

NEW YORK STATE  
DEPARTMENT OF ECONOMIC DEVELOPMENT  
633 THIRD AVENUE  
NEW YORK, NY 10017

In the Matter

- of -

the Application of **New York Communications Company, Inc.**  
**d/b/a Hudson Valley Public Safety Lighting**  
for Certification as a Woman-owned Business Enterprise  
Pursuant to Executive Law Article 15-A.

NYS DED File ID No. 60385

RECOMMENDED ORDER

- by -

A handwritten signature in black ink, appearing to read "Daniel P. O'Connell". The signature is written in a cursive style with a horizontal line underneath it.

Daniel P. O'Connell  
Administrative Law Judge

March 8, 2017

## **SUMMARY**

This report recommends that the determination of the Division of Minority and Women's Business Development (Division) of the New York State Department of Economic Development to deny the application filed by New York Communications Company, Inc. (NYComCo or applicant) for certification as a woman-owned business enterprise (WBE) be modified and, as so modified, affirmed for the reasons set forth below.

## **PROCEEDINGS**

In a denial letter dated April 12, 2016 (*see* WBE Exh. 4), the Division determined that NYComCo does not meet the eligibility requirements to be certified as a woman-owned business enterprise, and denied NYComCo's application (*see* WBE Exh. 3). With a letter dated April 21, 2016, Stephen E. Diamond, Esq. (Stenger, Roberts, Davis & Diamond, LLP [Wappingers Falls, New York]), on behalf of NYComCo, appealed from the Division's determination to deny WBE certification.

In a Notice of Appeal Hearing dated June 23, 2016, the Division acknowledged NYComCo's April 21, 2016 request for an appeal hearing. The June 23, 2016 notice scheduled the hearing for 11:00 a.m. on October 25, 2016 at the Division's offices located at 625 Broadway, Albany, New York 12207. The notice also reiterated the Division's bases for the denial.

The hearing convened as scheduled. Mr. Diamond represented NYComCo. Michele D. Pisanelli and Richard Lacouette testified on behalf of NYComCo. Phillip Harmonick, Esq., Assistant Counsel, New York State Department of Economic Development, represented the Division, and Matthew LeFebvre, Senior Certification Analyst, testified.

The hearing was recorded. On November 25, 2016, the Office of Hearings and Mediation Services (OHMS) of the New York State Department of Environmental Conservation received copies of the audio compact disks (CD1, Track 1 and CD2, Tracks 1 and 2), whereupon the record of the hearing closed.

In addition to the testimony of the witnesses identified above, the parties offered eight exhibits identified as WBE Exhibits 1-8, inclusive. All exhibits offered at that hearing were received into evidence (CD2Tr2 00:27). An exhibit list is attached to this recommended order.

## **ELIGIBILITY CRITERIA**

The eligibility criteria pertaining to certification as a woman-owned business enterprise are outlined in the regulations at Title 5 of the Official Compilation of Codes, Rules, and Regulations of the State of New York (5 NYCRR) § 144.2. To determine whether an applicant should be granted WBE status, the Division assesses the ownership, operation, control, and independence of the business enterprise on the basis of information supplied through the application process. The Division reviews the business enterprise as it existed at the time that the application was made, based on representations in the application itself, and on information

presented in supplemental submissions as well as any interviews that the Division's analyst may have conducted. (See 5 NYCRR 144.5[5].)

## STANDARD OF REVIEW

On this administrative appeal, NYComCo bears the burden of proving that the Division's denial of the application for WBE certification is not supported by substantial evidence (see State Administrative Procedure Act § 306[1]). The substantial evidence standard "demands only that a given inference is reasonable and plausible, not necessarily the most probable," and applicant must demonstrate that the Division's conclusions and factual determinations are not supported by "such relevant proof as a reasonable mind may accept as adequate" (*Matter of Ridge Rd. Fire Dist. v Schiano*, 16 NY3d 494, 499 [2011] [internal quotation marks and citations omitted]).

## POSITIONS OF THE PARTIES

### The Division

The Division denied the application filed by NYComCo for certification as a woman-owned business enterprise in a letter dated April 12, 2016, which is identified as WBE Exh. 4 in the hearing record. According to the April 12, 2016 denial letter, NYComCo did not meet the ownership criteria outlined at 5 NYCRR 144.2(a)(5), 5 NYCRR 144.2(a)(1), and 5 NYCRR 144.2(c)(2). With respect to exercising control over the business enterprise, the Division stated further that NYComCo did not comply with the requirement at 5 NYCRR 144.2(b)(2). (See WBE Exh. 4.)

### New York Communications Co., Inc.

In a letter from Mr. Diamond dated April 21, 2016, NYComCo appealed from the Division's April 12, 2016 determination to deny WBE certification. NYComCo explained that several shareholders each have small percentages of ownership. The Lacouette Family Limited Partnership (the Partnership), however, has a significant percentage of ownership. The Partnership was created to protect the family from New York State and federal estate taxes. The Partnership consists of two general partners, Lee Ann Lacouette and her spouse, Richard Lacouette. The general partners' children, Tiffany Sivco, Jenna (Lacouette) Riess, and Benjamin Lacouette, are limited partners. As a general partner, Lee Ann Lacouette has a small ownership interest in the partnership, but maintains the ultimate decision making control, according to NYComCo. NYComCo asserted that it should be certified as a WBE business enterprise.

## FINDINGS OF FACT

### I. General

1. New York Communications Company, Inc. (NYComCo), has business offices located at 53 West Cedar Street, Poughkeepsie, New York 12601. NYComCo sells and maintains customized communication equipment for police and fire departments, emergency medical services, hospitals, and construction companies, among others. Additionally, NYComCo offers on-call services 24 hours a day, 365 days a year. (See WBE Exh. 3.)

2. In December 2012, Lee Ann Lacouette and her spouse, Richard Lacouette, formed the Lacouette Family Limited Partnership (the Partnership). Lee Ann Lacouette and Richard Lacouette are the general partners. The general partners' children, Tiffany Sivco, Jenna (Lacouette) Riess, and Benjamin Lacouette, are limited partners. (*See* WBE Exh. 2; CD1Tr1 10:49, 11:23.)
3. On behalf of NYComCo, Jenna (Lacouette) Riess filed an application for WBE certification with the Division on March 22, 2016 (*see* WBE Exh. 3).
4. By letter dated April 12, 2016, the Division denied NYComCo's application for certification as a woman-owned business enterprise (*see* WBE Exh. 4).

## II. Ownership

5. NYComCo authorized 36,000 shares of common stock. Of that amount, the treasury has retained 23,731 shares. The remaining 12,269 shares are outstanding and owned by NYComCo's employees. (*See* WBE Exhs. 1 and 3; CD1Tr1 10:06, 10:15.)
6. The Partnership controls 10,633 shares of common stock. These shares of common stock are divided among the general and limited partners in the following manner. Tiffany Sivco, Jenna Lacouette, and Benjamin Lacouette each own 33% of the shares controlled by the Partnership (*i.e.*, 3,508.9 per limited partner). Lee Ann Lacouette owns 0.5% (*i.e.*, 53.2) and Richard Lacouette owns 0.5% of the shares controlled by the Partnership (*i.e.*, 53.2). (*See* WBE Exhs. 1, 2, 3, 8; CD1Tr1 10:49, 11:23, 13:54, 15:44, 16:45; CD2Tr1 01:15, 01:59.)
7. Other employees at NYComCo own shares of common stock. The following women own the following number of shares of common stock: Margaret E. Kane (11 shares), Jenna (Lacouette) Riess (40 shares),<sup>1</sup> Michele D. Pisanelli (289 shares), Kelly Simmons (69 shares), and Kelly A. Variano (45 shares). The sum of these woman-owned shares is 454. (*See* WBE Exhs. 1 and 3; CD1Tr1 20:24, 20:41.)
8. The women employees of NYComCo own a total of 7,525 shares of common stock, which is 61.3% of the total number of outstanding shares.
9. With its federal income tax return for 2014, NYComCo provided Form 1125-E, which identifies four corporate officers and the compensation each received. Richard Lacouette is the president of NYComCo, and his reported compensation was [REDACTED]. Michelle Pisanelli is the executive vice-president and treasurer of NYComCo, and her reported compensation was [REDACTED]. Eric Kraus is the vice-president for operations of NYComCo, and his reported compensation was [REDACTED]. Jenna (Lacouette) Riess is the secretary of NYComCo, and her reported compensation was [REDACTED]. (*See* WBE Exh. 6; CD1Tr1 33:41.)

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<sup>1</sup> These are in addition to the shares that Jenna (Lacouette) Riess owns as a limited partner in the Partnership.

10. In the application for WBE certification, Lee Ann Lacouette is identified as the chief executive officer (CEO) of NYComCo. However, Ms. Lacouette is not listed as an officer on Form 1125-E, and her compensation in 2014 is not known. (See WBE Exhs. 3 and 6.)
11. In section 2.C of the application, NYComCo identified two people who made capital contributions in February 2012 to the business enterprise. The first contribution was made by Richard Lacouette, who contributed [REDACTED] as shares of common stock. The second contribution identified in the application came from Lee Ann Lacouette, but she contributed \$0. Therefore, in comparison to Richard Lacouette, neither Lee Ann Lacouette, nor any other woman-owner made any capital contribution to the business enterprise. (See WBE Exhs. 3 and 5; CD1Tr1 25:07, 27:33, 51:39.)

### III. Control

12. NYComCo's by-laws provide for a president, a vice-president, a secretary, and a treasurer. The Board of Directors elects these corporate officers, and may appoint other officers, agents and employees. (See WBE Exh. 7 at ¶¶ 24-26; CD1Tr1 34:27.)
13. Richard Lacouette is the president of NYComCo. Lee Ann Lacouette is the chief executive officer. Michele Pisanelli is the executive vice-president and treasurer. Eric Kraus is the vice-president for operations. Jenna (Lacouette) Riess is the secretary for the corporation. (See WBE Exh. 3 at 3; CD1Tr1 09:27, 11:54, 35:31)
14. The by-laws identify the duties and responsibilities for each corporate officer. The president is the executive officer and has the authority to manage the corporation's business. In addition, the president must carry out the Board's orders and resolutions. (See WBE Exh. 7 at ¶ 29; CD1Tr1 34:55)
15. The by-laws neither identify a chief executive officer, nor describe the duties and responsibilities that would be associated with such a position (see WBE Exh. 7).

## DISCUSSION

This recommended order considers NYComCo's April 21, 2016 appeal from the Division's April 12, 2016 determination to deny NYComCo's application for certification as a woman-owned business enterprise pursuant to Executive Law Article 15-A. Referring to the eligibility criteria outlined at 5 NYCRR 144.2, the Division identified the following as the bases for the denial. Concerning ownership of the business enterprise, the Division asserted that NYComCo failed to show that women own at least 51% of the corporation, as required by 5 NYCRR 144.2(a)(5). The Division asserted further that NYComCo did not demonstrate that the woman-owners enjoy the customary incidents of ownership, and share in the risks and profits in proportion to their ownership interest in the enterprise, as required by 5 NYCRR 144.2(c)(2). According to the Division, NYComCo did not show that the capital contributions by the woman-owners are proportionate to their equity interest in the business enterprise as demonstrated by,

but not limited to, contributions of money, property, equipment or expertise, as required by 5 NYCRR 144.2(a)(1). (*See* WBE Exh. 4; CD1Tr1 02:56, 03:47, CD2Tr2 01:20-04:30.)

With respect to exercising control over the business enterprise, the Division asserted that NYComCo did not demonstrate that the woman-owners listed on corporate documents and relevant business agreements permits the woman-owners to make business decisions without restrictions as required by 5 NYCRR 144.2(b)(2). (*See* WBE Exh. 4; CD2Tr2 05:03-05:59.) Each basis is addressed below.

## I. Ownership

In addition to the bases identified in the April 12, 2016 letter (WBE Exh. 4), the Division asserted, for the first time at hearing, that NYComCo failed to show that women own at least 51% of the corporation, as required by 5 NYCRR 144.2(a)(5). NYComCo's counsel did not object to considering this additional basis, and stated that NYComCo was prepared to address this issue at the hearing. (CD1Tr1 02:42-03:15.)

Michele Pisanelli has been employed at NYComCo for 26 years, and currently serves as its executive vice-president and treasurer. One of Ms. Pisanelli's duties as the treasurer is to maintain NYComCo's stock ledger. NYComCo authorized 36,000 shares of common stock. Of that amount, the treasury has retained 23,731 shares. The remaining 12,269 shares are outstanding and owned by NYComCo's employees. (*See* WBE Exhs. 1 and 3; CD1Tr1 09:27-10:15.)

In December 2012, Lee Ann Lacouette and her spouse, Richard Lacouette, formed the Lacouette Family Limited Partnership (the Partnership). Lee Ann Lacouette and Richard Lacouette are the general partners. The general partners' children, Tiffany Sivco, Jenna (Lacouette) Riess, and Benjamin Lacouette, are limited partners. The Partnership controls 10,633 shares of NYComCo stock. (*See* WBE Exh. 2; CD1Tr1 10:49, 11:23.)

Referring to the NYComCo's stock ledger, Division staff testified that women owned 454 shares of stock out of the 12,269 outstanding shares. According to Division staff, Lee Ann Lacouette, as one of the general partners in the Partnership, owns 5,357 shares of the Partnership's 10,633 shares. The sum of Ms. Lacouette's shares (5,357) and the other shares owned by women (454) is 5,811 shares, which is 47% of the total number of outstanding shares. Staff observed that this percentage is less than the minimum 51% required by 5 NYCRR 144.2(a)(5). (*See* Exh. 1, 2, 3, 5; CD1Tr1 19:45-22:37.)

However, NYComCo distinguished between the ownership of the Partnership's shares, and the voting rights associated with these shares. The voting rights associated with the Partnership's shares are discussed below in Section II concerning the woman-owners' control of the business enterprise.

Ownership of the Partnership's 10,633 shares of common stock is divided among the general and limited partners in the following manner. Tiffany Sivco, Jenna (Lacouette) Riess, and Benjamin Lacouette each own 33% of the shares controlled by the Partnership. Therefore,

each limited partner owns 3,508.9 shares. Lee Ann Lacoutte owns 0.5% of the shares controlled by the Partnership, which is 53.2 shares. Richard Lacouette also owns 0.5%, which is 53.2 shares. (*See* WBE Exhs. 1, 2, 3, 8; CD1Tr1 10:49, 11:23, 13:54, 15:44, 16:45; CD2Tr1 01:15, 01:59.)

Based on the distribution of the Partnership's 10,633 shares, the general partner, Lee Ann Lacouette and the two limited partners who are woman, Tiffany Sivco and Jenna (Lacouette) Riess, collectively own 7,071 shares. These shares (7,071) plus those owned by NYComCo's other women employees (454) total 7,525 shares of common stock, which is 61.3% of the total number of outstanding shares.

The Division argued that ownership of the corporation should be based on the shares issued to woman as natural persons, and that the shares controlled by the Partnership should be excluded from the calculation. In the alternative, the Division contended that if the shares from the Partnership are considered, then the only the shares owned by the general partner should be considered. According to the Division, the shares owned by the limited partners should not be considered. (CD2Tr2 01:47-02:48.)

NYComCo argued, however, that the Partnership is a legal entity duly created under the laws of the State of New York. The Partnership consists of the general partners and the limited partners, and the ownership of the shares that the Partnership controls is distributed among the partners, as set forth in the partnership agreement. NYComCo observed that some members of the partnership are women, and that the number of shares that these women own should be considered to determine whether women own the majority of the shares of NYComCo's stock. (*See* WBE Exh. 2; CD1Tr1 04:00-04:24.)

The Division's argument that ownership of the corporation should be based on the shares owned by natural persons is without merit. No such requirement is outline in the regulations. Moreover, the Division did not identify any guidance developed by the Department to support the argument made at hearing. Finally, the Division cited no case law to support this position.

As noted above, the Partnership is a legal entity duly created under the laws of the State of New York. Pursuant to the terms of the partnership agreement, members of the Partnership own shares of NYComCo stock, and some of the partners are woman. (*See* WBE Exh. 2.) Given these circumstances, compliance with the requirement at 5 NYCRR 144.2(a)(5) should be based on the shares of NYComCo stock owned by the woman members of the Partnership, as well as the other women employees who own shares of NYComCo stock. Based on the record of this proceeding, women own 61.3% of the total number of outstanding shares of NYComCo stock. Therefore, NYComCo demonstrated that women own at least 51% of the corporation, as required by 5 NYCRR 144.2(a)(5).

Based on this finding, I conclude that Division staff did not base its determination with respect to the eligibility criterion outlined at 5 NYCRR 144.2(a)(5) on substantial evidence. I recommend that the Director conclude the same, and modify the denial with respect to this basis, which was first presented at hearing.

An additional ownership criterion at issue in this proceeding is whether NYComCo showed that the woman-owners enjoy the customary incidents of ownership, and share in the risks and profits in proportion to their ownership interest in the enterprise, as required by 5 NYCRR 144.2(c)(2). With its federal income tax return for 2014, NYComCo provided Form 1125-E, which identifies four corporate officers and the compensation each received. Richard Lacouette is the president of NYComCo, and his reported compensation was [REDACTED]. Michelle Pisanelli is the executive vice-president and treasurer of NYComCo, and her reported compensation was [REDACTED]. Eric Kraus is the vice-president for operations of NYComCo, and his reported compensation was [REDACTED]. Jenna (Lacouette) Riess is the secretary of NYComCo, and her reported compensation was [REDACTED]. (See WBE Exh. 6; CD1Tr1 33:41.) Although identified as NYComCo's CEO in the application, Lee Ann Lacouette is not identified on Form 1125-E, and her compensation in 2014 is not known (see WBE Exhs. 3 and 6).

In *Matter of CW Brown, Inc. v Canton* (216 AD2d 841,843 [3d Dept 1995]), the court held that staff's review of tax returns, such as those considered during the review of NYComCo's application for WBE certification, was substantial evidence to support the Division's consideration of whether a woman-owned business meets the eligibility criterion at 5 NYCRR 144.2(c)(2). In 2014, Richard Lacouette's compensation was more than 2½ times the compensation received by Michelle Pisanelli, and 3½ times the compensation received by Jenna (Lacouette) Riess. Given the disparity in the compensation that Mr. Lacouette received compared to that received by the other woman-owners, I conclude that the Division's determination that NYComCo does not comply with the eligibility criterion at 5 NYCRR 144.2(c)(2) is based on substantial evidence. I recommend that the Director conclude the same.

With respect to the contribution required by 5 NYCRR 144.2(a)(1), Division staff observed that in section 2.C of the application, NYComCo identified two people who made capital contributions in February 2012 to the business enterprise. The first contribution was made by Richard Lacouette, who contributed [REDACTED] as shares of common stock. The second contribution identified in the application was from Lee Ann Lacouette, but she contributed \$0. Staff explained that a gift of a majority of shares to a qualified woman-owner would not be considered an acceptable capital contribution. Therefore, in comparison to Richard Lacouette, neither Lee Ann Lacouette, nor any other woman-owner made any capital contribution to the business enterprise, according to staff. (See WBE Exhs. 3 and 5; CD1Tr1 25:07, 27:33, 50:39, 51:39.)

NYComCo claimed that staff's analysis would mean that business enterprises acquired through gifts of stock or as an inheritance could not be certified as a woman-owned enterprise. NYComCo argued that such an outcome is contrary to the public policy goals of the minority and woman-owned business program. (CD2Tr1 07:46-08:04.)

In addition to cash, the Division acknowledged that the required contribution may also include property, equipment, or expertise. The Division noted, however, that at no point during the review of NYComCo's application for WBE certification did it represent any contribution to the business enterprise other than in cash. (CD2Tr2 03:09.) Furthermore, staff said that NYComCo did not provide sufficient information with its application to demonstrate that the

woman-owners made a capital contribution in proportion to their equity interest in the business. (CD1Tr1 52:33-53:06.)

Although the eligibility criterion at 5 NYCRR 144.2(a)(1) identifies other acceptable types of contributions, staff's choice to focus on a capital contribution is not inappropriate. NYComCo has the burden to demonstrate that the woman-owners made a contribution to the business enterprise. With respect to the application materials before Division staff, I conclude that staff's determination that NYComCo did not demonstrate that the woman-owners made a capital contribution was based on substantial evidence, and recommend that the Director conclude the same.

## II. Control

The issue on appeal is whether NYComCo demonstrated compliance with the requirement at 5 NYCRR 144.2(b)(2), which states, in full, that:

[a]rticles of incorporation, corporate bylaws, partnership agreements and other agreements including, but not limited to, loan agreements, lease agreements, supply agreements, credit agreements or other agreements must permit minority group members or women who claim ownership of the business enterprise to make those decisions without restrictions.

NYComCo's by-laws provide for a president, a vice-president, a secretary, and a treasurer. The Board of Directors elects these corporate officers, and may appoint other officers, agents, and employees. (*See* WBE Exh. 7 at ¶¶ 24-26; CD1Tr1 34:27.) According to the application, Richard Lacouette is the president of NYComCo. Lee Ann Lacoute is the chief executive officer. Michele Pisanelli is the executive vice-president and treasurer. Eric Kraus is the vice-president for operations. Jenna (Lacouette) Riess is the secretary for the corporation.<sup>2</sup> (*See* WBE Exh. 3 at 3; CD1Tr1 09:27, 11:54, 35:31.)

The by-laws identify the duties and responsibilities for each corporate officer. The president is the executive officer and has the authority to manage the corporation's business. In addition, the president must carry out the Board's orders and resolutions. (*See* WBE Exh. 7 at ¶ 29; CD1Tr1 34:55.) The by-laws neither identify a chief executive officer, nor describe the duties and responsibilities that would be associated with such a position (*see* WBE Exh. 7).

The Division argued that when, as here, the corporate by-laws vest the authority to direct the business in individuals who are not women, the woman-owners are not in control of the business enterprise. Based on the information presented with the application and supporting materials, Division staff concluded that NYComCo's by-laws demonstrate that Richard

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<sup>2</sup> In NYComCo's opening statement, its counsel contended that when NYComCo filed its application for WBE certification, Jenna (Lacouette) Riess had been serving as the secretary for the corporation. Since then, Ms. Riess currently serves as the corporation's president. (CD1Tr1 05:03.) NYComCo offered no evidence during the hearing to support this contention, however. In the absence of any corroborating proof, I do not accept this contention. Therefore, I assign significant weight to the application, which is identified in the hearing record as WBE Exhibit 3.

Lacouette, as the president of NYComCo, has the authority to manage the daily affairs of the business enterprise. (See WBE Exh. 7; CD1Tr1 34:55, CD2Tr2 05:59.)

NYComCo argued, however, that Lee Ann Lacouette, as a member of the Board of Directors, has ultimate control over the corporation because she holds the majority (*i.e.*, 51%) of the voting shares (*see* WBE Exhs. 2 at 7, 26 [Appendix A], and 3 at § 2.A; CD1Tr1 46:41). Pursuant to the by-laws, the stockholders meet annually on August 1 to elect a Board of Directors. The Board of Directors manages the business of the corporation, and elects the corporate officers, who include the president. In addition to managing the business of the corporation, the president presides at the stockholders' meetings and the directors' meetings. (See WBE Exh. 7 at ¶¶ 4, 15, 25, and 29.)

By holding the majority of voting shares, NYComCo argued that Lee Ann Lacouette has the authority to call a meeting of the Board of Directors, and to replace the corporate officers with people who would share Ms. Lacouette's views with respect to NYComCo's business operations. Consequently, Ms. Lacouette has absolute control over the activities of the business enterprise, according to NYComCo. NYComCo concluded that it complies with the eligibility requirement outlined at 5 NYCRR 144.2(b)(2). (CD2Tr2 06:29.)

The intent of the eligibility requirement at 5 NYCRR 144.2(b)(2) concerning the designation of woman-owners as the decision makers in the corporate documents of the business enterprise is to formalize functional designations. Formalized designation, as reflected in the corporation's by-laws, ensure that woman-owners are in fact, the decision makers of the business enterprise. Consequently, at the time that NYComCo filed its application for WBE certification, Division staff correctly found that Lee Ann Lacouette was not the president of NYComCo. Therefore, staff appropriately determined that Ms. Lacouette could not make business decisions without restrictions, as required by 45 NYCRR 144.2(b)(2). This conclusion is consistent with the court's determination in *CW Brown, supra* (at 843).

## CONCLUSIONS

1. NYComCo demonstrated that its woman-owners own at least 51% of the outstanding shares of common stock, as required by 5 NYCRR 144.2(a)(5).
2. NYComCo did not demonstrate that the woman-owners enjoy the customary incidents of ownership and share in the risks and profits in proportion to their ownership interest in the enterprise, as required by 5 NYCRR 144.2(c)(2).
3. NYComCo did not show how the woman-owners made any contribution in proportion to their equity interest in the business enterprise as demonstrated by, but not limited to, contributions of money, property, equipment, or expertise, as required by 5 NYCRR 144.2(a)(1).
4. NYComCo failed to demonstrate that the woman-owners listed on corporate documents and relevant business agreements permit the woman-owners to make business decisions without restrictions, as required by 5 NYCRR 144.2(b)(2).

## **RECOMMENDATION**

For the reasons set forth above, the Division's April 12, 2016 determination to deny NYComCo's application for certification as a woman-owned business enterprise should be modified and, as so modified, affirmed.

Attachment: Exhibit List

Division of Minority and Women's Business Development

Exhibit Chart

**Matter of New York Communications Co.  
d/b/a Hudson Valley Public Safety Lighting  
WBE Case No. 60385**

Hearing Date: October 25, 2016

<b>WBE Exhibit No.</b>	<b>Description</b>
1	New York Communications Co., Inc. Stock Ownership Distribution
2	Limited Partnership Agreement of Lacouette Family Limited Partnership
3	WBE Certification Application filed by New York Communications Co. Inc. d/b/a Hudson Valley Public Safety Lighting Application No. 1061097 Submitted: March 22, 2016
4	Division's denial letter dated April 12, 2016
5	Stock Transaction Histories for Jenna (Lacouette) Riess Kelly Simmons Kelly Vanano Margaret Kane Michele Pisanelli
6	US Corporation Income Tax Return 2014 IRS Form 1120 New York Communication Co., Inc.
7	By-Laws of New York Communications Company, Inc.
8	Cover letter dated February 17, 2015 from Louis J. Gizzarelli, PCA, PC to Jenna Lacouette with Schedule K-1 (Form 1065) for Partner #4. Tax year 2014

All exhibits received into evidence (CD2Tr2 00:27).