

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

In the Matter of Application of	)	
	)	
CITY OF EL SEGUNDO	)	File No. 0001116979
	)	
To Operate a Public Safety Radio	)	
Communications System in Frequency Band	)	
470-512 MHz in El Segundo, California	)	

**ORDER**

**Adopted: April 9, 2004**

**Released: April 20, 2004**

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

**I. INTRODUCTION**

1. We have before us an application and waiver request filed by the City of El Segundo, California (El Segundo) for authority to operate a public safety radio system in the Los Angeles metropolitan area on six frequencies designated for non-public safety use.<sup>1</sup> Pursuant to Section 337(c) of the Communications Act, as amended (“the Act”)<sup>2</sup> or, alternatively, Section 1.925 of the Commission’s Rules,<sup>3</sup> El Segundo seeks a waiver of Section 22.621 of the Commission’s Rules<sup>4</sup> to permit it to use certain Part 22 paging frequencies. As set forth below, we conclude, based on the record before us, that El Segundo has not made the required showings under Section 337(c) of the Act or Section 1.925 of the Commission’s Rules. Accordingly, we find that four of the frequencies requested are currently assigned, which renders the remaining two requested frequencies unusable and all six requested frequencies unavailable. Consequently, we deny the waiver request and dismiss the application.

**II. BACKGROUND**

2. El Segundo is a city located in Los Angeles County (the County), California with a population of approximately 16,000, which rises to 75,000 during weekdays due to its significant industrial base.<sup>5</sup> Until 2000, El Segundo was a member of the South Bay Regional Public Communications Authority (South Bay), which dispatched El Segundo’s police and fire departments.<sup>6</sup> El

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<sup>1</sup> See FCC File No. 0001116979 (filed Dec. 10, 2002) (Request), as amended on March 31, 2003 (March 2003 Amendment) and April 30, 2003 (April 2003 Amendment).

<sup>2</sup> 47 U.S.C. § 337(c).

<sup>3</sup> 47 C.F.R. § 1.925.

<sup>4</sup> 47 C.F.R. § 22.621.

<sup>5</sup> Request at 1-2.

<sup>6</sup> *Id.* at 2.

Segundo states that it withdrew from South Bay in 2002 for operational reasons,<sup>7</sup> and has since dispatched police and fire personnel from its own communications facilities on frequencies temporarily shared with the County.<sup>8</sup> El Segundo states that the expiration of the arrangement with the County will leave it without the frequencies it needs to provide effective public safety services.<sup>9</sup>

3. On December 10, 2002, El Segundo filed an application and request for waiver for authority to operate on Part 22 spectrum using the following non-standard center frequencies: 506.075 MHz, 506.100 MHz, 506.125 MHz, 509.075 MHz, 509.100 MHz, and 509.125 MHz. As part of its proposal, El Segundo stated that it intends to pair the first three frequencies (as base frequencies) with the second three frequencies (as mobile frequencies), and to operate with a bandwidth of 11.25 kHz.<sup>10</sup> The first four frequencies that El Segundo requests are offset 12.5 kHz from frequencies that Paging Systems, Inc. (PSI) is authorized to use in Southern California<sup>11</sup> with a 20 kHz bandwidth.<sup>12</sup> Thus, El Segundo's proposed operation would have a channel bandwidth overlap of 3.125 kHz relative to PSI's assigned frequencies.

4. On February 12, 2003, Wireless Telecommunications Bureau (Bureau) staff informally alerted El Segundo's counsel about the adjacent channel situation involving PSI. On March 6, 2003, El Segundo informally requested that the Commission defer processing of its application until March 31, 2003, when El Segundo filed its first amendment to the application.<sup>13</sup> On April 10, 2003, Bureau staff requested additional engineering information. In response, El Segundo filed its second amendment on April 30, 2003.<sup>14</sup> Although El Segundo believes that it will not cause harmful interference to PSI, in order to resolve this issue, El Segundo offered to purchase and install transmitters and receivers to enable PSI to operate on 12.5 kHz wide channels.<sup>15</sup>

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<sup>7</sup> In 2001, El Segundo requested that the Commission reassign two frequency pairs from South Bay to El Segundo. Due to El Segundo's departure from the South Bay Authority, El Segundo asserted that the South Bay authority no longer met the minimum channel loading requirements with respect to Stations WPOJ563 and WPMN535. Through information provided by the South Bay Authority in its opposition, the Commission determined that the South Bay Authority's channels were still considered fully loaded and unavailable for reassignment to El Segundo. In this connection and due to the determination that El Segundo had not provided sufficient evidence to warrant further Commission inquiry into the South Bay Authority's operation of Stations WPOJ563 and WPMN535, El Segundo's request was denied in 2002. See *City of El Segundo, California, Order*, 17 FCC Rcd 593, 596 ¶ 10 (WTB PSPWD 2002).

<sup>8</sup> Request at 2-3.

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

<sup>10</sup> FCC File No. 0001116979. Amendments filed March 31, 2003 and April 30, 2003.

<sup>11</sup> PSI's Station KNKM280 is authorized to operate on, *inter alia*, frequencies 506.0875 MHz and 509.0625 MHz, and Station KNLQ534 is authorized to operate on frequency 506.1125 MHz.

<sup>12</sup> See 47 C.F.R. § 22.621.

<sup>13</sup> March 2003 Amendment, Appendix A at 66. The filing includes a new engineering analysis, which shows that two of PSI's known receiver sites are barely within El Segundo's 39 dBu service contour. With a conservative de-rating factor of 11 dB to account for being adjacent channel with PSI, El Segundo claims that no known PSI receiver sites are within its proposed 50 dBu contour.

<sup>14</sup> April 2003 Amendment, Appendix A at 9. The second new engineering analysis states that the use of El Segundo's 21 dBu interference contour is inappropriate in this case because the systems being compared are adjacent channel, not co-channel. In addition, the analysis states that interference is likely only in the immediate vicinity of El Segundo, and PSI's two known receiver sites are outside of the area.

<sup>15</sup> El Segundo Opposition to Petition to Dismiss or Deny at 8 (filed May 21, 2003) (Opposition).

5. On April 30, 2003, PSI filed a petition to dismiss or deny El Segundo's application.<sup>16</sup> PSI argues that it is allowed to construct 900 MHz transmitter locations anywhere in the Los Angeles-San Diego area, pursuant to the geographic area license for its 900 MHz frequency that it acquired via competitive bidding.<sup>17</sup> PSI also notes that its paging control frequencies are allowed to control any transmitter within its licensed contour.<sup>18</sup> Due to the bandwidth and geographic overlap presented by El Segundo's proposed operations, PSI asserts that El Segundo is requesting frequencies that are assigned to PSI; and thus, the frequencies are not available for a waiver pursuant to Section 337(c) of the Act.<sup>19</sup> PSI also believes that El Segundo's use of the frequencies will cause harmful interference to PSI.<sup>20</sup> In this connection, it notes that El Segundo's engineering analysis does not take into account a PSI paging control receiver within four miles of El Segundo (possibly because it is not listed nor required to be listed on PSI's license).<sup>21</sup> In response to El Segundo's offer to convert PSI's system to utilize 12.5 kHz channels, PSI states that it cannot split or narrowband its channels because it needs the full bandwidth for its existing operations.<sup>22</sup>

### III. DISCUSSION

6. *Section 337.* Section 337(c) of the Act provides that the Commission must waive any rules necessary to authorize entities providing public safety services to operate on "unassigned frequencies," if the Commission makes five specific findings:

- public safety spectrum is not immediately available;
- the proposed use will not cause harmful interference to protected spectrum users;
- public safety use of the unassigned frequencies is consistent with public safety spectrum allocations in the geographic area;
- the unassigned frequencies have been allocated for non-public safety use for more than two years; and
- grant of the application is consistent with the public interest.<sup>23</sup>

7. When considering requests under Section 337, we first must determine whether the applicant is "an entity seeking to provide public safety services."<sup>24</sup> Based on the record before us, we find that El

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<sup>16</sup> PSI Petition to Dismiss or Deny (filed Apr. 30, 2003) (Petition). El Segundo filed an Opposition on May 21, 2003. PSI filed a Reply on June 3, 2003. *See* PSI Reply to Opposition to Petition to Dismiss or Deny (filed June 3, 2003) (Reply).

<sup>17</sup> Petition at 2; Reply at 3.

<sup>18</sup> Reply at 3.

<sup>19</sup> Petition at 3.

<sup>20</sup> *Id.* at 5.

<sup>21</sup> *Id.*

<sup>22</sup> *See* Letter from Audrey P. Rasmussen, counsel for PSI, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated Jan. 12, 2004) (January 12, 2004 PSI Letter).

<sup>23</sup> *See* 47 U.S.C. § 337(c).

<sup>24</sup> 47 U.S.C. § 337(c). Section 337(f) defines the term "public safety services" as "services—  
(A) the sole or principal purpose of which is to protect the safety of life, health, or property;  
(continued....)

Segundo is an entity providing public safety services.<sup>25</sup> We therefore move to whether El Segundo meets the other statutory requirements supporting a waiver under Section 337(c) of the Act.<sup>26</sup>

8. Before addressing the five findings required before making a grant of a waiver under Section 337 of the Act, we note that Section 337(c)(1) requires that the requested non-public safety spectrum be unassigned.<sup>27</sup> In making a determination of whether frequencies are “unassigned,” we use the technical rules that govern the spectrum requested.<sup>28</sup> With respect to frequencies 506.075 MHz, 506.100 MHz, 506.125 MHz, and 509.075 MHz, we conclude that El Segundo is seeking spectrum that is assigned. PSI is licensed to operate paging control transmitters on frequencies 506.0875 MHz, 509.0625 MHz, and 506.1125 MHz at, *inter alia*, a transmitter site on Mt. Lukens, California, which is 41.43 km (25.75 mi) northeast of El Segundo’s proposed transmitter site.<sup>29</sup> The license for Station KNKM280 lists several paging control receive sites that transmit paging signals, one of which is at Rancho Palos Verdes, south of El Segundo. Since El Segundo is in between and nearly in line with the Mt. Lukens and Rancho Palos Verdes sites, El Segundo is within the service area of Station KNKM280. PSI states that it needs its full, authorized channel bandwidth for its paging control operations.<sup>30</sup> Due to the bandwidth overlap and the fact that El Segundo is within PSI’s service area, we conclude that El Segundo is seeking spectrum that is already assigned to PSI.<sup>31</sup> Because El Segundo has failed to satisfy the prerequisite criterion that the spectrum be unassigned, we need not address its arguments regarding the five criteria under Section 337(c)(1) of the Act.<sup>32</sup>

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(B) that are provided—

(i) by State or local government entities; or

(ii) by non-governmental 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."

47 U.S.C. § 337(f).

<sup>25</sup> See Nassau County Police Department, *Memorandum Opinion and Order*, 17 FCC Rcd 14252, 14258 ¶ 11 (2002). El Segundo is a local governmental entity and states that since 2000, the El Segundo Public Safety Communications Center has provided emergency communications and dispatch services for the cities of El Segundo and Hermosa Beach, California. Additionally, El Segundo is the enhanced 9-1-1 Public Safety Answering Point for both cities. El Segundo states that the requested frequencies will be employed to provide for El Segundo’s daily communications requirements, to provide enhanced tactical voice capability for police and fire operations, and to provide tactical communications capability, as required, for Hermosa Beach. Request at 4.

<sup>26</sup> April 2003 Amendment at 7.

<sup>27</sup> U.S.C. § 337(c)(1).

<sup>28</sup> See Syosset Fire District, *Memorandum Opinion and Order*, 18 FCC Rcd 16635, 16639 ¶ 8 (WTB PSPWD 2003).

<sup>29</sup> See note 11, *supra*.

<sup>30</sup> See January 12, 2004 PSI Letter.

<sup>31</sup> This conclusion is consistent with our decision in 2001 denying a Section 337 request from another public safety entity in Southern California for frequencies offset from these PSI frequencies. See University of Southern California, *Memorandum Opinion and Order*, 16 FCC Rcd 2978, 2982-84 ¶¶ 11-14 (WTB PSPWD 2001) (*University of Southern California*).

<sup>32</sup> See, e.g., State of Ohio, *Memorandum Opinion and Order*, 17 FCC Rcd 439, 447 ¶ 13 (WTB PSPWD 2002), *recon pending* ("Because Ohio has failed to satisfy one of the five criteria, we need not and do not address their arguments regarding the remaining four criteria.") (citing Hennepin County, *Order*, 14 FCC Rcd 19418 (WTB 1999); New Hampshire Department of Transportation, *Memorandum Opinion and Order*, 14 FCC Rcd 19438, (continued...)

9. *Section 1.925.* Next, we determine whether a waiver may be granted to El Segundo under Section 1.925 of the Commission's Rules. Section 1.925 provides that a waiver of the Commission's rules may be granted if it is shown that the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or, in view of the unique or unusual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.<sup>33</sup> Regarding the first prong of the waiver standard, we conclude that El Segundo has failed to show that the underlying purpose of Section 22.621 -- to allot wideband (i.e., 25 KHz) channels for assignment to point-to-multipoint transmitters with appropriate channel spacing so that interference is mitigated -- would not be served or would be frustrated by application to the instant case. Indeed, based on the record before us, we believe that denial of El Segundo's request serves that purpose. Regarding the second prong, we find that El Segundo has not demonstrated unique or unusual circumstances, as we have received similar requests from other public safety entities in Southern California.<sup>34</sup> Moreover, we conclude that grant of the request would be inequitable and contrary to the public interest, particularly given the potential interference to an incumbent licensee with existing operations. Due to the bandwidth overlap and the fact that El Segundo is within PSI's service area, we believe, based on the circumstances presented, that operation of El Segundo's proposed system would cause interference to PSI, which would in turn adversely affect those benefiting from PSI's services.

#### IV. CONCLUSION

10. Based on the record of this proceeding, we find that El Segundo's request fails the criteria set forth under Section 337(c) of the Act and Section 1.925 of the Commission's Rules to obtain a waiver and a grant of its application to operate a public safety communications system. We therefore deny the request for waiver, and dismiss the application. While we deny El Segundo's request, we do not intend to minimize the important communications needs of public safety entities. We recognize that it is imperative that the Commission ensure adequate access to spectrum for public safety purposes.<sup>35</sup> To this end, we have granted a number of requests to permit public safety entities in southern California to use spectrum not allocated for public safety, where the spectrum in question was not already assigned to another licensee.<sup>36</sup> Finally, we note that our action is taken without prejudice to El Segundo filing a subsequent request for unassigned spectrum.

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19442 (WTB 1999)). Moreover, because El Segundo requested the frequencies as channel pairs, and not as single frequencies, we conclude that frequencies 509.100 MHz and 509.125 MHz are also not available under Section 337 of the Act. *University of Southern California*, 16 FCC Rcd at 2983 ¶ 12.

<sup>33</sup> 47 C.F.R. § 1.925.

<sup>34</sup> See, e.g., *City of Pomona, California, Order*, 15 FCC Rcd 15597 (WTB 2000); *University of Southern California*, 16 FCC Rcd 2978; *City of Santa Monica, California, Order*, 15 FCC Rcd 24938 (WTB PSPWD 2000).

<sup>35</sup> Indeed, in an unrelated matter, the Commission recently addressed a local shortage of public safety spectrum when it reallocated television Channel 16 in the New York City Metropolitan Area to the land mobile service for public safety communications. See Amendment of Parts 2, 73, 74 and 90 of the Commission's Rules to Permit New York City Metropolitan Area Public Safety Agencies to Use Frequencies at 482-488 MHz, *Report and Order*, ET Docket No. 03-158, FCC 04-80 (rel. Apr. 9, 2004).

<sup>36</sup> See *City of Pomona, California, Order*, 15 FCC Rcd 15597 (WTB 2000); *City of Burbank, California, Memorandum Opinion and Order*, 18 FCC Rcd 23770 (WTB PSPWD 2003); *City of Santa Monica, California, Order*, 15 FCC Rcd 24938 (WTB PSPWD 2000).

**V. ORDERING CLAUSES**

11. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i) and 337(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 337(c) and Sections 1.925 and 22.621 of the Commission's Rules, 47 C.F.R. §§ 1.925, 22.621, the request for waiver associated with the captioned application filed by the City of El Segundo on December 10, 2002, as amended, to use frequencies 506.075 MHz, 506.100 MHz, 506.125 MHz, 509.075 MHz, 509.100 MHz, and 509.125 MHz, for public safety services as requested in the captioned application **IS DENIED**.

12. **IT IS FURTHER ORDERED** that, pursuant to Sections 4(i) and 337(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 337(c) and Sections 1.925 and 22.621 of the Commission's Rules, 47 C.F.R. §§ 1.925, 22.621, FCC File No. 0001116979 **IS DISMISSED**.

13. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0131, 0331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry  
Chief, Public Safety and Critical Infrastructure Division  
Wireless Telecommunications Bureau