

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

In the Matter of )
UNIVERSITY OF SOUTHERN CALIFORNIA )
For a Public Safety License ) File No. A056229
Pursuant to Section 337 of the )
Communications Act of 1934, as Amended )

MEMORANDUM OPINION AND ORDER

Adopted: February 7, 2001

Released: February 8, 2001

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

I. INTRODUCTION AND EXECUTIVE SUMMARY

1. We have before us an application<sup>1</sup> and waiver request<sup>2</sup> filed by the University of Southern California ("USC" or "the University"), for authority to use certain frequencies in its public safety land mobile radio communications system in Los Angeles, California. USC seeks a waiver, pursuant to Section 337 of the Communications Act of 1934, as amended (the "Act"),<sup>3</sup> of certain provisions in Part 22 of the Commission's Rules to use frequencies allotted for point-to-multipoint paging control.<sup>4</sup> For the reasons stated below, we deny USC's waiver request and dismiss its application.

II. BACKGROUND

2. USC requests authorization to add five channel pairs of frequencies<sup>5</sup> to its public safety land mobile radio communications system.<sup>6</sup> Three of the requested channel pairs are allotted for point-to-multipoint operation under the Commission's Part 22 Public Mobile Radio Service rules.<sup>7</sup> Two of the channel pairs requested, 506/509.0750 MHz and 506/509.1000 MHz, are located in between the other requested channels and are not listed in the Commission's Rules. USC proposes to utilize those frequencies

<sup>1</sup> FCC File No. A056229, University of Southern California (filed June 9, 2000).

<sup>2</sup> See Letter from Delaney M. DiStefano, Schwaninger & Associates, P.C. to Public Safety and Private Wireless Division (dated June 8, 2000 and filed June 16, 2000) (Request).

<sup>3</sup> 47 U.S.C. § 337.

<sup>4</sup> Specifically, 47 C.F.R. § 22.621 allots the desired channels to point-to-multipoint operations.

<sup>5</sup> The specific frequencies that USC proposes to use are 506/509.0625 MHz, 506/509.0750 MHz, 506/509.0875 MHz, 506/509.1000 MHz, and 506/509.1125 MHz.

<sup>6</sup> Request at 1.

<sup>7</sup> 47 C.F.R. § 22.621.

by operating with a bandwidth of 12.5 kHz.<sup>8</sup> Additionally, USC proposes to limit the operation of its system to an eight-mile radius.<sup>9</sup>

3. USC, a private educational institution, includes a Department of Public Safety (DPS) and is located in Los Angeles, California.<sup>10</sup> In an agreement with the Los Angeles Police Department, USC's DPS proposes use of the subject frequency pairs in its communications system to respond to an increased demand among its users.<sup>11</sup> USC's DPS serves the university's downtown campuses and has three hundred employees and forty-five campus patrol cars.<sup>12</sup>

4. USC's waiver request was placed on public notice on November 29, 2000.<sup>13</sup> We received comments from Paging Systems, Inc. ("PSI") and the City of Santa Monica, California ("Santa Monica"), which both oppose grant of USC's application. USC filed a reply comment.<sup>14</sup> PSI filed an Opposition to Reply Comments (Opposition)<sup>15</sup> on December 21, 2000, and USC filed a Motion to Strike the Opposition.<sup>16</sup>

5. PSI argues that it possesses authorizations for frequencies 506.1125 MHz, 506.0875 MHz and 509.0625 MHz, which makes these frequencies unavailable to USC.<sup>17</sup> PSI notes that Section 337(c) requires that the desired spectrum be unassigned.<sup>18</sup> In that connection, PSI alleges that granting USC's application would also cause harmful interference with its operation and contravene Section 337(c)(1)(B).<sup>19</sup>

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<sup>8</sup> See Request at 2.

<sup>9</sup> *Id.* at 3.

<sup>10</sup> *Id.* at 2.

<sup>11</sup> *Id.* at Attachment 2, Memorandum of Understanding Between University of Southern California and the City of Los Angeles.

<sup>12</sup> *Id.* at 2.

<sup>13</sup> Wireless Telecommunications Bureau Seeks Comment On Request for Waiver By the University of California To Obtain a License For Ten Channels Allocated For Paging Control Operations, *Public Notice*, DA 00-2584 (WTB PSPWD rel. Nov. 29, 2000).

<sup>14</sup> See Comments filed December 11, 2000 by Paging Systems, Inc. (PSI Comments); Comments of the City of Santa Monica, California, filed December 11, 2000 (Santa Monica Comments); and Reply Comments of the University of Southern California, filed December 18, 2000 (USC Reply Comments).

<sup>15</sup> See Opposition to Reply Comments filed December 21, 2000 by PSI.

<sup>16</sup> See Motion to Strike filed by USC and dated January 2, 2001. We grant USC's Motion to Strike and do not consider PSI's "Opposition to Reply Comments." We are persuaded by USC's Motion to Strike that PSI's Opposition to Reply Comments would not assist in the resolution of this matter.

<sup>17</sup> See PSI Comments at 3.

<sup>18</sup> *Id.* at 2-3.

<sup>19</sup> *Id.* at 5.

Additionally, PSI argues that other public safety spectrum is immediately available for use by USC.<sup>20</sup> Thus, PSI contends that USC fails to satisfy Section 337(c)(1)(A).

6. Similarly, Santa Monica argues that its application for frequencies 506.0625 MHz and 509.0875 MHz was filed prior to USC submitting its application and would therefore be processed before USC's application.<sup>21</sup> Based on a "first-come, first-serve" processing of applications, Santa Monica asserts that it would be licensed before USC and USC would be required to avoid harmful interference with its operations.<sup>22</sup> Santa Monica states that USC would cause harmful interference to its operations because its transmitter site would be less than ten miles away from USC's campus.<sup>23</sup>

7. In its reply comments, USC asserts that Santa Monica, as an applicant, is not entitled to interference protection.<sup>24</sup> Furthermore, USC claims that it filed an application prior to Santa Monica, and Santa Monica's assertion that it filed its application first is false.<sup>25</sup> Alternatively, USC proposes that it and Santa Monica share use of the subject frequencies.<sup>26</sup> Additionally, USC alleges that PSI is not operating on 506.1125 MHz, 506.0875 MHz and 509.0625 MHz and, as a result, should have its authorization terminated.<sup>27</sup> USC also insists that no other spectrum allocated for public safety use is immediately available.<sup>28</sup>

### III. DISCUSSION

8. USC requests a waiver pursuant to Section 337 of the Act, which provides public safety entities with a statutory means of obtaining a waiver of the Commission's Rules to permit them to use frequencies not allocated for public safety use.<sup>29</sup> Subsection (c)(1) of Section 337 provides as follows:

(c) Licensing of Unused Frequencies for Public Safety Services.--

(1) Use of unused channels for public safety services.--Upon application by an entity seeking to provide public safety services, the Commission shall waive any requirement of this Act or its regulations implementing this Act (other than its regulations regarding harmful interference) to the extent necessary to permit the use of unassigned frequencies

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<sup>20</sup> *Id.* at 3-4.

<sup>21</sup> *See* Santa Monica Comments at 3-4.

<sup>22</sup> *Id.* at 2-4.

<sup>23</sup> *Id.* at 2; *see also id* at Attachment – Letter from Dr. Henry L. Richter, Richter Group Communications Consultants to Robert Gurs, Shook, Hardy & Bacon, LLP, Counsel for the City of Santa Monica, California.

<sup>24</sup> USC Reply Comments at 1-2. *See* discussion *infra* para. 11.

<sup>25</sup> *Id.* at 2.

<sup>26</sup> *Id.* 3-4.

<sup>27</sup> *Id.* 4-5.

<sup>28</sup> *Id.* 5-6.

<sup>29</sup> *See* 47 U.S.C. § 337.

for the provision of public safety services by such entity. An application shall be granted under this subsection if the Commission finds that--

- (A) no other spectrum allocated to public safety services is immediately available to satisfy the requested public safety service use;
- (B) the requested use is technically feasible without causing harmful interference to other spectrum users entitled to protection from such interference under the Commission's regulations;
- (C) the use of the unassigned frequency for the provision of public safety services is consistent with other allocations for the provision of such services in the geographic area for which the application is made;
- (D) the unassigned frequency was allocated for its present use not less than 2 years prior to the date on which the application is granted; and
- (E) granting such application is consistent with the public interest.<sup>30</sup>

9. When considering requests under Section 337, we first must determine whether the applicant is an "entity seeking to provide public safety services."<sup>31</sup> The statute describes public safety services as services that are provided by state or local government entities or by nongovernmental organizations that are authorized by a governmental entity whose primary mission is the provision of such services.<sup>32</sup> Although USC classifies itself as a corporation in its application, it has demonstrated that its DPS is a non-governmental entity authorized by a governmental entity whose primary mission is the provision of such services, namely the Los Angeles Police Department.<sup>33</sup> The statute states that public safety services are those services the sole or principal purpose of which is to protect the safety of life, health or property.<sup>34</sup> USC's DPS provides police and ambulance services to the main campus and the medical school campus.<sup>35</sup> In its request, USC explains that the faculty, students and staff rely on DPS to protect their lives and property while on the two campuses.<sup>36</sup> Lastly, the statute provides that public safety services cannot be made commercially available to the public.<sup>37</sup> USC maintains that its system will be

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<sup>30</sup> 47 U.S.C. § 337(c)(1); *see also* Balanced Budget Act, § 3004.

<sup>31</sup> 47 U.S.C. § 337(c)(1). Section 337(f) defines the term "public safety services" as "services –  
(A) the sole or principle purpose of which is to protect the safety of life, health, or property;  
(B) that are provided –  
(i) by the State or local government entities; or  
(ii) by nongovernmental organizations that are authorized by a governmental entity whose primary mission is the provision of such services; and  
(C) that are not made commercially available to the public by the provider."

<sup>32</sup> 47 U.S.C. § 337(c)(1)(B).

<sup>33</sup> Request at 2.

<sup>34</sup> 47 U.S.C. § 337(c)(1)(A).

<sup>35</sup> *See* Request at 2.

<sup>36</sup> *Id*; *see also* Request at Attachment, Letter from Tom Hehir, Deputy Chief, Department of Public Safety, University of Southern California.

<sup>37</sup> 47 U.S.C. § 337(c)(1)(C).

limited to serving the students, faculty and staff of the University.<sup>38</sup> Based on the information before us, we are persuaded that the sole or principal purpose of USC's DPS is to protect the safety of life, health and property of university students and personnel, thereby satisfying the eligibility criteria established by Section 337.

10. USC requests authorization to add five channel pairs, 506/509.0625 MHz, 506/509.0750 MHz, 506/509.0875 MHz, 506/509.1000 MHz, and 506/509.1125 MHz to its public safety communications system.<sup>39</sup> Upon review of our licensing records, we found that five of the ten requested frequencies are assigned to other licensees in the same geographic area. Specifically, frequencies 506.0625 MHz and 509.0875 MHz are licensed to Santa Monica,<sup>40</sup> and 506.0875 MHz, 509.0625 MHz and 506.1125 MHz are licensed to PSI.<sup>41</sup>

11. USC insists that only a licensee is afforded protection from harmful interference and argues that Santa Monica is not entitled to protection from harmful interference.<sup>42</sup> Because Santa Monica acquired an authorization to operate on those frequencies after USC filed its reply comments, USC's argument is now moot.<sup>43</sup> USC also argues that PSI is not using frequencies 506.1125 MHz, 506.0875 MHz or 509.0625 MHz.<sup>44</sup> USC claims that it monitored the subject frequencies in September 1999 and again in December 2000. In September 1999, USC alleges there was no activity on any of the three frequencies, and in December 2000, USC reports that there was minimal "channel saver" activity where timed messages were transmitted. USC's allegations, which appear to be based on its sporadic monitoring of the channel, do not make a *prima facie* case that PSI permanently discontinued operation.<sup>45</sup> The Commission's rules provide that a licensee must return an authorization for cancellation if the station has not provided service to subscribers for ninety continuous days.<sup>46</sup> USC does not allege that it monitored for a period of ninety consecutive days. Since USC proposes operation less than ten miles away from the Santa Monica transmitter<sup>47</sup> and less than twenty miles away from the PSI transmitters, we conclude that the

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<sup>38</sup> Request at 1-2.

<sup>39</sup> *Id.* at 1.

<sup>40</sup> See City of Santa Monica, California, *Order*, DA 00-2854 (WTB rel. Dec. 20, 2000).

<sup>41</sup> License ID No. L00117428.

<sup>42</sup> USC Reply Comments at 1-2.

<sup>43</sup> Similarly, USC contends that its application was first in line to be processed, not Santa Monica's. USC Reply Comments at 2. We disagree, however, because the application to which USC refers, FCC File No. D131508, was dismissed on the basis that USC applied for Part 22 frequencies without the benefit of a waiver and failed to secure frequency coordination or submit the application through the frequency coordinator.

<sup>44</sup> USC Reply Comments at 4-5.

<sup>45</sup> See Cellular Design Corporation, *Memorandum Opinion and Order*, 14 FCC Rcd 13059, 13064 ¶12 (1999) ("[W]e agree with the Bureau's conclusion that an allegation of sporadic monitoring, by itself, is insufficient to conclusively demonstrate that a station has permanently discontinued operation.")

<sup>46</sup> 47 C.F.R. § 22.317.

<sup>47</sup> The USC transmitter would be 8.1 miles away from Santa Monica's site for frequencies 506.06250 MHz and 509.0875 MHz.

frequencies are assigned in the same geographic area as USC proposes to operate.<sup>48</sup> While the Commission's rules do not specifically identify a minimum distance separation to avoid harmful interference for the 470-512 MHz band, we believe a twenty-mile radius is insufficient to protect existing licensees from harmful interference. In this connection, we note that the transmitter separation requirement for the 928-960 MHz band, another band for point-to-multipoint paging operations under the Commission's Part 22 rules, states that the required minimum distance separation between co-channel fixed transmitters is 113 kilometers, approximately 70 miles.<sup>49</sup>

12. In its reply comments, USC proposes conditional shared use with Santa Monica if it is determined that Santa Monica's application will be processed prior to USC's application and thereby entitled to protection from harmful interference.<sup>50</sup> We reject that request because relief under Section 337 of the Act is limited to instances where the requested frequencies are "unassigned."<sup>51</sup> Given that certain of the subject frequencies are assigned, USC may not obtain a waiver pursuant to that section.<sup>52</sup> The frequency pairs 506/509.0625 MHz and 506/509.0875 MHz are not available frequencies under Section 337 of the Act. With respect to the channel pair 506/509.1125 MHz, the frequency 506.1125 MHz is assigned to PSI. Because USC requested the frequencies as channel pairs, not as single frequencies, we conclude that the channel pair 506/509.1125 MHz is also not available under Section 337 of the Act.

13. We now turn to whether USC has met the statutory criteria for grant of a waiver under Section 337(c)(1) of the Act for use of frequency pairs 506/509.0750 MHz and 506/509.1000 MHz. The plain language of subsection (c) provides that a waiver request under this section shall be granted only upon a finding that all five conditions are met regarding the spectrum specifically sought by an applicant.<sup>53</sup> Where any one of the five conditions is not met, the subject waiver will not be granted.<sup>54</sup>

14. We find that USC's request to use frequency pairs 506/509.0750 MHz and 506/509.1000 MHz does not satisfy Section 337(c)(1)(B), which requires that the proposed use not cause harmful interference to other spectrum users entitled to protection from such interference.<sup>55</sup> Here, USC proposes to

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<sup>48</sup> The USC transmitter would be 17.32 miles away from the PSI site for frequencies 506.0875 MHz and 506.1125 MHz. We note also that PSI is licensed on 506.1125 MHz in Santa Ana, California, which would be 48.25 miles from the proposed USC transmitter site.

<sup>49</sup> 47 C.F.R. § 22.625(a); *see also* 47 C.F.R. § 90.307 (requiring 145 kilometers, approximately 90 miles, separation between 470-512 MHz licensees and UHF-TV channels).

<sup>50</sup> USC Reply Comments at 3-4.

<sup>51</sup> 47 U.S.C. § 337(c)(1).

<sup>52</sup> *Id.*

<sup>53</sup> *See* 47 U.S.C. § 337(c)(1).

<sup>54</sup> South Bay Regional Public Communications Authority, *Memorandum Opinion and Order*, 13 FCC Rcd 23781, 23796 ¶ 33 (1998) (*South Bay*); Implementation of Sections 309(j) and 337 of the Communications Act of 1934, as Amended, *Report and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 99-87, FCC 00-403 ¶ 132 (rel. November 20, 2000).

<sup>55</sup> 47 U.S.C. § 337(c)(1)(B).

change the bandwidth to 12.5 kHz.<sup>56</sup> USC's proposed operation on 506/509.0750 MHz and 506/509.1000 MHz would overlap the authorized bandwidth of PSI, which is licensed to operate on 506.0875 MHz with an authorized bandwidth of 20 kHz.<sup>57</sup> Similarly, USC's proposed operation on 506/509.1000 MHz would overlap the authorized bandwidth of PSI's operation on 506.1125 MHz.<sup>58</sup> In these circumstances, USC's failure to coordinate its use of the proposed frequencies with a frequency coordinator, and its failure to provide a technical analysis regarding the impact offset channel operation may cause to existing licensees, prevents us from finding USC has satisfied Section 337(c)(1)(B).<sup>59</sup> While USC argues that limiting its operations to an eight-mile radius from the campus avoids any harmful interference to existing licensees,<sup>60</sup> we are unable to validate this assertion without an engineering study. Therefore, we find that USC has failed to show that the requested use is technically feasible without causing harmful interference to other spectrum users entitled to protection from such interference under the Commission's rules.

#### IV. CONCLUSION

15. We find that USC has not demonstrated that it meets the criteria for a waiver of the Commission's Rules pursuant to Section 337(c)(1) of the Act, because five of the point-to-multipoint channels requested are in fact already licensed to entities in the Los Angeles, California area and USC has not shown that the requested use of the remaining channels it seeks is technically feasible without causing harmful interference to other spectrum users entitled to protection from such interference under the Commission's rules. Accordingly, we must deny USC's request to use the subject frequencies for public safety services, and we need not address whether USC has submitted evidence that would allow us to make the other findings required by Section 337(c)(1) of the Act.

#### V. ORDERING CLAUSES

16. **IT IS ORDERED** that pursuant to Sections 4(i) and 337 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 337, the waiver request filed on June 9, 2000, by the University of Southern California to use frequencies 506/509.0625 MHz, 506/509.0750 MHz, 506/509.0875 MHz, 506/509.1000 MHz, and 506/509.1125 MHz at the requested locations for public safety services **IS DENIED**, and the associated application, FCC File No. A056229 **IS DISMISSED**.

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<sup>56</sup> Request at 2.

<sup>57</sup> FCC License Id. No. L00117428, 47 C.F.R. § 22.621. PSI's authorized bandwidth is from 506.0775 MHz to 506.0995 MHz. Under USC's proposal, it would have an authorized bandwidth from 506.06875 MHz to 506.08125 MHz and 506.09375 MHz to 506.10625 MHz.

<sup>58</sup> FCC License Id. No. L00117428, 47 C.F.R. § 22.621. PSI's authorized bandwidth is from 506.1025 MHz to 506.1225 MHz. Under USC's proposal, it would have an authorized bandwidth from 506.09375 MHz to 506.10625 MHz.

<sup>59</sup> *Compare* County of San Mateo, California, *Memorandum Opinion and Order*, 14 FCC Rcd 19002, 19008 ¶ 12 (WTB 1999) and County of Burlington, New Jersey, *Order on Reconsideration*, DA 00-814 ¶ 11 (WTB rel. April 12, 2000) (finding that use of frequencies that are immediately adjacent to frequencies used by public safety entities and coordinated by APCO satisfy Section 337(c)(1)(B)).

<sup>60</sup> Request at 3.

17. **IT IS FURTHER ORDERED** that the Motion to Strike filed by the University of Southern California on January 2, 2001 **IS GRANTED** and the “Opposition to Reply Comments” filed December 21, 2000 by Paging Systems, Inc. **IS STRICKEN**.

18. 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

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Chief, Public Safety and Private Wireless Division  
Wireless Telecommunications Bureau