

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

In the Matter of
CITY OF EL SEGUNDO
Application to Modify Conventional Public Safety
Station KDA289, El Segundo, California
File No. 0001913906

ORDER

Adopted: June 17, 2009

Released: June 24, 2009

By the Chief, Policy Division, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. The City of El Segundo, California (El Segundo) filed an application to modify its public safety radio communications system in order to construct and operate two repeaters in the 470-512 MHz band as part of Conventional Public Safety Pool Station KDA289, El Segundo, California. Station KDA289 is currently licensed for operation on paired frequencies 470/473.3875 MHz, 470/473.6375 MHz and 471/474.1125 MHz (the "Channels"), among others, for base and mobile transmissions. As discussed herein, we deny El Segundo's application because it fails to satisfy the separation criteria of Section 90.313(c) of the Commission's rules and lacks frequency coordination required under Section 90.175.

II. BACKGROUND

2. In 1975, El Segundo, along with other cities, entered into a frequency sharing pool agreement with the South Bay Regional Public Communications Authority (South Bay or SBRPCA). As a member of the SBRPCA, El Segundo was entitled to use repeaters licensed to and operated by the SBRPCA. In March 2000, El Segundo notified the SBRPCA of its election to withdraw from the SBRPCA. When El Segundo officially withdrew from the SBRPCA in June 2000, it retained authorization for the Channels, among others, on a shared basis under Call Sign KDA289.

1 File No. 0001913906 (filed Oct. 26, 2004; amended Nov. 5, 2004, Nov. 19, 2004, and Feb. 10, 2005) (Application).

2 Id. Station KDA289 also permits El Segundo to operate control stations on frequency 474.1125 MHz. Id.

3 47 C.F.R. §§ 90.313(c), 90.175.

4 See Application, Appendix C: El Segundo v. South Bay Regional Public Communications Auth., Case No. YC040688, (Cal. App. Dep't Super. Ct. March 13, 2002) at 2 (Appendix C). South Bay is a regional public safety consortium serving municipalities bordering on or near Santa Monica Bay, south of the City of Santa Monica and the Los Angeles Airport.

5 Id. at 3.

6 Id.

7 See Application. The Commission authorized El Segundo one additional UHF frequency and four VHF frequencies, which are not pertinent to the instant matter.

3. Because El Segundo no longer has access to the facilities of the SBRPCA, El Segundo filed the instant application to modify its license for the Channels in order to operate its base station channels in a repeater mode and its mobile units for control stations at two sites in areas already served by South Bay.⁹ Specifically, El Segundo seeks authority to establish its own repeaters on the lower half of the channel pairs at two locations: the 348 Main Street (Location 1) site and the 222 N. Sepulveda Boulevard (Location 3) site.¹⁰ El Segundo states that, although the distribution of mobile units will change from fifty-seven vehicular units to twenty vehicular units and thirty-seven portable units, it plans to retain the same number of total mobile units.¹¹

4. On September 16, 2004, the California Public Safety Radio Association (CPSRA), a frequency coordinator which is the Southern California Chapter of the Association of Public-Safety Communications Officials, International (APCO), tentatively approved El Segundo's application.¹² This approval, however, was subject to the condition that El Segundo reach an agreement with South Bay regarding the shared use of the frequencies in question.¹³ In a letter to CPSRA and APCO dated September 23, 2004, South Bay opposed CPSRA's tentative decision and urged CPSRA to withdraw its approval; or, in the alternative, requested that APCO reject El Segundo's application.¹⁴ On October 26, 2004, El Segundo filed its Application with a letter from APCO, which states that APCO "neither approves nor disapproves" of El Segundo's request to modify its license.¹⁵

5. Because we considered APCO's letter too vague for purposes of frequency coordination, on March 6, 2007, we directed APCO to review El Segundo's application again and to provide the Commission with a frequency recommendation pursuant to Section 90.175(e).¹⁶ Specifically, we instructed APCO to consider whether El Segundo's proposal, if authorized, would permit El Segundo to make more effective use of its frequencies without causing harmful interference to the operations of South Bay.¹⁷ We directed APCO to provide its engineering analysis to us as well as any recommended modifications to El Segundo's application.¹⁸

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⁸ See Application.

⁹ See *Id.* Although channels 473.3875 and 473.6375 MHz are licensed for mobile operations, El Segundo seeks to use these channels for control station purposes.

¹⁰ *Id.*

¹¹ *Id.* at 1.

¹² See Letter from Lynn B. Robbins, APCO, to Wireless Telecommunications Bureau, Federal Communications Commission (Oct. 12, 2004) (APCO Letter), attaching Letter from Eric Fishman, Esq., on behalf of the South Bay Regional Communications Authority, to APCO (Sept. 23, 2004) (South Bay Letter), Attachment A: CPRA Frequency Coordination Agenda for September 16, 2004 at 6.

¹³ *Id.*

¹⁴ South Bay Letter at 1.

¹⁵ See File No. 0001913906.

¹⁶ Letter from Michael Wilhelm, Deputy Chief, Policy Division, Public Safety and Homeland Security Bureau to Lynn Robbins, APCO (Mar. 6, 2007).

¹⁷ *Id.* at 2.

¹⁸ *Id.*

6. On April 27, 2007, APCO submitted a letter to the Commission, accompanied by an interference contour study (the Study), recommending the denial of El Segundo's application.¹⁹ APCO concluded that it cannot recommend the "requisite frequencies based on the intended station classes of operation and urges the FCC to deny the grant of El Segundo's license modification request."²⁰ Specifically, APCO determined that the proposed repeaters at Location 1 and Location 3 "would adversely affect" Station KDL483, licensed to South Bay, and Station KUY444, licensed to City of Manhattan Beach.²¹

7. On May 14, 2007, El Segundo filed a letter in reply, urging the Commission to grant the application.²² Citing Section 90.173(a), El Segundo states that its modification application should be granted, because frequencies in the 470-512 MHz band are generally available on a shared basis.²³ El Segundo also states that "the type of analysis APCO performed is not appropriate in this case."²⁴ El Segundo argues that a contour-based study is appropriate only "when a licensee has been authorized for exclusive use of the frequency assignment."²⁵ It states that, pursuant to Section 90.173(b), the Commission should assess the application as it would any other application for a shared environment.²⁶

III. DISCUSSION

8. Based on our review of the record, we deny El Segundo's application because it does not satisfy the distance separation criteria of Section 90.313(c).²⁷ This rule section specifies, in relevant part, that until a private land mobile radio channel in the 470-512 MHz band is loaded to capacity, it will be available for assignment to other users in the same area.²⁸ Further, under Section 90.313(a)(1), a channel in the 470-512 MHz band for public safety systems is considered fully loaded if fifty units are used on the

¹⁹ Letter from Ron Haraseth, AFC Director, Association of Public-Safety Communications Officials-International, Inc., to John Evanoff, Attorney-Advisor, Policy Division, Public Safety and Homeland Security Bureau (April 27, 2007) (APCO Haraseth Letter).

²⁰ *Id.* at 1.

²¹ *Id.* at 1. Station KDL483 is co-channel with El Segundo on all three of the subject frequency pairs. Station KUY444 is co-channel with El Segundo on frequency pairs 470/473.3875 and 471/474.1125 MHz. The Study also indicates that the proposed repeater at Location 3 would disperse stronger signals over a wider area on the base frequencies than the current base operations at Location 1 due to the higher effective radiated power (ERP) and antenna height above average (HAAT) proposed by El Segundo. The proposed repeater at Location 3 would operate at 200 watts ERP and 111.3 meters HAAT. The existing base station at Location 1 operates at 70 watts ERP and 40 meters HAAT.

²² Letter from Russell H. Fox, Counsel to City of El Segundo, to Michael Wilhelm, Deputy Chief, Policy Division, Public Safety and Homeland Security Bureau (May 14, 2007) (El Segundo Letter).

²³ *Id.* at 1. See 47 C.F.R. § 90.173(a) ("frequencies assigned to land mobile stations are available on a shared basis only and will not be assigned for the exclusive use of any licensee.").

²⁴ El Segundo Letter at 1.

²⁵ *Id.*

²⁶ Except as otherwise specifically provided, frequencies below 512 MHz assigned to land mobile stations are available on a shared basis. See 47 C.F.R. § 90.173(a). Section 90.313, however, provides frequency loading criteria for exclusive use of frequencies in the 470-512 MHz band. See 47 C.F.R. § 90.313.

²⁷ 47 C.F.R. § 90.313(c).

²⁸ *Id.*

subject channel pair.²⁹ According to South Bay, it “operates 295 mobile and 366 portable units” on the Channels for police and fire services, well in excess of the fifty units specified in Section 90.313.³⁰ Based on this representation, we find that the Channels are fully loaded for purposes of Section 90.313.

9. Under Section 90.313(c), the Channels that are fully loaded are not available for assignment to other users in the same area on a shared basis within a distance of sixty-four kilometers (forty miles) from the location of base stations authorized on that pair.³¹ We note that the Engineering Statement prepared on behalf of the SBRPCA indicates that the proposed repeater sites at Locations 1 and 3, respectively, would be located approximately 5.8 kilometers (3.6 miles) and 7 kilometers (4.4 miles) from South Bay’s repeaters operating on the same frequencies under co-channel Station KDL483.³² Because our analysis finds that El Segundo’s proposed repeaters would be located considerably less than the minimum sixty-four kilometers separation distance required under Section 90.313(c), we conclude that the application does not satisfy the requisite separation criteria of Section 90.313(c).

10. Moreover, in light of APCO’s conclusion that it cannot recommend the requested frequencies, we also deny the application for failure to obtain frequency coordination.³³ In this regard, we find unpersuasive El Segundo’s reliance on Section 90.173(b). Under this rule, “[l]icensees of stations suffering or causing harmful interference are expected to cooperate and resolve this problem by mutually satisfactory arrangements.”³⁴ We note, however, that APCO’s initial submission of frequency coordination to the Commission “was dependent upon letters of concurrence being provided by South Bay.”³⁵ The record does not indicate that El Segundo either has reached a mutually satisfactory arrangement with South Bay or has attempted to coordinate its proposed operations with City of Manhattan Beach.³⁶ Therefore, in the absence of a showing of frequency coordination or a “mutually satisfactory arrangement” with co-channel licensees South Bay and City of Manhattan Beach – especially given the likelihood of interference – we deny the application.

²⁹ 47 C.F.R. § 90.313(a)(1).

³⁰ South Bay Authority Letter at 4. South Bay indicates that it provides dispatch services for the Gardena, Hawthorne, Hermosa Beach and Manhattan Beach Police Departments and for the Fire Departments of Hermosa Beach and Manhattan Beach. South Bay Authority Letter at 2.

³¹ Section 90.313(c) states in relevant part that “[a] frequency pair may be reassigned at distances of 64 km. (40 mi.), ... or more from the location of base stations authorized on that pair without reference to loading at the point of original installation.” 47 C.F.R. § 90.313(c). *See, e.g.*, City of El Segundo, California, *Order*, 17 FCC Rcd 593, 596 ¶ 10 (PSPWD WTB 2002) (denying a petition seeking to delete two frequencies from South Bay’s authorization and “relicensing” the frequencies to El Segundo); Champion Communications Services, Inc., *Order of Modification*, 19 FCC Rcd 1131 (PSCID WTB 2004) (noting that a load of ninety or more mobile units ordinarily qualifies for exclusive use).

³² *See* Application, Appendix D: Engineering Exhibit Evaluation of the Potential El Segundo v. South Bay Regional Public Communications Auth., Case No. YC040688, (Cal. App. Dep’t Super. Ct. March 13, 2002) at 1-2 (Appendix D).

³³ Section 90.175(e) requires all applications for frequency assignments in the 470-512 MHz band to include a showing of frequency coordination. 47 C.F.R. § 90.175(e).

³⁴ 47 C.F.R. § 90.173(b).

³⁵ APCO Haraseth Letter at 1. Although CPSRA tentatively recommended approval of El Segundo’s application, its approval was conditioned on El Segundo reaching a mutually satisfactory arrangement with South Bay. *See* South Bay Letter, Attachment A: CPRA Frequency Coordination Agenda for September 16, 2004 at 6.

³⁶ *See* APCO Haraseth Letter at 1. APCO determined that the proposed repeater operations “would affect” both South Bay and City of Manhattan’s operations. *Id.*

IV. CONCLUSION

11. Based on our review of the record, we deny El Segundo's application because (i) it does not satisfy the co-channel mileage separation criteria specified in Section 90.313(c), and (ii) it does not include the requisite approval of a frequency coordinator required by Section 90.175(e).

V. ORDERING CLAUSES

12. ACCORDINGLY, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Sections 90.175, and 90.313 of the Commission's rules, 47 C.F.R. §§ 90.175, 90.313, the Application, File No. 0001913906, filed by the City of El Segundo, California, on October 24, 2004, as amended, IS DENIED.

13. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 C.F.R. §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Beers
Chief, Policy Division
Public Safety and Homeland Security Bureau