

**NEW YORK STATE**  
**DEPARTMENT OF ECONOMIC DEVELOPMENT**  
**625 BROADWAY**  
**ALBANY, NEW YORK 12207**

**In the Matter**

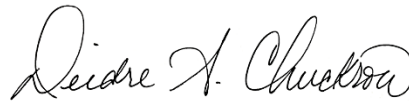
**- of -**

**the Application of SKYWAVE COMMUNICATIONS, INC.**  
**for Re-Certification as a Woman-Owned Business Enterprise**  
**pursuant to Executive Law Article 15-A.**

**NYS DED File ID No. 60918**

**RECOMMENDED ORDER**

**-by-**



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**Deidre A. Chuckrow**  
**Administrative Law Judge**  
**September 16, 2024**

This matter considers the appeal by Skywave Communications, Inc. (“Skywave” or “applicant”) pursuant to New York State Executive Law Article 15-A and Title 5 of the Official Compilation of Codes, Rules and Regulations of the State of New York (5 NYCRR) parts 140-144, challenging the determination of the Division of Minority and Women’s Business Development (“Division”) of the New York State Department of Economic Development (“DED”) that the business enterprise does not meet the eligibility criteria for certification as a woman-owned business enterprise (“WBE”).

### **PROCEDURAL HISTORY**

1. On June 22, 2021, Skywave applied for recertification as a woman-owned business enterprise (“WBE”). Skywave based its application on Ms. Elizabeth G. Patterson. (DED Exhibit 6).
2. On July 20, 2023, the Division denied the application on the following grounds (DED Exhibit 7):
  - a. The minority group members or women relied upon for certification do not possess adequate, industry-specific competence to make critical business decisions without relying upon other persons as required under 5 NYCRR § 144.2(c)(1); and
  - b. The minority group members or women relied upon for certification do not make operational decisions on a day-to-day basis with respect to the critical functions of the business enterprise, as required under 5 NYCRR § 144.2(c)(2).
3. Skywave submitted a request to appeal via hearing, dated August 15, 2023. (DED Exhibit 8).
4. A Notice of Hearing was sent to all parties on February 29, 2024 (DED Exhibit 9).
5. A hearing was held on August 19, 2024.

## **FINDINGS OF FACT**

6. Skywave is engaged in the business of public safety communication networks and equipment. (DED Exhibit 6; Hearing Testimony of Ms. Patterson; Hearing Testimony of Natia Simon).
7. Ms. Patterson is the woman owner relied upon for certification and is the President and 51% owner of the applicant business. Her husband, Mr. Ellison Patterson, Jr. owns the remaining 49% of Skywave. (DED Exhibit 6).
8. The critical functions of Skywave are the design, installation, and maintenance of public safety communication networks and equipment. (DED Exhibit 6; Hearing Testimony of Ms. Patterson; Hearing Testimony of Ms. Simon).
9. Skywave is an authorized partner and dealer for Motorola Solutions and holds Motorola “Elite Status.” Ninety percent of the business applicant’s work is through Motorola. (APP Exhibit N; DED Exhibit 23; Hearing Testimony of Ms. Patterson; Hearing Testimony of Mr. Patterson).
10. Skywave subcontracts for Motorola, and either receives work directly from Motorola or submits bids in response to RFPs from customers. (Hearing Testimony of Ms. Patterson).
11. Motorola “Elite Status” requires the applicant business to employ an engineer, and for a certain percentage of employees to complete certain Motorola classes, including P25 and R54. The R54 class concerns analog and digital log, and radios and takes approximately 30 hours to complete. (APP Exhibit N; DED Exhibit 23; Hearing Testimony of Ms. Patterson; Hearing Testimony of Mr. Patterson).
12. The applicant business employs Paul Radman as an engineer. Mr. Radman serves as a project manager on specific projects, can design, build, install, supervise, and review the design through installation process. (Hearing Testimony of Ms. Patterson; Hearing Testimony of Mr. Patterson; DED Exhibits 10, 12, 13, 14, 15, and 16).

13. The applicant business is a “second generation business,” owned by Ms. Patterson and Mr. Ellison Patterson, Jr. and employs Ms. Patterson, Mr. Ellison Patterson, Jr. and their two sons, Michael Patterson, and Ellison Patterson, III. (Hearing Testimony of Ms. Patterson).
14. Ms. Patterson has a Bachelor of Science degree in accounting. Her responsibilities at Skywave include overseeing human resources, financial matters, and strategic planning, including administering payroll, maintaining employee records, managing budgets, purchasing, accounts payable and accounts receivable, overseeing internal controls and audits, and securing financing. Ms. Patterson refers request for bids to employees “who handle. . . the . . . contract part. . .” At the time of application, Ms. Patterson had not taken any of the Motorola courses. Ms. Patterson does not design, build, install, or evaluate Skywave’s completed projects, nor does she train employees on design, building, installation, or project evaluation. (DED Exhibits 20 and 25; Hearing Testimony of Ms. Patterson).
15. Mr. Ellison Patterson, Jr. is the Vice President and is an Engineering Solutions Manager and Optimization Technician for the applicant business. He has worked for the business since 1982, has extensive experience working with radio systems and has received custom training for certain products. He worked on the rollout of the IBM Artis System, a multi-site digital radio system, and on the rollout for a satellite link driven paging system. He has also worked on a nationwide digital radio system for Federal Express, and on projects for the Monroe County Highway Department, and on the 9-11 system for Monroe County. (DED Exhibit 19; Hearing Testimony of Mr. Patterson).
16. For Skywave, Mr. Ellison Patterson, Jr. is the technical advisor to Ms. Patterson, and is the business’ field manager. He designs systems, ensures that the business’ systems are installed

and programmed correctly, and provides training to customers. (DED Exhibits 19 and 26; Hearing Testimony of Mr. Patterson)

17. Michael Patterson is employed as a systems engineer / system architect for the applicant business. He has taken the Motorola R54 class and designs and build systems. (Hearing Testimony of Ms. Patterson; Hearing Testimony of Mr. Patterson).
18. Ellison Patterson, III specializes in IT and programs and debugs systems for Skywave. (Hearing Testimony of Ms. Patterson).
19. The following individuals are employed by the applicant business: Ron Stolte, an electrician, responsible for system assembly and for training other employees; Carl Bourke, assists in the maintenance of systems, the building and installation of systems, and ensures that systems are installed correctly; (Hearing Testimony of Ms. Patterson; Hearing Testimony of Mr. Patterson).
20. A business management team reviews projects which includes a review of the project by Michael Patterson and an evaluation by Paul Radman. Initially, the work is done by Motorola and Michael Patterson, the system architect, who designs the systems, which are then built by other employees, which may include Paul Radman, Michael Patterson, Ellison Patterson, Jr., Ron Stolte, and Carl Bourke. (Hearing Testimony of Ms. Patterson; Hearing Testimony of Mr. Patterson).
21. Statement of Work (“SOW”) agreements list a Customer Support or Project Manager for each respective project. (DED Exhibits 10, 12, 13, 14, 15, and 16). None of the SOWs list Ms. Patterson as a manager, and instead list either a Motorola employee or Skywave employees Paul Radman or Michael Patterson.

**APPLICABLE LAW**

5 NYCRR § 144.2 (c)(1) states as follows:

Competence in the industry. Minority group members and women relied upon for certification must possess adequate, industry-specific competence to make critical business decisions without relying upon other persons. This requirement cannot be satisfied by expertise or experience in office management or general business administration, among other things. In evaluating whether a minority group member or woman possesses adequate, industry-specific competence, the division shall consider factors including but not limited to:

- (i) Whether individuals employed by the business enterprise for which certification is sought are required to obtain licenses or certifications to provide products or services to the clients of the business enterprise;
- (ii) The extent to which academic credentials exist for persons employed in the industry; and
- (iii) The extent to which industry-specific expertise may be obtained via direct work experience.

5 NYCRR § 144.2 (c)(2) states as follows:

Operational decisions. Minority group members and women relied upon for certification must make operational decisions on a day-to-day basis with respect to the critical functions of the business enterprise for which certification is sought. The critical functions of a business enterprise shall be determined by the division based upon the following factors, but is not limited to:

- (i) The products or services the business enterprise provides to clients; and
- (ii) The means by which the business enterprise obtains contracts or orders.

**STANDARD OF REVIEW**

On this administrative appeal, applicant bears the burden of proof to establish that Division staff's determination to deny the application filed by Skywave for recertification as a WBE 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 Division staff's

conclusions and factual determinations are not supported by “such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact.” *Matter of Ridge Rd. Fire Dist. v Schiano*, 16 NY3d 494, 499 [2011]).

The review is limited to such information that was before the division at the time of the denial determination (5 NYCRR 145.2(b)(1)). Evidence that seeks to clarify and explain previously submitted materials will be considered, however new evidence will not be considered. See *Scherzi Systems, LLC v. White*, 197 A.D.3d 1466 (3d Dept 2021).

## **DISCUSSION**

Derrick A. Spatorico, of Pheterson Spatorico LLP, appeared at the hearing on behalf of Skywave Communications, Inc. The following witness testified on behalf of Skywave: Elizabeth G. Patterson, Owner and President, Skywave and Ellison Patterson Jr. Owner and Vice President, Skywave. Skywave offered the following exhibits which were admitted into evidence: APP Exhibits K and N.

Ms. Karen L. Bernstein, Esq., Appeals Counsel, Empire State Development, appeared at the hearing on behalf of the Division. The following witness testified on behalf of the Division: Natia Simon, Senior Certification Analyst, Division of Minority and Women’s Business Development. The Division offered the following exhibits which were admitted into evidence: DED Exhibits 3 through 27.

### **I. Prior Certification**

The Division acknowledges that Skywave was previously certified as a woman-owned business enterprise. The Division asserts that it is not bound to recertify a WBE if its prior determinations were made in error. The Division argues that based on the application and

supplemental material submitted by applicant, Division staff correctly determined that applicant was not eligible for recertification.

The Division is correct that it is not obligated to certify Skywave based on its prior determinations. It is well settled that the doctrine of equitable estoppel cannot, as a general rule, be invoked against a governmental agency in the exercise of its governmental function. See *Matter of Daleview Nursing Home v. Axelrod*, 62 NY2d 30 (1984); *Matter of Atlantic States Legal Found., Inc. v. New York State Dept. of Environmental Conservation*, 119 AD3d 1172 (2014).

With the expiration of its certification, Skywave had the burden to demonstrate compliance with the eligibility criteria outlined at 5 NYCRR §144.2 when it submitted the June 22, 2021, application and supporting materials and cannot rely on the past determinations of the Division.

## II. Industry-Specific Competence and Day-to-Day Operations

The Division denied Skywave's application for certification as a WBE on the basis that the applicant failed to demonstrate that Ms. Patterson possesses adequate, industry-specific competence to make critical business decisions without relying upon other persons, as required by 5 NYCRR § 144.2(c)(1) and that the applicant failed to demonstrate that he makes operational decisions on a day-to-day basis with respect to the critical functions of the business enterprise as required by 5 NYCRR § 144.2(c)(2). (DED Exhibit 7). As many of the facts used to support the Division's denial are the same, and as some of the criteria for denial overlap, they will be addressed collectively.

The Division interprets these regulations to require an applicant to demonstrate that the owner, relied on for certification, has the working knowledge necessary to review or evaluate the work of more experienced employees. (See *In the Matter of Upstate Electrical, LLC v New York State Department of Economic Development*, 179 AD3d 1343 (3d Dept. 2020) citing to *C.W.*



*Brown, Inc. v Canton*, 216 AD 841, 842 (1995) (where the Court affirmed the denial where the owner had no training or experience in the industry to make her qualified to supervise the work of her employees.)) The Division consistently requires that owners be able to perform the core revenue generating functions of the business enterprise. (See *Matter of Bore Tech LLC*, Recommended Order dated June 1, 2021 (Final Order 21-05, dated December 22, 2021), see also, *Matter of Occupational Safety & Environmental Assoc. Inc. v New York State Department of Economic Development*, 161 AD3d 1582 (3d Dept. 2019)). Expertise or experience in office management or general business administration will not satisfy these requirements. (5 NYCRR § 144.2(c)(1)). In considering 5 NYCRR § 144.2(c)(1), regarding industry-specific competence, the Division shall consider:

- (i) Whether individuals employed by the business enterprise for which certification is sought are required to obtain licenses or certifications to provide products or services to the clients of the business enterprise;
- (ii) The extent to which academic credentials exist for persons employed in the industry; and
- (iii) The extent to which industry-specific expertise may be obtained via direct work experience.

The regulation under 5 NYCRR 144.2(c)(2) provides that in determining whether a person relied on for certification makes critical business decisions on a day-to-day basis without relying on others, the critical functions of the business enterprise shall be determined by the Division based upon, but not limited to, the following factors: (1) “The products or services the business enterprise provides to clients; and” (2) “The means by which the business enterprise obtains contracts or orders.” 5 NYCRR § 144.2 (c)(2). The Division consistently denies certification where the owner has no training, experience, or working knowledge in the core business functions and other employees or owners have more significant or substantive experience, and exercise that

experience, such as by supervising or controlling field operations. (*Matter of Panko Electrical and Maintenance Corp. v Zapata et. al*, 172 AD3d 1682 (3d Dept. 2019), see also *Matter of Upstate Electrical, supra*).

The Applicant bears the burden of establishing that the minority group member relied upon for certification has met this requirement. Failure to satisfy this burden is proof that the denial was supported by substantial evidence. See *A.A.C. Contracting, Inc. v. NYS Dept. of Economic Development*, 195 A.D. 3d 1284, 151 NYS 3d 187 (3d Dept. 2021).

Counsel for the applicant argued that the applicant business' prior certification should be considered, and that there have been no "derogatory" changes to the business since it's certification in 2016, and therefore the business should remain certified. Counsel stated that the only change to the business is that the "revenue has grown considerably. Ms. Patterson's role within the organization has expanded, that she supervises people and . . . [that] she qualified then, she qualifies now." Counsel also stated that Ms. Patterson has competence in the industry to make critical decisions and that she makes all of the day-to-day operational decisions for the business enterprise. Counsel also concedes that Mr. Ellison Patterson, Jr. possesses "the technical skillset," but asserts that his expertise is not a requirement for WBE certification.

The Division argued that the applicant failed to provide sufficient evidence to establish that Ms. Patterson possesses adequate industry-specific competence to make critical business decisions without relying on others. The Division asserts that Ms. Patterson's experience and work for the applicant business is in the administrative functions of the business, and that she has no training or experience in the critical functions of the business. Instead, Ms. Patterson's husband, Mr. Ellison Patterson, Jr. has the industry-specific competence, and that Ms. Patterson relies on him, and others, for critical business decisions.

Ms. Patterson testified that she is, and has been for 26 years, the CEO and President of the applicant business, which she described as “a second-generation business,” one in which employs her, her husband, and her two sons. (DED Exhibits 20 and 27; Hearing Testimony of Ms. Patterson). Ms. Patterson has a Bachelor of Science degree in accounting. (DED Exhibit 20; Hearing Testimony of Ms. Patterson). She oversees all human resource functions, including the hiring and termination of employees, health insurance, workers’ compensation, and is responsible for administering payroll and maintaining employee records. (DED Exhibits 20 and 25; Hearing Testimony of Ms. Patterson). In addition, she manages the budgets, purchasing, accounts payable and receivable, oversees internal controls and audits, and authorizes large purchases and manages the financial health of Skywave. (DED Exhibits 20 and 25; Hearing Testimony of Ms. Patterson).

Ms. Patterson stated that the business does not require any licenses or certifications to operate, but that Skywave is an authorized partner and dealer for Motorola Solutions and that in order to have and maintain Motorola Elite Status, employees of Skywave are required to have certain Motorola certifications. (APP Exhibit N; DED Exhibit 23; Hearing Testimony of Ms. Patterson; Hearing Testimony of Mr. Patterson). In addition, Elite Status also requires that the business retain an engineer and that person is Paul Radman, a non-relied upon employee. (Hearing Testimony of Ms. Patterson). In addition, Skywave also employs Michael Patterson, the son of Ms. Patterson and Mr. Ellison Patterson, Jr., as a system engineer and system architect. (Hearing Testimony of Ms. Patterson; Hearing Testimony of Mr. Patterson). Also employed by Skywave is Ron Stolte, an electrician who is responsible for system assembly and for training other employees, Carl Bourke, who assists in the maintenance of systems and ensures that systems are installed correctly, and Ellison Patterson, III, the son of Ms. Patterson and Mr. Ellison Patterson, Jr., who

has a degree in IT and handles IT for the business. (Hearing Testimony of Ms. Patterson; Hearing Testimony of Mr. Patterson).

At the time of application, Ms. Patterson had not taken any of the Motorola courses and held no Motorola certifications. (Hearing Testimony of Ms. Patterson). Ms. Patterson testified that while she handles the financial and HR aspects of the business, she does not design, build, install, or evaluate Skywave's projects, not does she train employees on design, building, installation, or project evaluation. (Hearing Testimony of Ms. Patterson). She also stated that she refers requests for bids to employees "who handle. . . the . . . contract part. . ." and states that one of her sons is an assistant administrator who works with one other employee on the contracts entered into by the applicant business. (Hearing Testimony of Ms. Patterson). A business management team reviews projects which includes a review of the project by Michael Patterson and an evaluation by Paul Radman. Initially, the work is done by Motorola and Michael Patterson, the system architect, who design the system, which is then built by other employees, which may include Paul Radman, Michael Patterson, Ellison Patterson, Jr., Ron Stolte, and Carl Bourke. (Hearing Testimony of Ms. Patterson; Hearing Testimony of Mr. Patterson). Ms. Patterson is involved only on issues relating to financing and does not design, build, install, or test the equipment deployed to the customers. (Hearing Testimony of Mr. Patterson).

Mr. Ellison Patterson, Jr. the non-relied upon owner, is the Vice President of Skywave and is an Engineering Solutions Manager and Optimization Technician for the applicant business. (DED Exhibit 19; Hearing Testimony of Mr. Patterson). He has worked for the applicant business since 1982 and has extensive experience working with radio systems, is experienced in Vizio, a tool used by Motorola to transmit conceptual drawings for products, and has taken dozens of Motorola courses, of which five or six provided Motorola certification. (Hearing Testimony of Mr.

Patterson). Mr. Ellison Patterson, Jr. has also taken approximately forty to fifty hours of training with Zetron, a company that manufactures control center and paging radio consoles. (Hearing Testimony of Mr. Patterson). Mr. Ellison Patterson, Jr. testified that he has nothing to do with the HR or office management portions of the business, and instead is responsible for designing, installing, and supervising the design and installation of equipment. (DED Exhibit 19; Hearing Testimony of Mr. Patterson). Mr. Ellison Patterson, Jr. is also responsible for training customers on the use of equipment installed by Skywave. (Hearing Testimony of Mr. Patterson). Mr. Ellison Patterson, Jr. is the field manager for the applicant business, assists Ms. Patterson by providing technical expertise and knowledge and updates her on the status of projects, and provides guidance for cost estimating. (Hearing Testimony of Mr. Patterson; DED Exhibits 19 and 26).

Ms. Natia Simon is a Senior Certification Analyst for the Division and has worked for the Division for over ten years. (Hearing Testimony of Ms. Simon). Ms. Simon was the analyst assigned to review the applicant business' re-certification application. (Hearing Testimony of Ms. Simon). Ms. Simon testified that the applicant business is involved in telecommunications and that the critical functions of the business relate to radio and communication and include the designing and uploading of software to equipment, the installation of that equipment, and the maintenance of the equipment. (DED Exhibit 6, Hearing Testimony of Ms. Simon). Skywave designs and installs various communication equipment from Motorola to customers and enters into Statements of Work (SOW) for their projects. (Hearing Testimony of Ms. Patterson; Hearing testimony of Ms. Simon; DED Exhibits 10, 12, 13, 14, 15, and 16). Several SOWs were submitted with the recertification application, and the SOWs list a Customer Support or Project Manager for each respective project. (DED Exhibits 10, 12, 13, 14, 15, and 16). None of the SOWs list Ms. Patterson as a manager, and instead list either a Motorola employee or other employees of the applicant

business, either Paul Radman or Michael Patterson. (DED Exhibits 10, 12, 13, 14, 15, and 16; Hearing Testimony of Ms. Simon).

Ms. Simon testified that nothing in the application or in the supporting materials submitted with the application, provide any evidence that Ms. Patterson possesses adequate industry specific competence to make critical business decisions without relying on others. (Hearing Testimony of Ms. Simon). Ms. Patterson holds no academic credentials relating to the critical functions of the business, nor does she hold any licenses or certifications, instead other employees have the background and experience in systems engineering, design, and installation. (Hearing Testimony of Ms. Patterson; Hearing Testimony of Mr. Patterson; Hearing Testimony of Ms. Simon). In addition, Ms. Patterson has no direct work experience relating to the design and installation of the equipment sold by Skywave. (Hearing Testimony of Ms. Simon; Hearing Testimony of Ms. Patterson). Ms. Patterson's experience is in the HR management of the business, and her work is administrative in scope, and therefore, does not qualify as adequate industry-specific competence. (Hearing Testimony of Ms. Simon; DED Exhibit 20). In contrast, Mr. Ellison Patterson, Jr. has a lengthy work history in radio communications and has taken classes through Motorola and other entities associated with the work done by the applicant business. (DED Exhibit 19; Hearing Testimony of Ms. Simon). Based on the information regarding Mr. Ellison Patterson Jr.'s background, and the information provided with the application, the Division determined that Ms. Patterson's experience and competence was in office administration and finance, and that she does not possess adequate industry-specific competence, and instead relies on other employees, including her husband, to make critical business decisions. (Hearing Testimony of Ms. Simon; DED Exhibit 7).

The SOWs submitted with the application, which evidence how the applicant business gains business and the type of business the applicant engages in, while signed by Ms. Patterson, list other individuals as the project managers. (Hearing Testimony of Ms. Simon; DED Exhibits 10, 12, 13, 14, 15, and 16). In addition, nothing in the information provided to the Division by the applicant demonstrates any involvement in the critical functions of the business. (Hearing Testimony of Ms. Simon). Ms. Patterson's duties and responsibilities are administrative and do not involve the critical functions of the applicant business, as such she must rely on others to make operational decisions on a day-to-day basis. (DED Exhibit 20; Hearing Testimony of Ms. Simons).

Ms. Patterson has a limited role in estimating and processing requests for proposals and the like. Requests received either from Motorola directly, or from customers, are passed on by Ms. Patterson to others in the company who "handle the contract end of things. . ." (Hearing Testimony of Ms. Patterson). The only aspect for which Ms. Patterson is involved is when financing may be required for a project. (Hearing Testimony of Mr. Patterson). Ms. Patterson admits that she is not involved in the design, building, installation, or supervision of those steps, and states that others at Skywave perform those functions. (Hearing Testimony of Ms. Patterson). Further, Ms. Patterson does not supervise any projects, nor is she ever listed as a Project Manager on contracts or SOWs. (Hearing Testimony of Ms. Patterson; DED Exhibits 10, 12, 13, 14, 15, and 16). Mr. Ellison Patterson, Jr. Michael Patterson, and other employees perform those functions for the applicant business. (Hearing Testimony of Ms. Patterson; Hearing Testimony of Mr. Patterson).

Where the owner relied upon for certification has no training or experience in the critical functions of the business enterprise and others, with more significant experience, such as an employee or non-qualifying owner, actively engage in the core functions of the business, denial based on lack of operational control is appropriate. (See *Matter of Panko, supra*, and *Matter of*

*Upstate Electrical, supra*). Here, the evidence presented establishes that Ms. Patterson's role at Skywave is administrative while others, namely Mr. Ellison Patterson, Jr., Mr. Michael Patterson, and Mr. Paul Radman, not relied on for certification, are responsible for the day-to-day operations of the business enterprise.

Further, it appears from the testimony that the applicant business is a family business. (Hearing Testimony of Ms. Patterson; Hearing Testimony of Ms. Simon). Ms. Patterson testified that this is a second-generation business which employs all members of her immediate family, and Skywave's website describes itself as a family-owned business, stating that the business was started by both Ms. Patterson and Mr. Ellison Patterson, Jr. (Hearing Testimony of Ms. Patterson; Hearing Testimony of Ms. Simon; DED Exhibit 27). It is well settled that businesses where the non-eligible spouse has the education or expertise to perform the specialized work and the owner spouse relied upon for certification handles the administrative aspects is considered a family-owned business and does not meet the criteria for WBE certification. (*Matter of Occupational Safety, supra* at 1583). Here, even if the business were not a family business, Ms. Patterson does not possess industry specific competence to make critical business decisions and day-to-day operational decisions without relying on others.

Based on the foregoing, I find that the Division's determination that Skywave has not demonstrated that the woman owner relied upon for certification does not possess adequate industry competence without relying on others and cannot make operational business decisions as to the critical functions of the applicant business, as required under 5 NYCRR §§ 144.2(c)(1) and (2) is supported by substantial evidence.



### **CONCLUSION**

Skywave Communications, Inc. did not meet its burden to demonstrate that the Division's determination to deny its application for certification as a minority woman-owned business enterprise with respect to the eligibility criteria at 5 NYCRR §§ 144.2(c)(1), and 144.2(c)(2) was not based on substantial evidence.

### **RECOMMENDATION**

The Division's determination to deny Skywave Communications, Inc.'s application for certification as a woman-owned business enterprise should be affirmed.

In the Matter of Skywave Communications, Inc.  
DED File ID No. 60918  
Exhibit Chart

Exhibit #:	Description of the Exhibits	Offered (Yes/No)	Admitted (Yes/No)
APP A	Listing of Officers and Directors	N	N
APP B	Elizabeth Patterson Certifications	N	N
APP C	Letters of Recognition	N	N
APP D	Sample Contracts	N	N
APP E	Technical Training Certificates	N	N
APP F	Resume Elizabeth Patterson	N	N
APP G	Completed Contracts 2020-2024	N	N
APP H	Statements of Work	N	N
APP I	Letters of Endorsement	N	N
APP J	Democrat & Chronicle News Article	N	N
APP K	CSC Certifications	Y	Y
APP L	2020 Skywave Tax Return	N	N
APP M	Sample Contracts	N	N
APP N	MSI Certificate	Y	Y
APP O	MSI Certificate	N	N
APP P	NYS WBE Cert 2016 and supporting documents	Y	N
APP Q	NYS WBE Cert 2019 and supporting documents	Y	N

APP R	NYS WBE Cert 2021 and supporting documents	N	N
DED 1	Executive Law Article 15-A	Y	N
DED 2	5 NYCRR Parts 140-147	Y	N
DED 3	Blank Recertification Application	Y	Y
DED 4	Certification Application Affidavit (6/17/2021)	Y	Y
DED 5	Certification Application Affidavit (New) (6/17/2021)	Y	Y
DED 6	Skywave's WBE Recertification Application (6/22/2021)	Y	Y
DED 7	Division's Denial Letter (7/20/2023)	Y	Y
DED 8	Skywave's Request to Appeal (8/15/2023)	Y	Y
DED 9	Notice of Hearing and Conference (2/29/2024)	Y	Y
DED 10	SOW: Madison County Public Safety Comm (1/15/2019)	Y	Y
DED 11	Website: Madison County Criminal Justice, Public Safety & Emergency Comm. ( <a href="https://www.madisoncounty.ny.gov/1789/Criminal-Justice-Public-Safety-Emergency">https://www.madisoncounty.ny.gov/1789/Criminal-Justice-Public-Safety-Emergency</a> )	Y	Y
DED 12	SOW: Niagara County SAR-8 (3/12/2021)	Y	Y
DED 13	SOW: Niagara County RF Equip. Installation (3/12/2021)	Y	Y
DED 14	SOW: Allegany County Sheriff's Office (1/11/2023)	Y	Y
DED 15	SOW: Niagara County Paging Upgrade (10/7/2022)	Y	Y
DED 16	SOW: Yates County Staging Work	Y	Y
DED 17	Website: FBI CJIS ( <a href="https://www.fbi.gov/services/cjis">https://www.fbi.gov/services/cjis</a> )	Y	Y
DED 18	Website: What Does It Mean to Be CJIS Compliant? ( <a href="https://www.compassitc.com/blog/what-does-it-mean-to-be-cjis-compliant">https://www.compassitc.com/blog/what-does-it-mean-to-be-cjis-compliant</a> )	Y	Y

DED 19	Resume of Ellison Patterson Jr.	Y	Y
DED 20	Resume of Elizabeth Patterson	Y	Y
DED 21	Certified Service Center (CSC) Certificate	Y	Y
DED 22	Website: The Consortium For Certified Service Centers (C-CSC) ( <a href="https://c-csc.org/">https://c-csc.org/</a> )	Y	Y
DED 23	Motorola Solutions Certificate of Authorization	Y	Y
DED 24	Website: Motorola Solutions ( <a href="https://www.motorolasolutions.com/en_us.html?geo=redirect">https://www.motorolasolutions.com/en_us.html?geo=redirect</a> )	Y	Y
DED 25	Q&A 6 Response	Y	Y
DED 26	Q&A 7 Response	Y	Y
DED 27	Website – Skywave History ( <a href="https://www.skywave.org/about-us/history/">https://www.skywave.org/about-us/history/</a> )	Y	Y