

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
GRECO COUSINS CONCRETE CORP)
For Authorization to Operate a Private Land)
Mobile Radio Station in the Industrial Radio)
Service)
And License of)
BERGEN COUNTY POLICE DEPARTMENT)
To Operate Frequency Pair 477/480.5125 MHz)
Under Call Sign WPLR685.)
File No. D069976

MEMORANDUM OPINION AND ORDER

Adopted: May 30, 2001

Released: May 31, 2001

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. We have before us a Petition for Reconsideration (Petition) filed by the Department of Public Safety of the County of Bergen, New Jersey (Bergen County) on June 16, 2000.1 Bergen County seeks reconsideration of the Order on Reconsideration and Order of Modification (Modification Order) released by the Public Safety and Private Wireless Division (Division) on May 18, 2000.2 We also have before us Bergen County's July 27, 2000 protest of the Modification Order.3 In the Modification Order, the Division decided, first, to reinstate to pending status Greco Cousins Concrete Corporation's (Greco) application for authorization of a new station in the Industrial Radio Service for use on frequency pair 477/480.5125 MHz. Second, the Division decided to institute a proceeding looking to modify Bergen County's license to operate Station WPLR685 by removing frequency pair 477/480.5125 MHz. For the reasons set forth below, we grant Bergen County's Petition and Protest, decline to modify Bergen County's license, and dismiss Greco's application.

1 Department of Public Safety of the County of Bergen, New Jersey, Petition for Reconsideration (filed June 16, 2000) (Petition).

2 In the Matter of Application of Greco Cousins Concrete Corp., et al., Order on Reconsideration And Order of Modification, 15 FCC Rcd 10310 (WTB PSPWD 2000) (Modification Order).

3 Protest of the Bergen County Police Department to the Public Safety and Private Wireless Division's Order Terminating its Law Enforcement Frequencies (filed July 27, 2000) (Protest). The time for Bergen County to file a protest was extended until July 27, 2000. In the Matter of Application of Greco Cousins Concrete Corp., et al., Order, 15 FCC Rcd 10658 (WTB PSPWD 2000).

II. BACKGROUND

A. The New York Metropolitan Advisory Committee Strategic Plan

2. Bergen County and the New York City Police Department (NYPD) are members of the New York Metropolitan Advisory Committee (NYMAC), a committee formed by the public safety agencies in the New York metropolitan area to enhance the effectiveness and efficiency of all public safety communications.⁴ On March 17, 1995, in response to then-stated public safety communication needs, the Commission assigned Television Channel 16 frequencies (namely, 482-488 MHz) to NYMAC.⁵ Although these frequencies were assigned to NYMAC, the TV Channel 16 frequencies are limited by their technical parameters on the west side of the Hudson River.⁶ Bergen County and the NYPD agreed, therefore, that NYPD would swap four of its existing UHF channels for the four new channels received as part of the TV Channel 16 authorization.⁷ NYPD, however, could not swap its existing channels because of its own communications needs⁸ and retained a consulting engineering firm to explore the possibility of obtaining other frequencies that could be assigned to Bergen County.⁹

B. CIBRO-NYPD Assignment and Modification/NYPD-Bergen County Assignment

3. NYPD found a suitable frequency pair, 477/480.5125 MHz, on which Station WIL489 operated. The license for station WIL489 was held by CIBRO-Petroleum, Inc. (CIBRO), a Special Industrial (SI) Licensee, which later assigned its authorization to NYPD in 1996. The CIBRO-NYPD assignment was assisted by Mr. Russ Taylor an attorney with Gardner, Carton & Douglas (GCD).¹⁰ Mr. Taylor declares under penalty of perjury, that:

Prior to submitting the NYPD application to APCO [Association of Public Safety Communications Officials, an FCC-certified frequency coordinator for the Public Safety Radio Pool], I contacted Barbara Edmonds of ITA [Industrial Telecommunications Association, Inc. (ITA), a FCC-certified frequency coordinator for the Industrial/Business Radio Pool] and sought ITA's guidance regarding the coordination requirements applicable to the Frequency. I explained to Ms. Edmonds my understanding that the Frequency was not completely a 'Special Industrial' channel and that the Frequency was also in the 'General Access Pool' and could be coordinated by APCO. I explained that, because

⁴ Protest, Attachment A, Affidavit of Paul A. Einreinhofer at 3 (filed July 27, 2000) (Einreinhofer Affidavit).

⁵ *Id.*

⁶ *Id.* The Commission authorized twelve public safety agencies in the New York metropolitan area (including the New York City Police Department) to use TV Channel 16 for a period of at least five years or until any television broadcast licensee in the New York City metropolitan area initiates use of TV Channel 16 for advanced television service (ATV), whichever is longer. See Waiver of Parts 2 and 90 of the Commission's Rules to Permit New York Metropolitan Area Public Safety Agencies to Use Frequencies at 482-488 MHz on a Conditional Basis, *Order*, 10 FCC Rcd 4466 (1995).

⁷ *Id.*

⁸ *Id.* at 3-4.

⁹ *Id.* at 4.

¹⁰ Protest, Declaration of Russ Taylor at ¶ 3.

channel availability in the General Access Pool depended on whether the Frequency would ‘subsequently become unassigned’ and because the Special Industrial licensee, CIBRO, was conveying its authorization to the NYPD, the Frequency became ‘unassigned’ to Special Industrial entities and was available in the General Access Pool. ITA agreed with me that under this scenario, it was proper for APCO to coordinate the application, provided that I served ITA with a copy of the application.¹¹

4. On November 6, 1996, Mr. Taylor sent a letter to Rachel Mortimer of APCO, asking her to coordinate the NYPD application for assignment and modification. In that letter he stated “[w]hile this application proposes to use the UHF General Access Pool channels by assignment from two Special Industrial Radio Service licensees,¹² Barbara Edmonds of the Industrial Telecommunications Association indicated that APCO coordination is permissible provided that ITA receives a copy of the application.”¹³ Mr. Taylor further stated that he sent to Rachel Mortimer, by overnight courier, a check¹⁴ for \$155.00, payable to ITA¹⁵ for its coordination services.¹⁶

5. On November 13, 1996, S. Klein of S & S Excavating Company sent a letter to Barbara Edmonds of ITA stating that “[i]t has been brought to our attention that the New York City Police Department . . . has submitted an application to APCO for use of this frequency (477.5125/480.5125 MHz) Since we have no objection to the NYPD application, it is therefore our intention to remove our application from processing when ITA concurs with APCO’s request to coordinate the NYPD.”¹⁷

6. On February 7, 1997, APCO filed with the FCC an application seeking consent to an assignment of the license for Station WIL489 from CIBRO to NYPD and authorization for a modification of the license for Station WIL489 by relocating the base station and increasing the number of authorized units on frequency pair 477/480.5125 MHz from fifty-four to 200 units.¹⁸ On March 5, 1997, the Licensing and Technical Analysis Branch of the Public Safety and Private Wireless Division (Branch)

¹¹ *Id.* at ¶4.

¹² According to Bergen County, there were two Industrial Service licensees on Station WIL489, CIBRO and Ambassador Fuel & Oil Burner Company (Ambassador). CIBRO was operating 54 mobile units and one base unit and Ambassador was operating 16 mobile units and one base unit in the frequency pair 477/480.5125 MHz. Protest at 5-6.

¹³ Protest, attachment, Letter from Russ Taylor, attorney, Gardner, Carton & Douglas, to Rachel Mortimer, APCO (November 6, 1996).

¹⁴ A photocopy of this check (dated Nov. 14, 1996) was attached to the Declaration of Russ Taylor. The check stub contains the notation “NYPD application.”

¹⁵ ITA denies receiving this check. Letter from Laura L. Smith, Executive Director, Government Relations, ITA, to D’wana R. Terry, Public Safety and Private Wireless Division, Federal Communications Commission at 2 (August 9, 2000) (ITA August 9 Letter).

¹⁶ Declaration of Russ Taylor at ¶ 3.

¹⁷ Protest, attachment, Letter from S. Klein, S & S Excavating Company, to Barbara Edmonds, ITA (Nov. 13, 1996) (Letter from S & S Excavating).

¹⁸ Application File No. 9702A003396 (filed Feb. 7, 1997) (NYPD Application).

granted this application.¹⁹ On October 28, 1997, as part of the NYMAC project, NYPD reached an agreement to assign the license for Station WIL489 to Bergen County.²⁰ On December 8, 1997, seven months after it was granted the license, NYPD filed an application to assign Station WIL489 to Bergen County, who, in turn, filed a new application for frequency pair 477/480.5125 MHz, which was licensed under Call Sign WPLR685.²¹ The Branch granted the assignment application and Bergen County's application on December 22, 1997.²²

7. As mentioned above, the assignment of frequency pair 477/480.5125 MHz from NYPD to Bergen County was part of a region-wide effort to improve public safety communications. Bergen County decided through another committee, a law enforcement communications committee, consisting of representatives from the County Prosecutor's Office and the County Police Department to use 477/480.5125 MHz for secure communications that had encryption capability.²³ To accomplish this, in the late fall of 1999, Bergen County constructed a transitional analog mobile relay system for eventual conversion of 477/480.5125 MHz to digital/encrypted technology.²⁴ Bergen County has expended \$700,000 in local, federal, and seized/confiscated funds to support this conversion.²⁵ Station WPLR685 is Bergen County's only digital encrypted radio system²⁶ and frequency pair 477/480.5125 MHz are the only frequencies authorized under Call Sign WPLR685.²⁷

C. The Competing Greco Application

8. On February 11, 1997, four days after APCO submitted NYPD's application to the Commission, ITA submitted a new application from Greco, a SI entity located in New York, to operate sixteen units on the same frequency pair, 477/480.5125 MHz.²⁸ On March 6, 1998, over one year after it had submitted Greco's application to the Branch, and a year after the Branch had granted the CIBRO-NYPD assignment and modification, ITA requested a status update on Greco's pending application.²⁹ On April 27, 1998, before the Branch responded, Bergen County requested dismissal of Greco's pending

¹⁹ NYPD Application (granted March 5, 1997).

²⁰ Einreinhofer Affidavit at 4.

²¹ Application File No. 9712A010992 (filed Dec. 8, 1997).

²² Radio Station License for Call Sign WPLR685 (File No. 9712A010992) (granted Dec. 22, 1997).

²³ Einreinhofer Affidavit at 5.

²⁴ *Id.* at 7.

²⁵ *Id.*

²⁶ *Id.* at 8.

²⁷ *Id.* at 4.

²⁸ Application File No. D069976 (filed Feb. 11, 1997) (Greco Application).

²⁹ Letter from Richard F. Feser, ITA, to Michael Regiec, Licensing and Technical Analysis Branch, Federal Communications Commission (dated March 5, 1998, filed March 6, 1998).

application and an order requiring Greco to stop operating on 477/480.5125 MHz.³⁰ On May 6, 1998, the Branch returned Greco's application to ITA because Greco's proposed location sites were not within 48 km of Greco's associated base stations, in contravention of Section 90.305(b) of the Commission's Rules.³¹ The Branch further indicated that ITA should select another frequency for its applicant and amend the effective radiated power of the proposed station.³²

9. On July 2, 1998, two months after the Branch had returned Greco's application, ITA resubmitted it without change.³³ Further, ITA noted that it is "the exclusive frequency advisory committee" for coordinating SI frequencies, and contended that NYPD should have coordinated its request through ITA, not APCO, because the subject frequency had been licensed previously to CIBRO, an SI entity. ITA stated that "[a]lthough the New York City application was received by the Commission before the Greco application, the New York City application was improperly coordinated and therefore, should have been denied. The Greco application was the first properly coordinated application received by the Commission and should be granted."³⁴ Furthermore, ITA stated that "[a]t no time did the City of New York either request or receive coordination from ITA for an increase in the number of mobile units to be licensed on frequency 477.5125 MHz."³⁵

10. Four months later, on November 16, 1998, ITA supplemented its July Letter, basically reiterating its position that ITA, and not APCO, was the appropriate coordinator of the CIBRO-NYPD assignment and concurrent modification. ITA stated "[b]ecause station WIL489 was licensed on 477.51250 MHz as a special industrial pool frequency, any request to modify the station to increase its mobile units had to be coordinated through the certified special industrial pool frequency coordinator - ITA"³⁶ Again, ITA asserted that "[t]o date, no request for coordination of the modification application has been received or processed by ITA."³⁷ ITA concluded that because the "modification application did not contain certification from the appropriate frequency coordinator" it was "defective on its face."³⁸

³⁰ Letter from Paul A. Einreinhofer, Sergeant, Division of Emergency Management, Department of Public Safety, County of Bergen, to Michael Regiec, Licensing and Technical Analysis Branch, Federal Communications Commission (dated April 23, 1998, filed March 27, 1998).

³¹ Letter from the Licensing and Technical Analysis Branch, Federal Communications Commission, to ITA (May 6, 1998).

³² *Id.*

³³ Letter from Andre F. Cote, Senior Vice President, ITA, to Michael Regiec, Chief, Licensing and Technical Analysis Branch, Federal Communications Commission (July 2, 1998) (July Letter).

³⁴ *Id.* at 2.

³⁵ *Id.*

³⁶ Letter from Andre Cote, Senior Vice President, Spectrum Operations & Analysis, ITA, to Mary Shultz, Chief, Licensing & Technical Analysis Branch, Public Safety and Private Wireless Division, Federal Communications Commission at 2 (Nov. 16, 1998) (Resubmission Letter).

³⁷ *Id.*

³⁸ *Id.*

11. On February 1, 1999, the Branch rejected ITA's arguments and dismissed Greco's application.³⁹ In response, on March 3, 1999, Greco filed a petition for reconsideration of the Branch's dismissal of its application and a request to initiate a proceeding to revoke Bergen County's license.⁴⁰ Citing Sections 90.135(a) and 90.175(e) of the Commission's Rules, Greco contended that APCO was required to "request concurrence from ITA prior to coordinating"⁴¹ NYPD's applications because "only ITA was authorized to coordinate a request to relocate the base stations and increase loading on a 470-512 MHz Industrial Pool frequency."⁴² Greco also contended that APCO was required to "notify ITA of their submission to the FCC."⁴³ Thus, Greco concluded that APCO's alleged failure to coordinate with and notify ITA of NYPD's application rendered the NYPD application defective, and, thus, Greco argued, the Branch erred in granting NYPD's application.⁴⁴

D. The Modification Order

12. On May 18, 2000, in response to Greco's petition for reconsideration, we released the *Modification Order*. In the *Modification Order*, we reinstated Greco's application to pending status and proposed to modify Bergen County's license to operate Station WPLR685 by removing frequency pair 477/480.5125 MHz.⁴⁵ We based this decision on the coordination of the assignment and modification of the license for Station WIL489 from CIBRO to NYPD by APCO instead of ITA. In the *Modification Order*, we stated that "[i]n 1997, Sections 90.135(a) and 90.175 of the Commission's Rules required . . . [NYPD] to obtain a coordination statement from a certified frequency coordinator prior to submitting its assignment and modification application to the Commission."⁴⁶ We noted that "[w]hen frequencies are shared by more than one service," Section 90.175 of the Commission's Rules provided that, "concurrence must be obtained from the other applicable certified frequency coordinators."⁴⁷ We further stated that "Section 90.175(b) of the Commission's Rules required an applicant to obtain a "statement from the applicable coordinator recommending specific frequencies that are available for assignment in accordance with the loading standards and mileage separations applicable to the specific radio service or category of user involved." We then "agreed with Greco that the applicable coordinator for both the assignment and modification request was ITA, the certified SI frequency coordinator, because the frequency pair subject to assignment was licensed to CIBRO, an SI licensee."⁴⁸

³⁹ Letter from Mary M. Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, to Elizabeth Sachs (Feb. 1, 1999).

⁴⁰ Greco Petition for Reconsideration and Request for Initiation of Revocation Proceeding at 8 (filed March 3, 1999) (Greco Petition).

⁴¹ *Id.* at 2.

⁴² *Id.* at 3.

⁴³ *Id.* at 2.

⁴⁴ *Id.* at 4.

⁴⁵ *Modification Order*, 15 FCC Rcd at 10316.

⁴⁶ *Id.*, 15 FCC Rcd at 10314 ¶ 9.

⁴⁷ *Id.*

⁴⁸ *Id.*, 15 FCC Rcd at 10314 ¶ 10.

E. Bergen County's Petition For Reconsideration and Protest

13. On June 16, 2000, Bergen County filed a Petition for Reconsideration of the *Modification Order*.⁴⁹ Among other points,⁵⁰ Bergen County maintains that the *Modification Order* is based on an incomplete and erroneous factual record.⁵¹ Specifically, Bergen County argues, the *Modification Order* is "based on the Division's conclusion that the original license application was not properly coordinated and thus [was] 'defective.'"⁵² But, Bergen County continued, the record of this proceeding, particularly APCO's *Motion to Vacate the Modification Order* demonstrates that APCO coordinated the CIBRO-NYPD assignment and concurrent modification "in accordance with the Commission regulations and provides evidence to this end."⁵³ Thus, Bergen County concludes, NYPD assigned a valid license to Bergen County.

14. On July 27, 2000, Bergen County filed a Protest of the Bergen County Police Department to the Public Safety and Private Wireless Division's *Order* terminating its law enforcement frequencies.⁵⁴ Bergen County protested the *Modification Order* for the following reasons. First, Bergen County argues that the modification of its license will have a devastating impact on law enforcement operations in Bergen County.⁵⁵ Bergen County asserts that it spent \$800,000 in reliance on the Commission's authorization in 1998 for a digital, encrypted radio system that it intends to use for surveillance activities.⁵⁶ Second, Bergen County argues that the evidence indicates that the frequency coordination was proper.⁵⁷ Bergen County asserts that both ITA and APCO coordinated the transfer application and were paid to do so.⁵⁸ Even if the coordination actions of NYPD and APCO did not fully conform to the prevailing industry standards, Bergen County argues, it is improper to burden it with the equivalent of a revocation because there was no violation of the Commission rules.⁵⁹ Third, Bergen County argues that the Division's approach conflicts with the principles of finality.⁶⁰ Bergen County asserts that the Division had thirty days to set-aside the order approving the NYPD transfer and cannot correct an alleged procedural error under the guise of a

⁴⁹ See Petition.

⁵⁰ Bergen County also argues that the Division does not have delegated authority to modify its license, that the Division's procedure for curing an allegedly defective application was flawed, and that Greco's application cannot be reinstated. See Petition.

⁵¹ Petition at 4.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ See *supra* note 3.

⁵⁵ Protest at 7.

⁵⁶ Protest at 8.

⁵⁷ Protest at 11.

⁵⁸ *Id.*

⁵⁹ Protest at 14.

⁶⁰ Protest at 15.

modification to the license after the thirty-day period has expired.⁶¹ Bergen County argues that if processing errors are held against future licensees of frequencies and then invoked to modify or revoke a license, there will never be administrative finality to the Commission's licensing process.⁶² Fourth, Bergen County argues that the Division's procedures for resolving this dispute are fatally flawed because the Division's action is tantamount to a revocation under Section 312 of the Communications Act⁶³ and not a modification.⁶⁴ Therefore, Bergen County insists, it is entitled to a hearing.⁶⁵ Fifth, Bergen County argues that Greco is not entitled to the license in any event because if the NYPD application was defective the license should revert to the transferor of the defective license not to a party that filed an application later.⁶⁶ Thus, Bergen County asserts that Greco is unjustly enriched by the award of the license.⁶⁷

III. DISCUSSION

15. While the parties have raised many issues and arguments,⁶⁸ the dispositive issue in this case is whether APCO did in fact notify ITA of the assignment and concurrent modification of the CIBRO-NYPD application before ITA coordinated the Greco application, and whether ITA concurred in the coordination of that application. As we stated in the *Modification Order* “[i]n 1997, Section 90.175 of the Commission's Rules provided that “[w]hen frequencies are shared by more than one service, concurrence must be obtained from the other applicable certified frequency coordinator.”⁶⁹ In the *Modification Order*, we tentatively concluded that the processing of the CIBRO-NYPD application was defective because “we accept[ed] Greco's assertion that APCO failed to notify ITA.”⁷⁰ Based on the information now before us, we conclude that ITA both was notified of and concurred in the handling of the CIBRO-NYPD assignment application.

⁶¹ *Id.*

⁶² *Id.*

⁶³ 47 U.S.C. § 312.

⁶⁴ Protest at 17.

⁶⁵ Protest at 18.

⁶⁶ Protest at 22.

⁶⁷ *Id.*

⁶⁸ We also have before us various motions relating to this proceeding. Since we are granting Bergen County's petition and protest, the “Motion to Vacate” filed by APCO on May 25, 2000 IS DISMISSED as moot. Similarly, the “Request for Stay” filed on June 30, 2000 by Bergen County IS DISMISSED as moot. Bergen County's “Motion to Strike” ITA's July 17, 2000 letter, which was filed on August 4, 2000, IS DENIED because we find that ITA's submission assists our resolution of this proceeding. Finally, the “Motion to Treat Proceeding on a Non-Restricted, Permit-But-Disclose, Basis” filed by Bergen County on July 18, 2000 IS DENIED because Bergen County has not demonstrated good cause for modifying the *ex parte* status of this proceeding.

⁶⁹ *Modification Order*, 15 FCC Rcd at 10314 ¶ 9, citing 47 C.F.R. § 90.175 (1996).

⁷⁰ *Id.*, 15 FCC Rcd at 10314 ¶ 10.

16. Although we stated in the *Modification Order* that we accepted “Greco’s assertions that APCO failed to notify ITA”⁷¹ and based on that assertion, determined that the CIBRO-NYPD application was defective,⁷² Greco maintains that the *Modification Order* “probably overstates the agency’s reliance on Greco’s statements.”⁷³ Greco maintains that it “has no personal knowledge of what ITA did or did not do in respect to coordinating the NYPD application.”⁷⁴ Greco maintains that “[i]t must rely, and has relied, entirely on ITA’s statements to Greco and to the FCC” concerning what ITA did or did not know.⁷⁵ Greco concludes that the Commission may have found “Greco’s statements credible, but it undoubtedly relied primarily on ITA’s own filings” which show that “ITA had not been asked to, and did not” coordinate the CIBRO-NYPD application.⁷⁶

17. ITA does not dispute the assertions that ITA was contacted about the CIBRO-NYPD application before it submitted the Greco application. Instead, ITA argues that it is irrelevant whether “ITA received courtesy copies of the applications”⁷⁷ or whether “an APCO representative called ITA and informed them of the applications.”⁷⁸ “Mere phone calls and courtesy copies are *never* sufficient to satisfy notification requirements,”⁷⁹ ITA argues. Moreover, regardless of whether APCO’s statements are true, ITA asserts, “they are completely irrelevant to whether or not ITA, as the FCC-certified frequency advisory committee for the special industrial pool, *received and processed* the CIBRO/City of New York application prior to its receipt and processing of Greco’s application.”⁸⁰ ITA emphatically states that “[a]t no time did ITA *receive and process* any application other than Greco’s for frequency 477.51250 MHz.”⁸¹ Thus, ITA concludes, the CIBRO-NYPD application was improperly coordinated and was defective, regardless of when it was filed, “thus rendering the Bergen County application defective.”⁸²

18. Under those circumstances, we now conclude that the CIBRO-NYPD assignment application was properly coordinated. ITA does not dispute that Mr. Taylor contacted Barbara Edmonds

⁷¹ *Id.*

⁷² *Id.*

⁷³ Greco Cousins Concrete Corp., Opposition to Bergen County Police Department Protest at 4-5 (filed Aug. 9, 2000) (Greco Opposition to Protest).

⁷⁴ *Id.* at 4.

⁷⁵ *Id.*

⁷⁶ *Id.* at 5.

⁷⁷ Letter from Laura L. Smith, Executive Director, Government Relations, ITA, to D’wana R. Terry, Public Safety and Private Wireless Division, Federal Communications Commission at 2 (July 17, 2000) (ITA July 17 Letter).

⁷⁸ *Id.*

⁷⁹ *Id.* at 3.

⁸⁰ *Id.* at 2.

⁸¹ *Id.*

⁸² *Id.* at 3.

of ITA before ITA coordinated the Greco application. The dispute centers on whether the telephone conversation between Mr. Taylor, together with the submission of the application to both APCO and ITA, satisfied the requirements of Sections 90.135 and 90.175 of the Commission's Rules. We now believe that those requirements were satisfied because, in the conversation between Mr. Taylor and Ms. Edmonds, Ms Edmonds consented to the coordination of CIBRO-NYPD application by APCO. Significantly, ITA never contradicted Mr. Taylor's declaration concerning his conversation with Ms. Edmonds. Mr. Taylor and APCO relied on the statement of Ms. Edmonds. Mr. Taylor submitted a copy of the application concurrently to APCO and ITA and he sent a check to ITA for its coordination services, although ITA denies receiving this check. Moreover, ITA was further put on notice that there was a prior application pending when S. Klein of S & S Excavating Company wrote to ITA on November 13, 1996, removing their application from processing "when ITA concurs with APCO's request to coordinate the NYPD."⁸³ Because we believe that ITA had knowledge of and consented to APCO's coordination of the CIBRO-NYPD application, before it coordinated the Greco application, we believe that the requirements of Sections 90.135 and 90.175 of the Commission's Rules have been met. Accordingly, we therefore find no basis for modifying Bergen County's license. Since Greco's application was not submitted to the Commission until after the CIBRO-NYPD application was submitted, we also conclude that Greco's application must be dismissed.

IV. CONCLUSION AND ORDERING CLAUSES

19. For the reasons stated above, we conclude that the assignment and concurrent modification from CIBRO to NYPD was properly coordinated by APCO with the knowledge and consent of ITA and thus, CIBRO assigned a valid license to operate frequency pair 477/480.5125 MHz to NYPD; NYPD in turn, assigned a valid license to Bergen County.

20. ACCORDINGLY, IT IS ORDERED THAT, pursuant to Sections 4(i), 316, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 316, 405, and Sections 1.87 and 1.106 of the Commission's Rules, 47 C.F.R. §§ 1.87, 1.106, the petition for reconsideration filed by Bergen County on June 21, 2000, and the protest filed by Bergen County on July 27, 2000 ARE GRANTED.

21. IT IS FURTHER ORDERED THAT, pursuant to Section 316 of the Communications Act of 1934, as amended, 47 U.S.C. § 316, and Section 1.87 of the Commission's Rules, 47 C.F.R. § 1.87, that Bergen County's license for Station WPLR685 SHALL NOT BE MODIFIED.

22. IT IS FURTHER ORDERED that pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, Greco Cousins Concrete Corporation's application under file number D069976 for authorization of a new station in the Industrial Radio Service for use on frequency pair 477/480.5125 MHz, filed on February 11, 1997, IS DISMISSED.

23. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry

⁸³ Letter from S & S Excavating at 1.

Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau