

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

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| In the Matter of |) | |
| |) | |
| DELAWARE RIVER PORT AUTHORITY |) | File No. 0002517804 |
| |) | |
| Application to Add Frequency Pair 811/856.2125 |) | |
| MHz to Trunked Public Safety Station |) | |
| WQAV342, Bridgeport, New Jersey |) | |

ORDER

Adopted: June 19, 2012

Released: June 19, 2012

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

I. INTRODUCTION

1. The Delaware River Port Authority¹ (DRPA) filed an application to modify its Public Safety system to add frequency pair 811/856.2125 MHz to DRPA's Trunked Public Safety Station WQAV342, Bridgeport, New Jersey.² DRPA, however, filed its application nearly a year after the New Jersey Department of Corrections (New Jersey) filed an application to construct a new public safety station on the same frequency.³ DRPA proposed to "short-space" its operations to New Jersey's proposed station but failed to obtain concurrence from New Jersey for the proposed short-spacing. Instead, DRPA filed a request to dismiss New Jersey's application in order to permit the processing of DRPA's modification application.⁴ As discussed herein, we (1) dismiss DRPA's request as moot because New Jersey withdrew its application⁵ and (2) dismiss DRPA's modification application because it lacks evidence of frequency coordination as required under Section 90.175 of the Commission's rules.⁶

II. BACKGROUND

2. On August 5, 2005, New Jersey filed an application to operate a new private land mobile station in Camden, New Jersey.⁷ The Association of Public-Safety Communications Officials-International, Inc. (APCO) coordinated the New Jersey application and proposed operation on the

¹ The Delaware River Port Authority (DRPA) is a regional transportation agency serving Southeastern Pennsylvania and Southern New Jersey. DRPA owns and operates the Benjamin Franklin, Walt Whitman, Commodore Barry, and Betsy Ross bridges. See <http://www.drpa.org/drpa/about.html>.

² FCC File No. 0002517804 (filed Mar. 8, 2006; amended Mar. 10, 2006, August 24, 2006, and August 25, 2006).

³ FCC File No. 0002265784 (filed Aug. 5, 2005).

⁴ Letter from T. Fred Short, Consultant for the DRPA, to Michael Regiec, Wireless Telecommunications Bureau, Federal Communications Commission (Feb. 22, 2006) (attached to FCC File No. 0002265784) (DRPA Letter).

⁵ FCC File No. 0002265784.

⁶ 47 C.F.R. § 90.175.

⁷ FCC File No. 0002265784 (withdrawn May 10, 2012).

frequency pair 811/856.2125 MHz.⁸ On February 22, 2006, DRPA filed a letter requesting that the Commission dismiss the New Jersey application.⁹ In its letter, DRPA contended that approval of the New Jersey application would conflict with its proposed use of frequency pair 811/856.2125 MHz for a trunked system located at the Commodore Barry Bridge.¹⁰ DRPA stated that it had been working with APCO since October 2004 to coordinate frequency pair 811/856.2125 MHz.¹¹ On March 8, 2006, DRPA submitted an application proposing to add frequency pair 811/856.2125 MHz at the Commodore Barry Bridge site.¹²

3. The distance between DRPA's proposed operation on frequency pair 811/856.2125 MHz and New Jersey's proposed co-channel operation is only 24.85 kilometers.¹³ In addition, DRPA's proposed operation is spaced only 67.4 kilometers from New Jersey's licensed co-channel facilities located in Wrightstown, NJ (Call Sign KNJH423). Section 90.621(b) of the Commission's rules requires that the minimum separation between co-channel stations in the 800 MHz band is 113 kilometers (70 miles).¹⁴ Section 90.621(b)(5) of the Commission's rules allows co-channel systems to be separated by less than the minimum distance but only if the applicant obtains a letter of consent from each short-spaced co-channel licensee.¹⁵ DRPA stated that it attempted, without success, to obtain a letter of consent from New Jersey.¹⁶ APCO, nonetheless, certified the DRPA application for Commission review even though Section 90.621(b) of the Commission's rules prohibited DRPA's proposed short-spaced operation on frequency pair 811/856.2125 MHz.¹⁷ Therefore, we directed APCO to review its frequency recommendation and to specify, if possible, rule-compliant frequencies.¹⁸

4. On April 9, 2007, APCO responded to the Commission's directive.¹⁹ Specifically, APCO proposed that DRPA's application "be amended to change frequency 856.2125 MHz to frequency 856.0375 MHz [...]."²⁰ APCO stated that "Mr. Fred Short, contact person for [DRPA] is in agreement

⁸ *Id.*

⁹ DRPA Letter.

¹⁰ *Id.*

¹¹ *Id.*

¹² FCC File No. 0002517804.

¹³ The co-channel spacing was determined by a staff assessment of the distance between the fixed location on DRPA's application, FCC File No. 0002517804, and the fixed location on New Jersey's application, FCC File No. 0002265784.

¹⁴ 47 C.F.R. § 90.621(b).

¹⁵ 47 C.F.R. § 90.621(b)(5).

¹⁶ DRPA Letter.

¹⁷ APCO assigned frequency coordination number 09YPAP860202423 to DRPA's application.

¹⁸ Letter from Michael J. Wilhelm, Deputy Chief, Policy Division, Public Safety and Homeland Security Bureau, to the Association of Public-Safety Communications Officials-International, Inc. (Feb. 8, 2007).

¹⁹ Letter from Ron Haraseth, Director of the Association of Public-Safety Communications Officials-International, Inc., to Brian Marengo, Policy Division, Public Safety and Homeland Security Bureau, Federal Communications Commission (April 9, 2007) (APCO Letter) at 2.

²⁰ *Id.*

with this frequency change.”²¹ APCO also stated that it suggested that DRPA rescind its objection to the New Jersey application and that DRPA’s representative agreed to do so.²²

5. DRPA, however, neither modified its application nor rescinded its dismissal request. On February 12, 2008, DRPA advised FCC licensing staff that New Jersey planned to tear down the prison facilities served by New Jersey’s station, thus obviating the need for DRPA to obtain concurrence from New Jersey to use frequency pair 811/856.2125 MHz.²³

6. On October 8, 2009, the Bureau directed APCO to refresh the record on this matter.²⁴ Specifically, the Bureau asked whether APCO continued to support its frequency proposal and whether New Jersey and DRPA still wished to operate on frequency 811/856.2125 MHz.²⁵ On October 19, 2009, APCO stated that it no longer supports recommending frequency 811/856.0375 MHz for DRPA and that it was unable to identify an alternative frequency.²⁶ APCO also stated that it has not had contact with either DRPA or New Jersey.²⁷ On May 10, 2012, New Jersey withdrew its application.²⁸

III. DISCUSSION

7. Based on our review of the record, we dismiss both DRPA’s request to dismiss New Jersey’s application and DRPA’s modification application. First, we dismiss, as moot, DRPA’s request to dismiss New Jersey’s application because New Jersey has withdrawn its application for frequency pair 811/856.2125 MHz at the Camden, New Jersey location. Second, we dismiss DRPA’s modification application for frequency pair 811/856.2125 MHz because it lacks evidence of frequency coordination. Section 90.175 of the Commission’s rules requires that all applications for modified facilities in the Private Land Mobile Radio service include a showing that the application was coordinated by a certified frequency coordinator.²⁹ Here, APCO has withdrawn its support for DRPA’s proposed use of 811/856.2125 MHz³⁰ and states that it no longer recommends frequency 856.0375 MHz for DRPA.³¹ The

²¹ *Id.*

²² *Id.*

²³ E-mail from T. Fred Short, DRPA to Michael Regiec, Electronics Engineer, Public Safety and Homeland Security Bureau (dated Feb. 12, 2008) attached to FCC File Nos. 0002265784 and 0002517804.

²⁴ Email from Brian Marengo, Electronics Engineer, Public Safety and Homeland Security Bureau, to the Association of Public-Safety Communications Officials-International, Inc. (dated Oct. 8, 2009).

²⁵ *Id.*

²⁶ Email from Farokh Latif, Director, Association of Public-Safety Communications Officials-International, Inc., to Brian Marengo, Electronics Engineer, Public Safety and Homeland Security Bureau (dated Oct. 19, 2009) (APCO Email).

²⁷ *Id.*

²⁸ FCC File No. 0002265784.

²⁹ 47 C.F.R. § 90.175 stating in pertinent part “...each application for a new frequency assignment . . . must include a showing of frequency coordination [. . .].” *See also* City of El Segundo, California, *Order*, 24 FCC Red. 8413, 8415 ¶¶ 6, 10 (PSHSB 2009) (denying an application for license modification after the frequency coordinator rescinded its frequency recommendation).

³⁰ APCO Letter at 2.

³¹ APCO Email.

record does not show that DRPA has obtained APCO's support for any other frequency proposal. Therefore, because it lacks frequency coordination, we dismiss DRPA's application.

8. Finally, we caution APCO to conform to the Commission's rules and frequency coordination policies, and to take all other necessary steps to avoid future defective coordinations. Errors in coordination undermine the licensing process and unduly burden limited Commission resources. The Commission established frequency coordination to eliminate the confusion and delay that had previously inhibited the private land mobile licensing process:

These coordinators play a pivotal role in helping the Commission develop and manage private land mobile frequencies. Their involvement is especially important at a time when the demand for private land mobile radio systems is growing rapidly and the Commission's manpower resources are shrinking. Poor frequency recommendations, if relied on by the Commission, undermine efficient use of the radio spectrum, contrary to our statutory mandate to "... make available to all the people of the United States a rapid, efficient ... radio communication service." Conversely, enlightened frequency recommendations help to ensure that the Commission optimizes the use of the available spectrum for the benefit of all members of the public.³²

9. Frequency coordinators are responsible for recommending "a frequency that will result in the least amount of interference to all existing stations operating in a particular area."³³ As discussed above, APCO's certification of the DRPA application was defective because, under Section 90.621(b) of the Commission's Rules, the subject frequency pair should not have been frequency coordinated within 113 kilometers (70 miles) of New Jersey's proposed co-channel operation. APCO also should not have filed DRPA's application without obtaining the necessary concurrence from New Jersey, as required by Section 90.621(b)(5) of the Commission's rules.³⁴ Coordinators must review applications for "general correctness,"³⁵ which includes compliance with the Commission's rules. In this respect, the process failed.

IV. CONCLUSION

10. Based on our review of the record, we dismiss, as moot, DRPA's request to dismiss New Jersey's application now that New Jersey no longer seeks to license frequency pair 811/856.2125 MHz. We also dismiss DRPA's application for 811/856.2125 MHz because it lacks evidence of frequency coordination.

V. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, 47 U.S.C. § 154(i), and Section 1.41 of the Commission's Rules, 47 C.F.R. § 1.41, that the request to dismiss New Jersey Department of Correction's application, filed by Delaware River Port Authority on February 22, 2006, IS DISMISSED AS MOOT.

³² Frequency Coordination in the Private Land Mobile Services, PR Docket No. 83-737, *Report and Order*, 103 FCC 2d 1093, 1095 ¶ 2 (1986) *citing* 47 U.S.C. § 151 (*Frequency Coordination Report and Order*).

³³ *Id.* at 1108 ¶ 29.

³⁴ 47 C.F.R. § 90.621(b)(5).

³⁵ *Frequency Coordination Report and Order*, 103 FCC 2d at 1118 ¶ 53.

12. IT IS FURTHER ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, 47 U.S.C. § 154(i), and Section 90.175 of the Commission's Rules, 47 C.F.R. § 90.175, that application, FCC File No. 0002517804, filed by the Delaware River Port Authority on March 8, 2006, as amended, IS DISMISSED.

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

Michael J. Wilhelm
Deputy Chief, Policy and Licensing Division
Public Safety and Homeland Security Bureau