



Public Safety Wireless Network

Saving Lives and Property Through Improved Interoperability

July 21, 2003

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
12th St. Lobby, TW-A325
Washington, DC 20554

Re: Ex Parte Comments to the Federal Communications Commission's Request for Comments, In the Matter of City of El Segundo, California Request For Waiver of Section 22.621 of the Commission's Rules, DA No. 03-2061

Dear Ms. Dortch:

On behalf of the Public Safety Wireless Network (PSWN) Program and pursuant to Sections 22.621 and 337(c) of the Communications Act of 1934, as amended (1934 Act), 47 C.F.R. § 22.621, 337(c) and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925 (2002), enclosed herewith for filing are an original and four (4) copies of the PSWN Program's Comments in the above-referenced proceeding.

Kindly date-stamp and return the additional marked copy of this cover letter and filing.

Should you require any additional information, please contact the undersigned.

Respectfully submitted,

Handwritten signature of Steven Proctor in black ink.

Steven Proctor
Executive Director,
Utah Communications Agency Network
Executive Vice-Chair,
PSWN Executive Committee

Handwritten signature of Donald Pfohl in black ink.

Donald Pfohl
Communications Manager,
Oregon State Police
Member,
PSWN Executive Committee

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of the)	
)	
City of El Segundo, California)	DA 03-2061
Request For Waiver of Section 22.621)	
of the Commission's Rules)	

To: The Commission

**EX PARTE COMMENTS OF THE
PUBLIC SAFETY WIRELESS NETWORK PROGRAM**

Filed by: The Public Safety Wireless Network Program

Date: July 21, 2003

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of the)
)
City of El Segundo, California) DA 03-2061
Request For Waiver of Section 22.621)
of the Commission’s Rules)

To: The Commission

**EX PARTE COMMENTS OF THE
PUBLIC SAFETY WIRELESS NETWORK PROGRAM**

1. The Public Safety Wireless Network (PSWN) Program¹ respectfully submits the following Ex Parte Comments in the above-referenced request for waiver filed by the City of El Segundo, California.² For the reasons discussed below, the PSWN Program supports granting El Segundo’s request for a waiver pursuant to Sections 22.621³ and 337(c)⁴ of the Communications Act of 1934, as amended (1934 Act), and Section 1.925 of the Federal Communications Commission’s (Commission) Rules.⁵

¹ The PSWN Program is a federally funded initiative operating on behalf of all local, state, federal, and tribal public safety agencies. The Department of Homeland Security and the Department of Justice are jointly leading the PSWN Program’s efforts to plan and foster interoperability among public safety wireless networks.

² In The Matter of the City of El Segundo, California Amended Application and Request For Waiver Pursuant to Section 337(c) of the Communications Act of 1934, as amended, and Section 1.925 of the FCC’s Rules to Employ Certain Public Land Mobile Radio Service Channels for Public Safety Operations, and the Application of City of El Segundo For New Facilities in El Segundo, File No. 000116979, April 30, 2003 (*City of El Segundo Request for Waiver*).

³ See 47 CFR § 22.621.

⁴ See 47 CFR § 337(c).

⁵ See 47 CFR § 1.925.

I. STATEMENT OF INTEREST

2. As an entity dedicated to fostering public safety wireless communications interoperability throughout the Nation and at all levels of government, the PSWN Program is particularly interested in assuring that local, state, and tribal agencies are provided with sufficient resources to carry out their primary mission in support of public safety, including adequate frequencies to serve law enforcement, fire and rescue, and other first responders. The PSWN Program is pleased to offer the following Comments in support of El Segundo's waiver request.

II. BACKGROUND

3. The City of El Segundo currently satisfies its primary police and fire safety communications requirements by sharing, on a not-for-profit basis, the frequency assignments 483/486.8875 and 482/485.9625 megahertz (MHz), which are licensed to the County of Los Angeles throughout the coverage area required by El Segundo. This arrangement was scheduled to terminate on July 1, 2003,⁶ leaving the City of El Segundo in the untenable position of potentially being unable to meet its critical communications requirements.

4. El Segundo operates in excess of 200 mobile and portable units on the frequency assignments licensed to the County of Los Angeles. In addition to supporting its own communications requirements, since 2000 the El Segundo Public Safety Communications Center (ESPSCC) has provided emergency communications and dispatch services for the City of Hermosa Beach. Upon expiration of the current arrangement with the County of Los Angeles, the City of El Segundo might be without the use of radio frequencies it requires to provide effective public safety services.

⁶ See City of El Segundo Request for Waiver, at p.3.

III. DISCUSSION

5. As the City of El Segundo indicated, this waiver request would allow independent and increased tactical voice capability for police and fire operations, and provide tactical communications capability, as required, for the City of Hermosa Beach.⁷ The PSWN Program agrees with El Segundo's assertion that the lack of channels will continue to contribute to conditions that put lives at risk. The PSWN Program further acknowledges the assertion of Gary David Gray, Chair, California Public-Safety Radio Association, Inc. (CPRA)/Association of Public-Safety Communications Officials-International, Inc. (APCO), that "there are no available, usable public safety channels in the Los Angeles basin that are compatible with the El Segundo requirements."⁸ For these reasons, the PSWN Program emphasizes that the City of El Segundo should be permitted to employ the requested three pairs of frequency assignments. In particular, El Segundo seeks the use of the paired channels 506/509.075, 506/509.100, and 506/509.125 MHz.

6. The PSWN Program also concurs that this waiver request meets the five criteria stated in Section 337(c) of the 1934 Act, which are considered necessary by the Commission to waive any rules authorizing entities providing public safety services to operate on unassigned non-public safety spectrum. The five specific findings are as follows: (1) public safety spectrum is not immediately available; (2) the proposed use will not cause harmful interference to protected spectrum users; (3) public safety use of the unassigned frequencies is consistent with public safety spectrum allocations in the geographic area; (4) the unassigned frequencies have been allocated for non-public safety use for more than two years; and (5) grant of the application is consistent with the public interest.⁹ The PSWN Program agrees with the City of El Segundo that, on review of the record established in this proceeding, these conditions have arguably been established.

⁷ See City of El Segundo Request for Waiver, at p. 3.

⁸ See Letter to Lt. Max Phipps, Communications Manager, El Segundo Police Department, from Gary David Gray, P.E., Chair, CPRA/APCO Frequency Advisory Committee, November 5, 2002, at p. 2.

⁹ See 47 CFR § 337(c).

7. The PSWN Program is also aware of the ongoing dispute between Paging Systems, Inc. (PSI), and the City of El Segundo. However, because the PSWN Program does not have the appropriate information to comment on the issue, it will defer to the Commission's judgment in this matter, with respect to the potential for interference as alleged in PSI's Engineering Study.¹⁰ Apart from this issue, the PSWN Program concludes that, based on the urgency of this request, and the Commission's recognition of the priority to be placed on facilitating public safety communications services, granting this waiver is in the public's best interest.

8. The PSWN Program also asserts that the Commission already has precedent for granting this type of relief, as determined in the State of Ohio's¹¹ and Jersey City Police Department's¹² Requests for Waiver Pursuant to Section 337(c) of the Communications Act of 1934. In applicable cases where a discretionary waiver is called for, the U.S. Court of Appeals has conclusively held that public safety communications are entitled to special consideration and that the Commission may waive its Rules when "compliance [is] inconsistent with the public interest."¹³ In El Segundo, the added channel capacity would have an immediate and positive impact on public safety entities' ability to communicate and would greatly enhance their ability to protect life and property. However, the PSWN Program emphasizes that while granting this waiver would provide enhanced tactical voice capability for police and fire operations in response to El Segundo's complaints, this action is not a substitute for the permanent allocation of additional spectrum for the purpose of supporting public safety communications. The PSWN

¹⁰ See Paging Systems, Inc., Petition to Dismiss or Deny, In the Matter of Application of City of El Segundo For New Facilities in El Segundo, California, FCC File No. 000116979, April 30, 2003, at p. 5; The City of El Segundo, California, Opposition to Petition to Dismiss or Deny, In the Matter of Application of City of El Segundo For New Facilities in El Segundo, California, FCC File No. 000116979, May 21, 2003, at pp. 3–8.

¹¹ In the Matter of Applications of State of Ohio for 800 MHz General Category Channels and Request for Waiver Pursuant to Section 337(c) of the Communication Act of 1934, and Section 1.925 of the Commission's Rules, granted January 7, 2002.

¹² In The Matter of Application of the Jersey City Police Department to Operate a Public Safety Radio Communications System in Frequency Band 470–480 MHz in Jersey City, New Jersey, granted April 11, 2003.

¹³ Keller Communications, Inc. v. FCC, 130 F.3d 1073, 1073 (D.C. Cir. 1997) (Keller), quoting Northeast Cellular Telephone Co. v. FCC, 78 F.3d. 620 (D.C. Cir. 1996) (cited in In the Matter of State of Ohio Applications for 800 MHz Former "General Category" Channels and Request for Waiver Pursuant to Section 337(c) of the Communications Act of 1934 and Section 90.151 of the Commission's Rules, Application Nos. A051346, A051773, A051775, A051776, A052254, A052257, A053871, A054250, A054249, A054251, A051347 and A056224, July 12, 2000, at page 7).

Program reiterates its request for expedited access to the channels designated for this purpose following the completion of the 700 MHz band clearing initiative.

IV. CONCLUSION

8. The PSWN Program thanks the Commission for its consideration of the above recommendations. For the reasons presented above, the PSWN Program supports the City of El Segundo's waiver request to operate a public safety radio communications system in the 506–509 MHz frequency band. The PSWN Program respectfully recommends that the Commission approve El Segundo's request for waiver and grant any and all such further relief as the Commission finds appropriate, as quickly as possible.

Respectfully submitted,



Steven Proctor
Executive Director,
Utah Communications Agency Network
Executive Vice-Chair,
PSWN Executive Committee



Donald Pfohl
Communications Manager,
Oregon State Police
Member,
PSWN Executive Committee

**Before the
Federal Communications Commission
Washington, DC 20554**

Certificate of Service

In the Matter of the)	
)	
City of El Segundo, California)	DA 03-2061
Request For Waiver of Section 22.621)	
of the Commission's Rules)	

I, Richard N. Allen, Senior Associate, Booz Allen Hamilton, 8283 Greensboro Drive, McLean, Virginia, 22102-3838, hereby certify that on this date I caused to be served, by first-class mail, postage prepaid (or by hand where noted) copies of the Public Safety Wireless Network Program's Comments *In the Matter of the City of El Segundo, California Request for Waiver of Section 22.621 of the Commission's Rules* DA 03-2061, the original of which is filed herewith and upon the parties identified on the attached service list.

DATED at Fair Oaks, Virginia this 21st day of July 2003.



Richard N. Allen

SERVICE LIST

The Honorable Michael Powell, Chairman
Federal Communications Commission
445 12th St., SW, Rm. 8–B201
Washington, DC 20554

The Honorable Kathleen Q. Abernathy, Commissioner
Federal Communications Commission
445 12th St., SW, Rm. 8–B115
Washington, DC 20554

The Honorable Michael J. Copps, Commissioner
Federal Communications Commission
445 12th St., SW, Rm. 8–A302
Washington, DC 20554

The Honorable Kevin J. Martin, Commissioner
Federal Communications Commission
445 12th St., SW, Rm. 8–A204
Washington, DC 20554

The Honorable Jonathan S. Adelstein
Federal Communications Commission
445 12th St., SW, Rm. 8–C302
Washington, DC 20554

Marsha J. MacBride, Chief of Staff
Office of Chairman Powell
Federal Communications Commission
445 12th St., SW, Rm. 8–B201
Washington, DC 20554

Bryan Tramont, Senior Legal Advisor
Office of Chairman Powell
Federal Communications Commission
445 12th St., SW, Rm. 8–B201
Washington, DC 20554

Matthew Brill, Senior Legal Advisor
Office of Commissioner Abernathy
Federal Communications Commission
445 12th St., SW, Rm. 8–B115
Washington, DC 20554

Jordan Goldstein, Senior Legal Advisor
Office of Commissioner Copps
Federal Communications Commission
445 12th St., SW, Rm. 8-A302
Washington, DC 20554

Paul Margie, Spectrum and International Legal Advisor
Office of Commissioner Copps
Federal Communications Commission
445 12th St., SW, Rm. 8-A302
Washington, DC 20554

Daniel Gonzalez, Senior Legal Advisor
Office of Commissioner Martin
Federal Communications Commission
445 12th St., SW, Rm. 8-C302
Washington, DC 20554

Samuel Feder, Legal Advisor on Spectrum Issues
Office of Commissioner Martin
Federal Communications Commission
445 12th St., SW, Rm. 8-C302
Washington, DC 20554

Lisa Zaina, Senior Legal Advisor
Office of Commissioner Adelstein
Federal Communications Commission
445 12th St., SW, Rm. 8-C302E
Washington, DC 20554

Barry Ohlson, Interim Legal Advisor
for Wireless Issues
Office of Commissioner Adelstein
Federal Communications Commission
445 12th St., SW, Rm. 8-C302B
Washington, DC 20554

John Muleta, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th St., SW, Rm. 3-C252
Washington, DC 20554

Scott D. Delacourt, Chief of Staff
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th St., SW, Rm. 3–C224
Washington, DC 20554

Catherine W. Seidel, Deputy Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th St., SW, Rm. 3–C220
Washington, DC 20554

Kathleen O’Brien–Ham, Deputy Chief
Office Strategic Planning and Policy Analysis
Federal Communications Commission
445 12th St., SW, Rm. 3–C255
Washington, DC 20554

James D. Schlichting, Deputy Chief
Office of Engineering and Technology
Federal Communications Commission
445 12th St., SW, Rm. 7–C115
Washington, DC 20554

Gerald P. Vaughan, Deputy Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th St., SW, Rm. 3–C250
Washington, DC 20554

David Furth, Associate Bureau Chief
and Senior Legal Advisor
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th St., SW, Rm. 3–C217
Washington, DC 20554

John Branscome, Legal Advisor
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th St., SW, Rm. 3–C227
Washington, DC 20554

Jennifer Tomchin, Acting Legal Advisor
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th St., SW, Rm. 3–C400
Washington, DC 20554

D’wana R. Terry, Chief
Public Safety & Private Wireless Division
Federal Communications Commission
445 12th St., SW, Rm. 4–C321
Washington, DC 20554

Ramona Melson, Deputy Chief (Legal)
Public Safety & Private Wireless Division
Federal Communications Commission
445 12th St., SW, Rm. 4–C321
Washington, DC 20554

Herbert W. Zeiler, Deputy Chief (Technical)
Public Safety & Private Wireless Division
Federal Communications Commission
445 12th St., SW, Rm. 4–C321
Washington, DC 20554

Jeanne Kowalski, Deputy Chief (Public Safety)
Public Safety & Private Wireless Division
Federal Communications Commission
445 12th St., SW, Rm. 4–C324
Washington, DC 20554

John Borkowski, Assistant Division Chief
Public Safety & Private Wireless Division
Federal Communications Commission
445 12th St., SW, Rm. 4–C237
Washington, DC 20554

Michael J. Wilhelm, Legal Advisor
Public Safety and Private Wireless Division
Federal Communications Commission
445 12th Street, SW, Room 4–C305
Washington, DC 20554

Blaise Scinto, Acting Chief
Policy Division
Federal Communications Commission
445 12th St., SW, Rm. 3–C133
Washington, DC 20554

Tom Stanley, Chief Engineer
Policy Division
Federal Communications Commission
445 12th St., SW, Rm. 3–C204
Washington, DC 20554

Walter D. Strack, Chief Economist
Policy Division
Federal Communications Commission
445 12th St., SW, Rm. 3–C460
Washington, DC 20554

John Schauble, Chief
Policy and Rules Branch
Public Safety and Private Wireless Division
Federal Communications Commission
445 12th St., SW, Rm. 4–C336
Washington, DC 20554

Scot Stone, Deputy Chief
Policy and Rules Branch
Public Safety and Private Wireless Division
Federal Communications Commission
445 12th St., SW, Rm. 4–B337
Washington, DC 20554

Peter Daronco, Deputy Chief
Policy and Rules Branch
Public Safety and Private Wireless Division
Federal Communications Commission
445 12th St., SW, Rm. 4–C431
Washington, DC 20554

Ed Thomas, Director
Office of Engineering and Technology
Federal Communications Commission
445 12th St., SW, Rm. 7–C155
Washington, DC 20554

Peter A. Tenhula, Acting Deputy Bureau Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th St., SW, Rm. 2-C343
Washington, DC 20554

Fred Thomas, Deputy Director
Spectrum Policy Task Force
Office of Engineering and Technology
Federal Communications Commission
445 12th St., SW, Rm. 7-A164
Washington, DC 20554

William Kunze, Chief
Commercial Wireless Division
Federal Communications Commission
445 12th St., SW, Rm. 4-C224
Washington, DC 20554

Qualex, Inc.
445 12th St., SW
Washington, DC 20554

ALL SERVICE LIST COPIES HAVE BEEN PROVIDED BY U. S. MAIL IN LIEU OF HAND
DELIVERY DUE TO NEW FCC SECURITY PROCEDURES