

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

<b>In the matter of:</b>	)	
	)	
<b>Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended</b>	)	<b>WT Docket No. 99-87</b>
	)	
<b>Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies</b>	)	

**REQUEST FOR WAIVER OF COMMISSION RULES**

**EXPEDITED ACTION REQUESTED**

**Clayton County, Georgia  
FRN 0001823434  
Petitioner**

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## **I. INTRODUCTION**

Clayton County, Georgia, respectfully requests that the Federal Communications Commission ("FCC") grant a waiver of 47 C.F.R. § 90.209(b) for the radio licenses listed in Exhibit A to migrate to narrowband (12.5 kHz or narrower) technology. Clayton County is in the process of replacing its entire existing communications system to a new 700MHz digital simulcast trunked radio network that is capable of meeting current and future communication needs, will improve operations and services, and will satisfy the FCC's narrowbanding requirement. Although Clayton County has worked diligently and in good faith to complete this project as quickly as possible, it will not be able to complete its transition to the 700 MHz system by January 1, 2013, due to the scope and complexity of the project. As set forth herein, the transition is expected to be complete by December 31, 2013. Therefore, Clayton County respectfully requests a waiver through December 31, 2013, in order to make this transition.

## **II. BACKGROUND INFORMATION**

Clayton County is within the five-county core of the Atlanta Metropolitan Area, and is the county in which most of Hartsfield-Jackson Atlanta International Airport lies. There are eight municipalities within Clayton County, and, as of the 2010 census, Clayton County had a total population of 259,424.

Clayton County's existing communications systems consist of both analog VHF and UHF repeaters and simplex base stations. The backbone infrastructure consists of one Main Site and five Remote Receiver sites. These five Remote Receiver sites are connected back to the Main Site via antiqued LOS microwave links and expensive leased telephone lines. In addition, the Clayton County Justice Complex has dedicated VHF repeaters and base stations for internal use. A significant amount of existing VHF and UHF system equipment is not narrowband capable, including repeaters, base stations, mobiles, and portable radios. Consequently, the current system is not narrowband capable as-is and must be either replaced or upgraded.

## **III. CLAYTON COUNTY'S NARROWBANDING PLAN**

In order to modernize its system, improve the efficiency of its operations and services, and comply with the FCC's narrowbanding requirement, Clayton County is replacing its entire existing communications system with a new APCO Project-25 Phase I compliant 700MHz digital simulcast trunked radio network. This new 700 MHz system will allow Clayton County to meet its current and future communications needs, and comply with the FCC's narrowbanding requirement as well. The new radio network also will serve as the infrastructure for many of the municipalities within Clayton County that operate their own public safety agencies and radio communications systems.

Clayton County's work toward transitioning to narrowband operations through the new 700 MHz radio system began in September 2007 when the Director of Information Technology

proposed the new 700 MHz radio system to the Board of Commissioners. In order to fund the new 700MHz radio system, Clayton County held a special election on February 5, 2008, to vote on a Special Purpose Local Option Sales Tax ("SPLOST") referendum, which would impose an additional 1% sales tax over a five year period on all sales within Clayton County in order to raise money for designated projects, including the new 700 MHz system. Voters approved the SPLOST and the election results were certified on April 1, 2008. Collections toward the new 700 MHz radio system under the SPLOST began on March 1, 2009. As a result of the SPLOST, \$23 million will be available to fund the development and implementation of the new 700 MHz radio system.

As funding through the SPLOST became available, Clayton County appointed a Public Safety Digital Network ("PSDN") Committee to oversee the development and implementation of the new 700 MHz radio system. The PSDN Committee began meeting on a regular basis in September 2010. The PSDN Committee identified possible radio tower sites and, in March 2011, hired an experienced radio engineering consultant to assist in the development and implementation of the new 700MHz radio system, including providing information regarding voice and data developments, practices and trends; serving as technical liaison between Clayton County, applicants and grantees, equipment manufacturers, and distributors as well as other related parties and support for policy, protocol and agenda setting for the PSDN Committee.

The PSDN Committee prepared several drafts of a Request for Proposal ("RFP") that ultimately was released to the public on September 21, 2011, seeking bids for the development and implementation of the new 700 MHz radio system. Unfortunately, due to unexpected legal issues that required revision, the RFP had to be placed on hold. The RFP was re-released on November 18, 2011.

Two bid proposals were submitted to Clayton County in response to the RFP. The Board of Commissioners is currently evaluating the proposals and needs appropriate time to award the RFP and negotiate a contract before development and implementation of the new 700 MHz system can begin. The Board of Commissions will reach a decision by July 3, 2012 and the development and implementation of the new 700 MHz system is expected to begin by August 2012. Both bid proposals set forth development and implementation schedules of approximately 13 months. Therefore, Clayton County expects to complete its transition to the new 700 MHz system, and hence its migration to narrowband technology, by no later than December 31, 2013.

Consequently, Clayton County respectfully requests a waiver of 47 C.F.R. § 90.209(b) for the radio licenses listed in Exhibit A through December 31, 2013. Once Clayton County completes its transition to the new 700MHz radio network, it will relinquish the radio frequencies listed in Exhibit B. It will, however, retain the frequencies listed in Exhibit C, which will be operated in conjunction with the 700MHz radio network.

#### IV. A WAIVER OF THE CURRENT DEADLINE IS WARRANTED

Clayton County is aware of the high level of scrutiny given to any request for waiver, but respectfully submits that a waiver of the current narrowbanding deadline is warranted under the circumstances present here. As courts have recognized, “[a]n application for waiver has an appropriate place in the discharge by an administrative agency of its assigned responsibilities. The agency’s discretion to proceed in difficult areas through general rules is intimately linked to the existence of a safety valve procedure for consideration of an application for exemption based on special circumstances.” *WAIT Radio v. F.C.C.*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

Thus, section 1.925 of the FCC’s rules provides that the FCC may grant a waiver if “(i) 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 (ii) in view of unique or unusual factual 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.” 47 C.F.R. § 1.925(b)(3). Here, a waiver of the current narrowbanding deadline is warranted because both of these elements are present.

First, a waiver is warranted because applying the current narrowbanding deadline under the circumstances present here would not serve, but actually frustrate, the FCC’s rules. In this regard, the Supreme Court has explained that “a general [FCC] rule, deemed valid because its overall objectives are in the public interest, may not be in the ‘public interest’ if extended to an applicant who proposes a new service that will not undermine the policy, served by the rule[.]” *F.C.C. v. WNCN Listeners Guild*, 450 U.S. 582, 611 (1981) (quoting *WAIT Radio*, 418 F.2d at 1157). Here, the purpose of mandatory narrowbanding is to promote more efficient use of the VHF and UHF land mobile bands by operating on narrower channel bandwidths, thereby making new channels available for licensing by parties who need them. As part of this transition, “[i]t also is hoped that the narrowband conversion will spur the development and use of new technologies that will further promote efficient spectrum use, be less susceptible to interference, and provide licensees with enhanced capabilities.” *FCC Narrowbanding Mandate: A Public Safety Guide for Compliance*, available at [http://transition.fcc.gov/pshs/docs/clearinghouse/guidelines/Narrowbanding\\_Booklet.pdf](http://transition.fcc.gov/pshs/docs/clearinghouse/guidelines/Narrowbanding_Booklet.pdf).

Clayton County’s transition to a new 700MHz system does just this. In addition to allowing Clayton County to use narrowband channels, the new 700MHz system will provide greater protection against interference; allow for future expansion of Clayton County’s system; provide flexibility to use the 700 MHz system for a variety of applications, including voice, data, and video; and allow for interoperability with neighboring 800 MHz systems. Further, once Clayton County completes its transition to the new 700MHz system, it will relinquish all of the radio frequencies listed in Exhibit B, thereby making them available to others. Not granting a waiver would undermine these purposes of the narrowbanding requirement that are being served by Clayton County’s transition to the 700MHz system.

Second, a waiver is warranted because applying the current narrowbanding deadline under the circumstances present here would be inequitable, unduly burdensome, and contrary to the public interest. Applying the current narrowbanding deadline would punish Clayton County

for undertaking its transition to a new 700MHz system, and at the same time impede its transition to the new system, by forcing it to divert extensive financial and human resources to work on its existing system to make it narrowbanding-compliant by January 1, 2013, only to be dismantled and not used any further once Clayton County completes the new 700MHz system. Clayton County estimates that it would cost no less than \$1.2 million in pure equipment costs to temporarily upgrade its existing communications system to meet the current narrowbanding deadline, not to mention the additional labor costs involved in performing such work. Requiring Clayton County to narrowband in this manner, then subsequently decommission the newly narrow-banded system only a matter of months later would be highly contrary to the public interest. On the other hand, the increased efficiency and interoperability of the new 700MHz system will greatly serve the public interest. Thus, allowing Clayton County to temporarily continue operating on the UHF and VHF frequencies in the wideband mode while it completes this transition will further the FCC's goals by allowing Clayton County to focus its resources on completing the new 700MHz system as quickly as possible, thereby enhancing public safety by making the most effective and efficient communications systems available.

Clayton County further shows that it has worked diligently and in good faith to meet the FCC's narrowbanding requirement. It sought funding for the new 700MHz system through the SPLOST approved by voters in 2008 and, once sufficient funding became available through the SPLOST, issued a RFP on September 21, 2011 for development and implementation of the system. The new 700MHz system is a large and complex project that will require an expected 13 months to develop and implement once a contract is awarded and work begins. Clayton County is diligently reviewing the bids submitted in response to the RFP and needs appropriate time to evaluate the bids and negotiate a contract for this significant project before work begins. Clayton County submits that its efforts to date and the commitment it has shown to implementing the 700MHz system reflects its good faith efforts to meet the FCC's narrowbanding requirement.

In addition, Clayton County shows the FCC that there will be no impact on interoperability or mutual agreements with other licenses as a result of its proposed narrowbanding schedule. Moreover, Clayton County is the only county within the Atlanta Metropolitan Area that is still operating wideband (all surrounding counties have transitioned to 800 MHz systems). As such, Clayton County is not aware of any negative impact that would result to co-channel or adjacent channel operations as a result of it temporarily remaining on wideband frequencies until the new 700 MHz system is fully operational.

## V. CONCLUSION

For the reasons herein, Clayton County respectfully requests that the FCC grant a waiver of 47 C.F.R. § 90.209(b) through December 31, 2013, for the radio licenses listed in Exhibit A. As set forth herein, granting this waiver will serve the purposes of the narrowbanding requirement and the public interest, while not granting the waiver would be inequitable, unduly burdensome, and contrary to the public interest. This is not a request for an indefinite waiver, but one for a specific period of time based on the unique circumstances of Clayton County's replacement of its existing communications systems with a new 700MHz system. Accordingly,

the requirements for a waiver under 47 C.F.R. § 1.925 are satisfied, and Clayton County respectfully submits that its request should be granted.

Respectfully submitted,

**FREEMAN MATHIS & GARY, LLP**

*s/ David A. Cole*

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**EXHIBIT A**

Clayton County, Georgia  
Radio Authorizations For Which Waiver Is Sought

**PW – Public Safety Pool, Conventional**

<b>Call Sign</b>	<b>License FRN</b>	<b>Licensee Name</b>	<b>Frequency Assigned</b>
KB82185	0001823434	CLAYTON, COUNTY OF	453.0125 453.9875 458.0125 458.9875
KJP274	0001823434	CLAYTON, COUNTY OF	453.3000 458.3000 458.4000 453.4000
KNCG451	0001823434	CLAYTON, COUNTY OF	453.5250 458.5250 453.5000 465.3500 460.3500
KNCW943	0001823434	CLAYTON, COUNTY OF	155.3700 154.9050 158.7300 154.7100 154.9050 154.7400 154.9350 155.4750
KNDL919	0001823434	CLAYTON, COUNTY OF	458.4000
KNDT805	0001823434	CLAYTON, COUNTY OF	155.7600 153.8150 153.905 154.7100 155.0850 159.0450
KNNI699	0001823434	CLAYTON, COUNTY OF	155.3400
KSV692	0001823434	CLAYTON, COUNTY OF	458.3250 453.3250
KZO495	0001823434	CLAYTON, COUNTY OF	158.8950 158.9400 153.8150 153.9050
WNQE751	0001823434	CLAYTON, COUNTY OF	467.9500 467.9750 468.0000 468.0250 468.0500 468.0750 468.1000 468.1250 468.1500 468.1750 462.9500 462.9750 463.0000 463.0250 463.0500 463.0750 463.1000 463.1250 463.1500 463.1750
WNUA305	0001823434	CLAYTON, COUNTY OF	159.4350 151.1600

Call Sign	License FRN	Licensee Name	Frequency Assigned
WNUA851	0001823434	CLAYTON, COUNTY OF	155.0850 151.3250
WNWH878	0001823434	CLAYTON, COUNTY OF	154.2800
WNZC450	0001823434	CLAYTON, COUNTY OF	156.2400 154.0250 154.1000 155.0550 155.1000 155.1450
WPEG312	0001823434	CLAYTON, COUNTY OF	453.0875 458.0875
WPEK869	0001823434	CLAYTON, COUNTY OF	457.2750 452.2750
WPFE266	0001823434	CLAYTON, COUNTY OF	154.8450
WPKJ557	0001823434	CLAYTON, COUNTY OF	169.4450 169.5050 170.2450 170.3050 171.0450 171.1050 171.8450 171.9050
WPLF542	0001823434	CLAYTON, COUNTY OF	155.0550 150.9950 153.8150 159.0450
WPNP314	0001823434	CLAYTON, COUNTY OF	460.6000 460.6250 465.6000 465.6250
WPPU961	0001823434	CLAYTON, COUNTY OF	453.5250 458.5250
WPRG511	0001823434	CLAYTON, COUNTY OF	151.1600 153.8150 153.9050 154.7100 154.8450 154.9050 155.0850 155.8500 159.0450 154.1000 154.7250 156.0150
WPWF855	0001823434	CLAYTON, COUNTY OF	151.1600 153.8150 154.7100 155.08500 159.0450 153.9050
WQAP366	0001823434	CLAYTON, COUNTY OF	151.4900 159.3150

**EXHIBIT B**

Clayton County, Georgia  
Radio Frequencies To Be Relinquished

**PW – Public Safety Pool, Conventional**

<b>Call Sign</b>	<b>License FRN</b>	<b>Licensee Name</b>	<b>Frequency Assigned</b>
KB82185	0001823434	CLAYTON, COUNTY OF	453.0125 453.9875 458.0125 458.9875
KJP274	0001823434	CLAYTON, COUNTY OF	453.3000 458.3000 458.4000 453.4000
KNCG451	0001823434	CLAYTON, COUNTY OF	453.5250 458.5250 453.5000 465.3500 460.3500
KNCW943	0001823434	CLAYTON, COUNTY OF	158.7300 154.7100 154.7400 (Will retain VHF Public Safety Mutual Aid Frequencies which are part of this call-sign)
KNDL919	0001823434	CLAYTON, COUNTY OF	458.4000
KNDT805	0001823434	CLAYTON, COUNTY OF	155.7600 153.8150 153.9050 154.7100 155.0850 159.0450
KSV692	0001823434	CLAYTON, COUNTY OF	458.3250 453.3250
KZO495	0001823434	CLAYTON, COUNTY OF	158.8950 158.9400 153.8150 153.9050
WNUA305	0001823434	CLAYTON, COUNTY OF	159.4350 151.1600
WNUA851	0001823434	CLAYTON, COUNTY OF	155.0850 151.3250
WNZC450	0001823434	CLAYTON, COUNTY OF	156.2400 154.0250 154.1000 155.0550 155.1000 155.1450
WPEG312	0001823434	CLAYTON, COUNTY OF	453.0875 458.0875
WPEK869	0001823434	CLAYTON, COUNTY OF	457.2750 452.2750

Call Sign	License FRN	Licensee Name	Frequency Assigned
WPFE266	0001823434	CLAYTON, COUNTY OF	154.8450
WPLF542	0001823434	CLAYTON, COUNTY OF	155.0550 150.9950 153.8150 159.0450
WPNP314	0001823434	CLAYTON, COUNTY OF	460.6000 460.6250 465.6000 465.6250
WPPU961	0001823434	CLAYTON, COUNTY OF	453.5250 458.5250
WPRG511	0001823434	CLAYTON, COUNTY OF	151.1600 153.8150 153.9050 154.7100 154.8450 154.9050 155.0850 155.8500 159.0450 154.1000 154.7250 156.0150
WPWA510	0001823434	CLAYTON, COUNTY OF	453.6125 458.6125
WPWF855	0001823434	CLAYTON, COUNTY OF	151.1600 153.8150 154.7100 155.08500 159.0450 153.9050
WQAA874	0001823434	CLAYTON, COUNTY OF	154.8675 155.0175
WQAP366	0001823434	CLAYTON, COUNTY OF	151.4900 159.3150
WQBT832	0001823434	CLAYTON, COUNTY OF	453.4625 453.7125 453.8625 453.8875 453.4620 453.7125 453.8625 458.4625 458.7125 458.8625
WQFM644	0001823434	CLAYTON, COUNTY OF	154.7100 151.1825

**MW– Microwave Public Safety Pool**

Call Sign	License FRN	Licensee Name	Frequency Assigned
WNEU474	0001823434	CLAYTON, COUNTY OF	957.80
WNEU475	0001823434	CLAYTON, COUNTY OF	959.15
WNEU476	0001823434	CLAYTON, COUNTY OF	985.75

**EXHIBIT C**

Clayton County, Georgia  
Radio Authorizations To Be Retained

**PW – Public Safety Pool, Conventional**

<b>Call Sign</b>	<b>License FRN</b>	<b>Licensee Name</b>	<b>Frequency Assigned</b>
KNCW943	0001823434	CLAYTON, COUNTY OF	155.3700 154.9050 154.9050 154.9350 155.4750
KNNI699	0001823434	CLAYTON, COUNTY OF	155.3400
WNQE751	0001823434	CLAYTON, COUNTY OF	467.9500 467.9750 468.0000 468.0250 468.0500 468.0750 468.1000 468.1250 468.1500 468.1750 462.9500 462.9750 463.0000 463.0250 463.0500 463.0750 463.1000 463.1250 463.1500 463.1750
WNWH878	0001823434	CLAYTON, COUNTY OF	154.2800
WPKJ557	0001823434	CLAYTON, COUNTY OF	169.4450 169.5050 170.2450 170.3050 171.0450 171.1050 171.8450 171.9050