup>20</sup>

10. Nevertheless, the Presiding Judge does not need to rely on this speculative argument to establish that Norcom did not abuse the Commission's processes. Section II, paragraph (c)(1), as well as the case law cited in Section II, paragraph (d) of the Motion, supply ample evidence and argument to support findings favorable to Norcom on Issues (c), (d) and (e) in the HDO.

11. The Bureau supports the issuance of a summary decision adopting the recommendations made in the Joint Motion For Summary Decision, as modified above.

Respectfully Submitted,

Thomas Sugrue  
Chief, Wireless Telecommunications Bureau



Gary P. Schonman  
Chief, Compliance and Litigation Branch  
Wireless Telecommunications Bureau



Thomas D. Fitz-Gibbon  
Judy Lancaster  
Attorneys, Compliance and Litigation Branch  
Wireless Telecommunications Bureau

August 5, 1999

Federal Communications Commission  
445 12<sup>th</sup> Street, S.W. Room 3-C438  
Washington, D.C. 20554  
(202) 418-0569

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<sup>20</sup> Movants' proposed Exhibit D, Attachment 8, is a letter from East End responding to questions from the Commission's licensing staff. While East End's letter indicates that Norcom will manage East End's station, it does not disclose important details, such as the content of East End's management contract with Norcom or Norcom's "sublease" agreements with intermediaries. Attachments 12 and 13 to Movants' proposed Exhibit D concern negotiations over the original license applications filed by East End, NY, and other applicants represented by George Petrusas. Examination of Attachments 12 and 13 shows that the concerns dealt with therein are different from the concerns in this case.

**EXHIBIT 1**

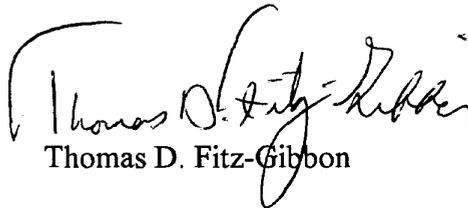
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**DECLARATION OF THOMAS D. FITZ-GIBBON**

My name is Thomas D. Fitz-Gibbon. I am attorney employed by the Wireless Telecommunications Bureau ("Bureau") of the Federal Communications Commission.

In the course of my duties as an attorney employed by the Bureau, I prepared and sent a letter requesting, among other things, that the Norcom Communications Corporation ("Norcom") furnish copies of Norcom's agreements with "independent sales agents." The attached document dated December 19, 1996, is a true and correct copy of that letter with the pertinent portion highlighted. The attached document dated January 7, 1997, is a true correct copy of the cover letter for Norcom's response. Another attached document is a true and correct copy of a redacted version of the "Statement of Robert Nopper" attached to the cover letter. The other attached documents are true and correct copies of "sublease agreements" attached to the "Statement of Robert Nopper" as "Exhibit B."

I declare, under penalty of perjury, that the foregoing is true and correct to the best of my recollection and belief.

  
Thomas D. Fitz-Gibbon

August 4, 1999

1014  
E-3330

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

December 19, 1996

IN REPLY REFER TO:

2000D-TF

WB/ENF-96-0569

Russell H. Fox, Esq.  
Gardner, Carton and Douglas  
1301 K Street, N.W., East Tower, Suite 901  
Washington, D.C. 20005

Dear Mr. Fox:

After analyzing the response of your client Robert Nopper to our letter of November 15, 1996, we find that we need additional information to determine Mr. Nopper's and Norcom's qualifications to hold Commission licenses. The term "associations," as used below, refers to the Wireless Communications Association of Suffolk County, the Association for East End Land Mobile Coverage, the LMR 900 Association of Suffolk, the NY LMR Association, and the Metro NY LMR Association. We request, pursuant to Section 308(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 308(b), that Mr. Nopper furnish complete responses to the following questions by January 8, 1997:

(1) In your answer to our letter of November 15, 1996, you state that Mr. Chris Allen, Mr. Timothy Mangan, Mr. Laurence J. Blass, Mr. Daniel T. Kennecke, and Mr. Gary Wicmandy were never employed by you, Norcom or any other entity that you control. Did any of these persons perform services for you, Norcom or any other entity that you control? If so, provide:

- (a) The nature and extent of the services performed by each person;
- (b) The time frame during services were performed by each person;
- (c) The amount of compensation, if any, paid for the services; and
- (d) If the services were performed pursuant to a written contract, a copy of the contract.

(2) Your answer to question (4)(b) in our letter of November 15, 1996, does not indicate who initiated the process by which it was decided to conduct research. Please provide this information.

(3) Your answer to our letter of November 15, 1996, indicates that your purpose for participating in research with Mr. Allen and Mr. Mangan was "to assist in the fostering of analog trunked radio service on Long Island" and that "Norcom's interest in the associations was based on its desire to promote communications capacity for its customers outside of Norcom's service area." Please furnish the following

information:

(a) For each system licensed to an association, specify the portion of the service area that is located "outside Norcom's service area."

(b) Do any of Norcom's customers actually make use of the communications associations' capacity "outside Norcom's service area"? If so, identify them.

(4) Your answer to our letter of November 15, 1996, indicates that some of the "prospective users" contained in the lists submitted with the original applications for Business radio stations WPAT-910, WPAT-918, WNXT-323, WPAP-734, and WPAZ-64 were already users or prospective users of another station owned or managed by you or by an entity that you control. State the number of such "prospective users" and identify each.

(5) The management agreements furnished with your answer to our letter of November 15, 1996, provide that , during the first five years of the agreements, the associations will pay Norcom a monthly fee equal to 100 % of the gross revenues derived from the operation of the stations and that, after five years, Norcom's compensation will be determined by mutual agreement. Please furnish the following information:

(a) Provide copies of the mutual agreements determining Norcom's compensation after five years. If the agreements are not in writing, provide complete details.

(b) How were the fees paid by the association members determined during the first five years of the agreements?

(c) How were the fees paid by the association members determined after the first five years?

(6) The Articles of Association provided with your answer to our letter of November 15, 1996, refer to bylaws. Please provide copies of the Bylaws of the associations.

(7) Your answer to our letter of November 15, 1996, indicates that some of the communications services provided through the associations are resold to the ultimate users through "independent sales agents," most of whom have agreements with Norcom. Furnish copies of these agreements.

(8) Provide a list of all stations managed by you for which space at a tower site is leased. The list should include, for each station, the call sign, licensee, frequency assignment, and tower site.

(9) Provide the number of mobile units in service for each user indicated in the lists provided of members, as of November 16, 1995, in the Wireless Communications Association of Suffolk County and the Association for East End Land Mobile Coverage.

Failure to reply within the specified period and to furnish the requested information could lead to the revocation of your client's radio station licenses. Direct your response to:

Enforcement Division, 2000D, Room 8308  
Wireless Telecommunications Bureau  
Federal Communications Commission  
Washington, D.C. 20554  
Attention: Thomas D. Fitz-Gibbon

You requested, pursuant to section 0.459 of the Commission's Rules, 47 C.F.R. § 0.459, that the information submitted by Norcom be treated confidentially. All of the information submitted by Norcom has been placed in an enforcement file that is not routinely available for public inspection.

If you have any questions about this matter, please write Mr. Fitz-Gibbon at the above address.

Sincerely,

Howard Davenport  
Chief, Enforcement Division  
Wireless Telecommunications Bureau

cc: Enf. Div. Chron, Room 8308  
Tom, Room 8308  
Kathy, Room 8308  
CIB Enforcement Division, Rom744  
CIB New York, NY

TFitz-Gibbon j:\enf\308b\tom\Nopper5

GARDNER, CARTON & DOUGLAS RECEIVED

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WRITER'S DIRECT DIAL NUMBER

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JAN 8 12 01 PM '97

ENFORCEMENT DIVISION  
TELECOMMUNICATIONS BUREAU

CHICAGO, ILLINOIS

January 7, 1997

**VIA HAND DELIVERY**

Mr. Thomas D. Fitz-Gibbon  
Enforcement Division, 2000D, Room 8308  
2025 M Street, N.W.  
Wireless Telecommunications Bureau  
Federal Communications Commission  
Washington, D.C. 20554

**Re: December 19, 1996, FCC Letter of Inquiry of Robert Nopper**

Dear Mr. Fitz-Gibbon:

Transmitted herewith, on behalf of Norcom Communications Corp. ("Norcom"), is a response to the Commission's inquiry letter dated December 19, 1996. Based on the Commission's inquiry letter, it is our understanding that Norcom's response will not be made available for routine public inspection.

If you should have any questions regarding this response, or need additional information, please do not hesitate to contact the undersigned counsel at the direct line noted above.

Cordially yours,



Russell H. Fox

Enclosures

## STATEMENT OF ROBERT NOPPER

The following statement responds to the inquiry of the Federal Communications Commission ("FCC") to Russell Fox. The FCC's questions are indicated in **bold** and my answers are indicated in standard typeface.

\* \* \*

**(7) Your answer to our letter of November 15, 1996, indicates that some of the communications services provided through the associations are resold to the ultimate users through "independent sales agents," most of whom have agreements with Norcom. Furnish copies of the agreements.**

See Exhibit B.

\* \* \*

I declare, under penalty of perjury, that the foregoing is true and correct.

Robert Nopper  
Robert Nopper

1/7/97  
Date

## SUBLEASE AGREEMENT

AGREEMENT, made this first day of November, 1995, between NORCOM COMMUNICATIONS CORP. (hereinafter "NORCOM"), located at 70-C Corbin Avenue, Bay Shore, New York 11706, as lessor and CRAIG HOCHSTRASSER doing business as WAVELENGTH FLEET COMMUNICATIONS (hereinafter "LESSEE"), currently located at 30 Samuels Path, Miller Place, New York 11764, as lessee.

WHEREAS, NORCOM is the owner of certain Trunked Land Mobile Repeater Systems located throughout Long Island and New York City, within the state of New York and Stamford, within the state of Connecticut, and desires to Sublease said Trunked Land Mobile Repeater Systems Communications Air Time to the LESSEE; and

WHEREAS, the LESSEE agrees to Sublease Trunked Land Mobile Repeater Systems Communications Air Time from NORCOM.

In consideration of the premises and of the covenants and promises contained herein, the parties hereto mutually agree as follows:

1. NORCOM agrees to continuously Sublease its Communications Air Time at each of its Trunked Land Mobile Repeater Systems until it has been determined, by NORCOM, that specific Trunked Land Mobile System is considered to be fully loaded to capacity with users.
2. NORCOM reserves the right to refuse any proposed Subleased User based on the Code of Federal Regulation Title 47 Part 90 Statement OF Eligibility or NORCOM's experience with high air time usage of specific types of users due to the nature of their businesses.
3. Existing, Pre-existing or Past NORCOM Users (customers) shall be excluded from being classified as Sublease Users. In the event this fact is not immediately known, NORCOM unconditionally reserves the right to assume these Users upon evaluation of the circumstances.
4. NORCOM will hold all Sublease User information confidential and will not intentionally communicate, solicit, and/or mail any communications to these Sublease Users.
5. The LESSEE hereby covenants and agrees to pay NORCOM the total monthly Sublease Rental at NORCOM's place of business on the first day of each month commencing with the first Sublease Account Activation, and on the first day of each month thereafter until there are no activated Subleased Accounts. NORCOM shall not be required to send monthly billing requesting such payments. The LESSEE further agrees to pay and shall automatically include a late charge of \$10.00 or 10% of the total monthly billing, which ever is the greater amount if payments are not made in a timely manner as described above. Should any instrument of payment be returned to NORCOM as not being negotiable, the account of that LESSEE shall be considered as not having been paid on time. All late charges and service charges shall then be debited to the LESSEE's account.

6. NORCOM further reserves the right to interrupt any and/or all service from each Trunked Land Mobile Repeater System if said payments are not paid in full in a timely manner as described above without any further notification to the LESSEE. Should Subleased Users be TURNED OFF as an Interruption of Service for NON-PAYMENT in accordance of the terms of this agreement, a seventy-five dollar (\$75.00) restoral charge per Sublease User per site plus all monies owed must be received by NORCOM prior to any services being restored by NORCOM.

7. Should more than thirty (30) calendar days pass and the then total monthly Sublease Rental is not paid in full, NORCOM unconditionally reserves the right to take over all the then existing Sublease Users on Direct Billing, and these accounts shall then be termed as NORCOM "Existing" Accounts, without any further notifications to the LESSEE.

8. At any time during the term of this lease should the LESSEE not have any Sublease accounts activated, this Agreement shall become void and at the sole discretion of NORCOM, the LESSEE may then start a new Sublease Agreement.

9. Should there arise a discrepancy in monthly billing between NORCOM and the LESSEE, a notice of this discrepancy shall be made in writing by the LESSEE within ten (10) days of the then NORCOM billing date to NORCOM and must explain in detail exactly where the possible discrepancy exists.

10. Any and all discrepancies in NORCOM billing for services shall not be cause for the LESSEE to delay in making a full and timely monthly leasing payments as determined by NORCOM.

11. The LESSEE further agrees to meet its debit obligation each month and shall make no claims and/or withhold payment to NORCOM because of possible errors in billing, insolvency, bankruptcy actions or any other such actions claiming financial complications and/or difficulties.

12. The LESSEE unconditionally agrees to immediately reimburse NORCOM for all expenses incurred by NORCOM in the collections of any monies owed under the terms and conditions of this Agreement.

13. The LESSEE cannot in turn Sublease Air Time or "piggy back" customers on the same user codes or fleets or in general Sublease Air Time to any other entity. Should this fact be discovered by NORCOM, the LESSEE agrees to make full financial restitution as then defined by NORCOM.

14. The LESSEE shall not assign, sell, transfer, pledge, or promise Sublease Users to another entity without prior written permission and/or approval from NORCOM.

15. First Time Sublease Users shall have an initial per piece per site starting rate of :

2 to 5 pieces @ \$10.00 per piece per month  
6 to 10 pieces @ \$9.00 per piece per month  
11 and up @ \$8.00 per piece per month

There is also a one time Connect Charge of \$25.00 per user per site to administratively set up the account and program the Trunk Land Mobile Repeater System.

These first time rates are subject to change with 30 days notice from NORCOM.

16. Notwithstanding of the above, if NORCOM's cost with respect to maintenance of the Trunked Mobile Repeater Facilities or the Antenna Site rent increase in any year more than past costs and/or increases, NORCOM reserves the right to increase the next succeeding years monthly Air Time Rates to an equal percentage; but in any event, the increase from one year to the next shall not exceed twenty percent (20%).

17. Computer Activation or Deactivation of an existing Sublease User's total piece count or any portion thereof shall incur a charge of \$6.00 each time a specific Trunk Land Mobile Repeater System is accessed for such changes. This charge shall not apply to the first time Activation of a new Sublease User or the addition of new pieces to an existing Sublease User thus increasing the sum total of the Sublease User's per piece count. All Computer Activation(s) and/or Deactivation(s) of Sublease Users will routinely be done at 3:00PM each work day as required.

18. The LESSEE shall continuously provide NORCOM with full and complete information with regard to address location of the Control Station and billing information of each Sublease User.

19. The terms of this Agreement shall commence upon the activation of the first Sublease User and shall automatically renew in accordance with the terms of paragraph twenty three (23) of this Agreement.

20. NORCOM agrees to perform all necessary maintenance to the Trunked Land Mobile Repeater Systems to insure its proper operation and compliance with all Federal Communication requirements. All maintenance, whether preventive or necessary, shall be made at the sole discretion of NORCOM. NORCOM shall have a reasonable period of time to perform all maintenance and repairs.

21. Repair services will be provided Monday thru Friday, with the exception of holidays, 9AM to 4PM with a response time to the Trunked Mobile Repeater System Site within six (6) hours of notification from the LESSEE's office. The mean time to repair will be determined by the extent of the failure and the ability of the manufacturer's factory to supply the parts as required, if not stocked by NORCOM.

22 NORCOM shall not be liable for failure of the Building/Tower Site or any causes beyond NORCOM's control which results in the failure of said Trunked Land Mobile Repeater System to operate in its customary fashion.

23 Should NORCOM determine that the LESSEE has engaged in competitive and/or fraudulent actions against NORCOM, NORCOM reserves the right to immediately cancel this agreement in its entirety and assume all of the then existing Subleased Users.

24 Renewal of this Agreement shall occur automatically at the end of each one (1) year period provided that all of the terms and conditions of this agreement have been satisfied by both parties. For the specific purpose of this Agreement the term "one (1) year" shall mean a twelve (12) month period beginning on August 1st and continuing successively until July 31st of the following year.

25 Any notice(s) or demand(s) required or permitted by this Agreement shall be by Certified Mail, Return Receipt Requested, to the parties, at the addresses set forth in this Agreement, unless a different address has been so designated in writing to the parties.

This contract constitutes the entire Agreement between the parties hereto. No modification or amendments of this Agreement shall be valid unless made in writing and duly executed by the parties in the same fashion as this Agreement.

Robert L. Nyman Date: 11/3/95  
NORCOM COMMUNICATIONS CORP.

Wavelerath Fleet Communications  
LESSEE Typed or Printed Name

C. [Signature] Date: NOV. 3, 1995  
Signature of LESSEE  
**MUST BE ORIGINAL**

## SUBLEASE AGREEMENT

AGREEMENT, made this first day of November, 1995, between NORCOM COMMUNICATIONS CORP. (hereinafter "NORCOM"), located at 70-C Corbin Avenue, Bay Shore, New York 11706, as lessor and NORTH SHORE RADIO, INC. (hereinafter "LESSEE"), currently located at 2 Pamela Drive, Ridge, New York 11961, as lessee.

WHEREAS, NORCOM is the owner of certain Trunked Land Mobile Repeater Systems located throughout Long Island and New York City, within the state of New York and Stamford, within the state of Connecticut, and desires to Sublease said Trunked Land Mobile Repeater Systems Communications Air Time to the LESSEE; and

WHEREAS, the LESSEE agrees to Sublease Trunked Land Mobile Repeater Systems Communications Air Time from NORCOM.

In consideration of the premises and of the covenants and promises contained herein, the parties hereto mutually agree as follows:

1. NORCOM agrees to continuously Sublease its Communications Air Time at each of its Trunked Land Mobile Repeater Systems until it has been determined, by NORCOM, that specific Trunked Land Mobile System is considered to be fully loaded to capacity with users.
2. NORCOM reserves the right to refuse any proposed Subleased User based on the Code of Federal Regulation Title 47 Part 90 Statement OF Eligibility or NORCOM's experience with high air time usage of specific types of users due to the nature of their businesses.
3. Existing, Pre-existing or Past NORCOM Users (customers) shall be excluded from being classified as Sublease Users. In the event this fact is not immediately known, NORCOM unconditionally reserves the right to assume these Users upon evaluation of the circumstances.
4. NORCOM will hold all Sublease User information confidential and will not intentionally communicate, solicit, and/or mail any communications to these Sublease Users.
5. The LESSEE hereby covenants and agrees to pay NORCOM the total monthly Sublease Rental at NORCOM's place of business on the first day of each month commencing with the first Sublease Account Activation, and on the first day of each month thereafter until there are no activated Subleased Accounts. NORCOM shall not be required to send monthly billing requesting such payments. The LESSEE further agrees to pay and shall automatically include a late charge of \$10.00 or 10% of the total monthly billing, which ever is the greater amount if payments are not made in a timely manner as described above. Should any instrument of payment be returned to NORCOM as not being negotiable, the account of that LESSEE shall be considered at not having been paid on time. All late charges and service charges shall then be debited to the LESSEE's account.

6. NORCOM further reserves the right to interrupt any and/or all service from each Trunked Land Mobile Repeater System if said payments are not paid in full in a timely manner as described above without any further notification to the LESSEE. Should Subleased Users be INTERRUPTED as an Interruption of Service for NON-PAYMENT in accordance of the terms of this agreement, a seventy-five dollar (\$75.00) restoral charge per Sublease User per site plus all monies owed must be received by NORCOM prior to any services being restored by NORCOM.

7. Should more than thirty (30) calendar days pass and the then total monthly Sublease Rental is not paid in full, NORCOM unconditionally reserves the right to take over all the then existing Sublease Users on Direct Billing, and these accounts shall then be termed as NORCOM "Existing" Accounts, without any further notifications to the LESSEE.

8. At any time during the term of this lease should the LESSEE not have any Sublease accounts activated, this Agreement shall become void and at the sole discretion of NORCOM, the LESSEE may then start a new Sublease Agreement.

9. Should there arise a discrepancy in monthly billing between NORCOM and the LESSEE, a notice of this discrepancy shall be made in writing by the LESSEE within ten (10) days of the then NORCOM billing date to NORCOM and must explain in detail exactly where the possible discrepancy exists.

10. Any and all discrepancies in NORCOM billing for services shall not be cause for the LESSEE to delay in making a full and timely monthly leasing payments as determined by NORCOM.

11. The LESSEE further agrees to meet its debit obligation each month and shall make no claims and/or withhold payment to NORCOM because of possible errors in billing, insolvency, bankruptcy actions or any other such actions claiming financial complications and/or difficulties.

12. The LESSEE unconditionally agrees to immediately reimburse NORCOM for all expenses incurred by NORCOM in the collections of any monies owed under the terms and conditions of this Agreement.

13. The LESSEE cannot in turn Sublease Air Time or "piggy back" customers on the same user codes or fleets or in general Sublease Air Time to any other entity. Should this fact be discovered by NORCOM, the LESSEE agrees to make full financial restitution as then defined by NORCOM.

14. The LESSEE shall not assign, sell, transfer, pledge, or promise Sublease Users to another entity without prior written permission and/or approval from NORCOM.

15. First Time Sublease Users shall have an initial per piece per site starting rate of :

2 to 5 pieces @ \$10.00 per piece per month  
6 to 10 pieces @ \$9.00 per piece per month  
11 and up @ \$8.00 per piece per month

There is also a one time Connect Charge of \$25.00 per user per site to administratively set up the account and program the Trunk Land Mobile Repeater System.

These first time rates are subject to change with 30 days notice from NORCOM.

16. Notwithstanding of the above, if NORCOM's cost with respect to maintenance of the Trunked Mobile Repeater Facilities or the Antenna Site rent increase in any year more than past costs and/or increases, NORCOM reserves the right to increase the next succeeding years monthly Air Time Rates to an equal percentage; but in any event, the increase from one year to the next shall not exceed twenty percent (20%).

17. Computer Activation or Deactivation of an existing Sublease User's total piece count or any portion thereof shall incur a charge of \$6.00 each time a specific Trunk Land Mobile Repeater System is accessed for such changes. This charge shall not apply to the first time Activation of a new Sublease User or the addition of new pieces to an existing Sublease User thus increasing the sum total of the Sublease User's per piece count. All Computer Activation(s) and/or Deactivation(s) of Sublease Users will routinely be done at 3:00PM each work day as required.

18. The LESSEE shall continuously provide NORCOM with full and complete information with regard to address location of the Control Station and billing information of each Sublease User.

19. The terms of this Agreement shall commence upon the activation of the first Sublease User and shall automatically renew in accordance with the terms of paragraph twenty three (23) of this Agreement.

20. NORCOM agrees to perform all necessary maintenance to the Trunked Land Mobile Repeater Systems to insure its proper operation and compliance with all Federal Communication requirements. All maintenance, whether preventive or necessary, shall be made at the sole discretion of NORCOM. NORCOM shall have a reasonable period of time to perform all maintenance and repairs.

21. Repair services will be provided Monday thru Friday, with the exception of holidays, 8AM to 4PM with a response time to the Trunked Mobile Repeater System Site within six (6) hours of notification from the LESSEE's office. The mean time to repair will be determined by the extent of the failure and the ability of the manufacturer's factory to supply the parts as required, if not stocked by NORCOM.

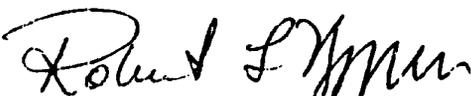
22. NORCOM shall not be liable for failure of the Building/Tower Site or any causes beyond NORCOM's control which results in the failure of said Trunked Land Mobile Repeater System to operate in its customary fashion.

23. Should NORCOM determine that the LESSEE has engaged in competitive and/or fraudulent actions against NORCOM, NORCOM reserves the right to immediately cancel this agreement in its entirety and assume all of the then existing Subleased Users.

24. Renewal of this Agreement shall occur automatically at the end of each one (1) year period provided that all of the terms and conditions of this agreement have been satisfied by both parties. For the specific purpose of this Agreement the term "one (1) year" shall mean a twelve (12) month period beginning on August 1st and continuing successively until July 31st of the following year.

25. Any notice(s) or demand(s) required or permitted by this Agreement shall be by Certified Mail Return Receipt Requested, to the parties, at the addresses set forth in this Agreement, unless a different address has been so designated in writing to the parties.

This contract constitutes the entire Agreement between the parties hereto. No modification or amendments of this Agreement shall be valid unless made in writing and duly executed by the parties in the same fashion as this Agreement.

  
\_\_\_\_\_  
NORCOM COMMUNICATIONS CORP.

Date: 11/3/95

NORTH SHORE RADIO INC.  
LESSEE Typed or Printed Name

  
\_\_\_\_\_  
Signature of LESSEE  
**MUST BE ORIGINAL**

Date: 11/1/95

## SUBLEASE AGREEMENT

AGREEMENT, made this first day of November, 1995, between NORCOM COMMUNICATIONS CORP. (hereinafter "NORCOM"), located at 70-C Corbin Avenue, Bay Shore, New York 11706, as lessor and EASTERN L.I. ELECTRONICS, INC. (hereinafter "LESSEE"), currently located at 10 Quogue Plaza Triangle, Quogue, New York 11959, as lessee.

WHEREAS, NORCOM is the owner of certain Trunked Land Mobile Repeater Systems located throughout Long Island and New York City, within the state of New York and Stamford, within the state of Connecticut, and desires to Sublease said Trunked Land Mobile Repeater Systems Communications Air Time to the LESSEE; and

WHEREAS, the LESSEE agrees to Sublease Trunked Land Mobile Repeater Systems Communications Air Time from NORCOM.

In consideration of the premises and of the covenants and promises contained herein, the parties hereto mutually agree as follows:

1. NORCOM agrees to continuously Sublease its Communications Air Time at each of its Trunked Land Mobile Repeater Systems until it has been determined, by NORCOM, that specific Trunked Land Mobile System is considered to be fully loaded to capacity with users.
2. NORCOM reserves the right to refuse any proposed Subleased User based on the Code of Federal Regulation Title 47 Part 90 Statement OF Eligibility or NORCOM's experience with High air time usage of specific types of users due to the nature of their businesses.
3. Existing, Pre-existing or Past NORCOM Users (customers) shall be excluded from being classified as Sublease Users. In the event this fact is not immediately known, NORCOM unconditionally reserves the right to assume these Users upon evaluation of the circumstances.
4. NORCOM will hold all Sublease User information confidential and will not intentionally communicate, solicit, and/or mail any communications to these Sublease Users.
5. The LESSEE hereby covenants and agrees to pay NORCOM the total monthly Sublease Rental at NORCOM's place of business on the first day of each month commencing with the first Sublease Account Activation, and on the first day of each month thereafter until there are no activated Subleased Accounts. NORCOM shall not be required to send monthly billing requesting such payments. The LESSEE further agrees to pay and shall automatically include a late charge of \$10.00 or 10% of the total monthly billing, which ever is the greater amount if payments are not made in a timely manner as described above. Should any instrument of payment be returned to NORCOM as not being negotiable, the account of that LESSEE shall be considered at not having been paid on time. All late charges and service charges shall then be debited to the LESSEE's account.

6. NORCOM further reserves the right to interrupt any and/or all service from each Trunked Land Mobile Repeater System if said payments are not paid in full in a timely manner as described above without any further notification to the LESSEE. Should Subleased Users be DISCONNECTED as an Interruption of Service for NON-PAYMENT in accordance of the terms of his agreement, a seventy-five dollar (\$75.00) restoral charge per Sublease User per site plus all monies owed must be received by NORCOM prior to any services being restored by NORCOM.
7. Should more than thirty (30) calendar days pass and the then total monthly Sublease Rental is not paid in full, NORCOM unconditionally reserves the right to take over all the then existing Sublease Users on Direct Billing, and these accounts shall then be termed as NORCOM "Terminated" Accounts, without any further notifications to the LESSEE.
8. At any time during the term of this lease should the LESSEE not have any Sublease accounts activated, this Agreement shall become void and at the sole discretion of NORCOM, the LESSEE may then start a new Sublease Agreement.
9. Should there arise a discrepancy in monthly billing between NORCOM and the LESSEE, a notice of this discrepancy shall be made in writing by the LESSEE within ten (10) days of the then NORCOM billing date to NORCOM and must explain in detail exactly where the possible discrepancy exists.
10. Any and all discrepancies in NORCOM billing for services shall not be cause for the LESSEE to delay in making a full and timely monthly leasing payments as determined by NORCOM.
11. The LESSEE further agrees to meet its debit obligation each month and shall make no claims and/or withhold payment to NORCOM because of possible errors in billing, insolvency, bankruptcy actions or any other such actions claiming financial complications and/or difficulties.
12. The LESSEE unconditionally agrees to immediately reimburse NORCOM for all expenses incurred by NORCOM in the collections of any monies owed under the terms and conditions of this Agreement.
13. The LESSEE cannot in turn Sublease Air Time or "piggy back" customers on the same user codes or fleets or in general Sublease Air Time to any other entity. Should this fact be discovered by NORCOM, the LESSEE agrees to make full financial restitution as then defined by NORCOM.
14. The LESSEE shall not assign, sell, transfer, pledge, or promise Sublease Users to another entity without prior written permission and/or approval from NORCOM.

15. First Time Sublease Users shall have an initial per piece per site starting rate of :

2 to 5 pieces @ \$10.00 per piece per month

6 to 10 pieces @ \$9.00 per piece per month

11 and up @ \$8.00 per piece per month

There is also a one time Connect Charge of \$25.00 per user per site to administratively set up the account and program the Trunk Land Mobile Repeater System.

These first time rates are subject to change with 30 days notice from NORCOM.

16. Notwithstanding of the above, if NORCOM's cost with respect to maintenance of the Trunked Mobile Repeater Facilities or the Antenna Site rent increase in any year more than past costs and/or increases, NORCOM reserves the right to increase the next succeeding years monthly Air Time Rates to an equal percentage; but in any event, the increase from one year to the next shall not exceed twenty percent (20%).

17. Computer Activation or Deactivation of an existing Sublease User's total piece count or any portion thereof shall incur a charge of \$6.00 each time a specific Trunk Land Mobile Repeater System is accessed for such changes. This charge shall not apply to the first time Activation of a new Sublease User or the addition of new pieces to an existing Sublease User thus increasing the sum total of the Sublease User's per piece count. All Computer Activation(s) and/or Deactivation(s) of Sublease Users will routinely be done at 3:00PM each work day as required.

18. The LESSEE shall continuously provide NORCOM with full and complete information with regard to address location of the Control Station and billing information of each Sublease User.

19. The terms of this Agreement shall commence upon the activation of the first Sublease User and shall automatically renew in accordance with the terms of paragraph twenty three (23) of this Agreement.

20. NORCOM agrees to perform all necessary maintenance to the Trunked Land Mobile Repeater Systems to insure its proper operation and compliance with all Federal Communication requirements. All maintenance, whether preventive or necessary, shall be made at the sole discretion of NORCOM. NORCOM shall have a reasonable period of time to perform all maintenance and repairs.

21. Repair services will be provided Monday thru Friday, with the exception of holidays, 9AM to 4PM with a response time to the Trunked Mobile Repeater System Site within six (6) hours of notification from the LESSEE's office. The mean time to repair will be determined by the extent of the failure and the ability of the manufacturer's factory to supply the parts as required, if not stocked by NORCOM.

12. NORCOM shall not be liable for failure of the Building/Tower Site or any causes beyond NORCOM's control which results in the failure of said Trunked Land Mobile Repeater System to operate in its customary fashion.

13. Should NORCOM determine that the LESSEE has engaged in competitive and/or fraudulent actions against NORCOM, NORCOM reserves the right to immediately cancel this agreement in its entirety and assume all of the then existing Subleased Users.

14. Renewal of this Agreement shall occur automatically at the end of each one (1) year period provided that all of the terms and conditions of this agreement have been satisfied by both parties. For the specific purpose of this Agreement the term "one (1) year" shall mean a twelve (12) month period beginning on August 1st and continuing successively until July 31st of the following year.

15. Any notice(s) or demand(s) required or permitted by this Agreement shall be by Certified Mail, Return Receipt Requested, to the parties, at the addresses set forth in this Agreement, unless a different address has been so designated in writing to the parties.

This contract constitutes the entire Agreement between the parties hereto. No modification or amendments of this Agreement shall be valid unless made in writing and duly executed by the parties in the same fashion as this Agreement.

Robert L. Yman Pres.  
NORCOM COMMUNICATIONS CORP.

Date: 10/31/95

PAUL GARRETT  
LESSEE Typed or Printed Name

Paul Garrett, President  
Signature of LESSEE  
**MUST BE ORIGINAL**

Date: 10/31/95

Certificate of Service

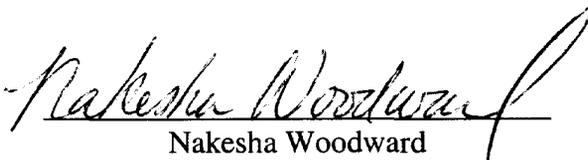
I, Nakesha Woodward, certify that, on August 5, 1999, a copy of the foregoing Wireless Telecommunications Bureau's Comments On Joint Motion For Summary Decision, filed on behalf of the Chief, Wireless Telecommunications Bureau, was sent by facsimile and first class mail to:

Russell H. Fox, Esq.  
Gardner, Carton & Douglas  
1301 K Street, N.W.  
Suite 900, East Tower  
Washington, D.C. 20005

George Petrutsas, Esq.  
Fletcher, Heald & Hildreth  
1300 North 17th Street, 11th Floor  
Arlington, VA 22209-3801

and was hand-carried to:

Honorable John M. Frysiak  
Administrative Law Judge  
445 12th Street, S.W., Room 1-C861  
Federal Communications Commission  
Washington, D.C. 20554

  
Nakesha Woodward