

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

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

MEMORANDUM OPINION AND ORDER

Adopted: September 27, 2002

Released: October 2, 2002

By the Commission:

1. On April 5, 2002, Greco Cousins Concrete Corporation (Greco) filed an application for review of the Public Safety and Private Wireless Division, Wireless Telecommunications Bureau (Division) affirmance of the grant of an application filed by Bergen County Police Department to operate on the frequency pair 477/480.5125 MHz in the New York City/New Jersey metropolitan area. Additionally, Greco objects to the dismissal of its above-captioned application.

2. We have reviewed the Application for Review and find that the Division staff properly decided the matters raised. In particular, we agree with the Division's analysis and conclusion that APCO's actions satisfied the requirements of Section 90.175 of the Commission's Rules because ITA had knowledge of and consented to APCO's coordination of the CIBRO-NYPD assignment/modification application before ITA coordinated the Greco application. Thus, we agree with the Bureau's conclusion that NYPD assigned a properly coordinated license to the Bergen County Police Department.

3. We believe, however, that one issue warrants further comment. Greco argues that the Division's decision must be overturned because it will substantially undermine the coordination process by permitting "parties to claim frequency rights based entirely on oral communications rather than written records" and an applicant or a representative of an applicant to relay a concurrence. We do not agree

1 Application for Review (filed Apr. 4, 2002).

2 Greco Cousins Concrete Corp et al., Order on Reconsideration, 17 FCC Rcd 4265 (WTB PSPWD 2002) (Order on Reconsideration).

3 Id. at 4270 ¶ 9.

4 Id. at 4271 ¶ 12.

5 Application for Review at 8.

that the Division created new precedent in this proceeding. On the contrary, the Division followed well-established Commission precedent when it stated that “the Commission generally does not mandate the procedures by which the frequency coordinators perform frequency coordination.”⁷ In this particular instance, based on the record, the Division was confronted with information from both ITA and APCO concerning the frequency coordination procedures that were used in 1996. According to ITA “[t]here are procedures in place that were agreed upon by all of the frequency advisory committees, including APCO, for inter-service coordinations and notifications.”⁸ In contrast, APCO states that “in 1996 there were not well-established, documented procedures agreed to by the coordinators for their processing of this type of application.”⁹ APCO states that the CIBRO-NYPD application was unique because “Special Industrial licensees rarely assign channels to public safety licensees in any band.”¹⁰ APCO further argues that the provisions of Section 90.311 of the Commission’s Rules¹¹ “were far from clear with regard to the coordination of such an assignment in the 470-512 MHz band, where the availability of a frequency for a particular class of user (and its coordination responsibility) could shift with assignment from one frequency pool to another.”¹² In light of this evidence, we agree with the Division that the fact that ITA may not have followed its normal procedures in granting such concurrence does not vitiate its grant of consent or support the conclusion that the coordination of the CIBRO-NYPD application violated the Commission’s Rules.

4. Accordingly, IT IS ORDERED that pursuant to Sections 4(i) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c), and Section 1.115 of the Commission’s Rules, 47 C.F.R. § 1.115, the Application for Review filed by Greco Cousins Concrete Corporation on April 4, 2002 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

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⁶ *Id.* at 9.

⁷ *Order on Reconsideration*, 17 FCC Rcd at 4270 ¶ 10.

⁸ Letter from Andre Cote, Senior Vice President, Industrial Telecommunications Association to D’wana R. Terry, Public Safety and Private Wireless Division at 3 (July 17, 2000).

⁹ Association of Public-Safety Communications Officials-International, Inc., Opposition to Petition for Reconsideration at 3 (filed July, 17, 2001) (APCO Opposition).

¹⁰ *Id.*

¹¹ 47 C.F.R. § 90.311 (1996).

¹² APCO Opposition at 3.