

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

In the Matter of)
)
CLAYTON COUNTY, GEORGIA)
Licensee of Station KNCW943)
)
CHEROKEE COUNTY, GEORGIA)
Licensee of Station WPBI872)

MEMORANDUM OPINION AND ORDER

Adopted: August 1, 2001

Released: August 3, 2001

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

I. INTRODUCTION

1. We have before us an ongoing interference conflict between Clayton County, Georgia (Clayton), licensee of Station KNCW943 and Cherokee County, Georgia (Cherokee), licensee of Station WPBI872. To date, the licensees have been unable to resolve the matter. Based upon our review and analysis of the information before us, we propose to modify both licenses in accordance with the recommendation of the Association of Public-Safety Communications Officials, International, Inc. (APCO), an FCC-certified frequency coordinating committee for public safety frequencies, so that both licensees may continue to operate without interfering with each other.

II. BACKGROUND

2. Both licensees are authorized to operate on frequency 158.730 MHz. Clayton has been licensed to operate on frequency 158.730 MHz for more than fifteen years. The Commission first authorized Cherokee to operate on the same frequency on December 22, 1992. APCO coordinated the applications for both Clayton and Cherokee. On July 28, 1994, Clayton was permitted to modify its license to add additional sites. Subsequently, Cherokee relocated Station WPBI872 under a license modification granted on February 22, 1996.¹ The distances between Cherokee and Clayton range from 40.14 to 49 miles. Clayton last renewed its license for Station KNCW943 on May 10, 1999.² Cherokee recently renewed its license for Station WPBI872 on January 24, 2001.³

¹ See License for Station WPBI872, FCC File No.9601D012777 (issued Feb. 22, 1996).

² See License for Station KNCW943, FCC File No. 9905R389113 (issued May 10, 1999).

³ See License for Station WPBI872, FCC File No.0000340195 (issued Jan. 23, 2001).

3. On July 13, 1998, Clayton requested that the Commission's field office in Atlanta, Georgia investigate interference on frequency 158.730 MHz.⁴ The Complaint states that Clayton's mobile units are experiencing interference from Cherokee's mobile units.⁵ The Complaint alleges that the interference is so severe that adversely affects the ability of Clayton's police officers to receive emergency dispatch information.⁶ On September 4, 1998, Clayton submitted a grievance to APCO regarding the interference on frequency 158.730 MHz.⁷ Cherokee filed a counter-complaint with APCO on September 8, 1998.⁸

4. In response, APCO offered recommendations that would allow Clayton and Cherokee to cooperatively mitigate or eliminate the interference. APCO explained that the coverage for Clayton's Station KNCW943 extended beyond its jurisdictional boundaries due to excessive Effective Radiated Power (ERP) on all frequencies.⁹ APCO recommended that Clayton reduce (i) the power on frequency 158.730 MHz from 475 watts ERP to 75 watts ERP at all locations and (ii) the antenna height for transmitting on the subject frequency from 83 meters to 50 meters at its location at 7946 North McDonough Street, Jonesboro, Georgia.¹⁰ APCO explained that, under its recommendation, Clayton would still enjoy full coverage of the entire county.¹¹ APCO also noted that Section 90.205 of the Commission's Rules¹² precludes a licensee from using more power than actually necessary for satisfactory operation of its station.¹³ With regard to Cherokee, APCO recommended that it (i) maintain its antenna height at 93 meters but redirect the antenna away from Clayton with a downward angle of two degrees and (ii) increase its power from 75 watts ERP to 100 watts ERP.¹⁴ Thereafter, APCO referred the matter to the Commission for further action on November 17, 1998.¹⁵

⁴ See Letter from Brett W. Lavender, Technical Support Manager, Clayton County Communications Department, to Fred Broce, FCC, Atlanta District Office (July 13, 1998) ("Complaint").

⁵ See *id.*

⁶ See *id.*

⁷ See Letter from George Johnson, AFC Staff Advisor, APCO Automated Frequency Coordination, Inc., to Brett Lavender, Clayton County and Mike Malone, Cherokee County 1 (Sept. 25, 1998) ("APCO Letter").

⁸ See *id.*

⁹ See *id.*

¹⁰ See *id.* at 1-2.

¹¹ See *id.* at 2.

¹² 47 C.F.R. § 90.205.

¹³ See APCO Letter at 1.

¹⁴ See *id.* at 2.

¹⁵ See Letter from Christine Phelps, AFC Manager, APCO to Riley Hollingsworth, Compliance and Information Bureau 1-2 (Nov. 17, 1998).

5. On December 14, 1998, engineers from the Commission's Atlanta Field Office inspected the transmission facilities for both licensees.¹⁶ They concluded that the interference was due to the two repeater stations involved being located too close together (i.e., forty-five miles apart).¹⁷ In a letter to both parties, dated May 11, 1999, the Chief, Licensing and Technical Analysis Branch ("Branch"), Public Safety and Private Wireless Division required Clayton and Cherokee to provide detailed information explaining the measures undertaken by the parties to resolve this matter.¹⁸ The parties indicated that they were still experiencing interference.¹⁹ In separate letters, dated September 21, 1999, the Branch directed Clayton and Cherokee to contact the other respective party to discuss this matter and to submit a progress report to the Branch within forty-five days.²⁰ Subsequent correspondence with Clayton and Cherokee indicated that APCO's recommendations were still not entirely adopted by either party and that the subject interference continued at that time.²¹ However, the parties also appeared to be committed to working together to resolve the problem.²²

6. As neither the Commission nor APCO has received any recent interference complaints from either Clayton or Cherokee,²³ we contacted the parties in May 2001 to ascertain the status of the subject interference conflict.²⁴ Cherokee responded on June 5, 2001 and stated that it no longer experiences

¹⁶ See Memorandum from Fred L. Broce, District Director, Atlanta Field Office to Riley Hollingsworth, Compliance and Information Bureau 1 (Dec. 22, 1998).

¹⁷ See *id.* at 3.

¹⁸ See Letter from Mary M. Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, to Brett W. Lavender, Clayton County and Robert J. Chester, Cherokee County (May 11, 1999).

¹⁹ See Letter from R. Mark Mahler, County Attorney, Cherokee County, to Mary M. Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division (filed May 28, 1999); Letter from Tom D. Foster, Clayton County, Project Manager, to Mary M. Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division (filed June 14, 1999).

²⁰ See Letter from Mary M. Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, to Tom D. Foster, Project Manager, Clayton County (Sept. 21, 1999); Letter from Mary M. Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, to R. Mark Mahler, Cherokee County (Sept. 21, 1999).

²¹ See Letter from Brett W. Lavender, Technical Support Manager, Clayton County Communications Department, to Mary M. Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division (filed Nov. 8, 1999) ("Clayton November 1999 Letter"); Letter from R. Mark Mahler, County Attorney, Cherokee County, to Mary M. Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division (filed May 1, 2000) ("Cherokee May 2000 Letter").

²² See Cherokee May 2000 Letter at 1 (noting that Cherokee was awaiting the results of interference tests previously conducted by Clayton); Clayton November 1999 Letter at 1 (explaining that Clayton decided to "schedule a meeting with Mark Mahler, Cherokee County Attorney to review with him our situation and present to him our recommendation for a course of action.").

²³ Telephone Conversation with Farokh Latif, AFC Engineer, APCO (May 23, 2001).

²⁴ Telephone Call to R. Mark Mahler, County Attorney, Cherokee County (May 24, 2001) (voice mail); Telephone Call to Brett W. Lavender, Technical Support Manager, Clayton County Communications Department (May 24, 2001) (voice mail).

interference from Clayton.²⁵ Cherokee noted that the parties have not been in contact for a substantial period of time and that Clayton has not raised any further interference complaints with Cherokee.²⁶ We notified Clayton of the content of the above conversation via voice mail on June 5, 2001.²⁷ Clayton replied on June 14, 2001 and informed us that it still experiences substantial interference from Cherokee.²⁸ Consequently, as we discuss below, we believe Commission action is necessary to resolve this post-licensing conflict.

III. DISCUSSION

7. As an initial matter, we note our concern that these two public safety licensees have been unable to resolve this interference matter for a protracted period of time. While the issuance of licenses to Clayton and Cherokee did not violate any Commission rule, given the inability of the parties and APCO to resolve the matter despite extensive efforts, we believe Commission action is warranted. We believe that Section 316(a)(1) of the Communications Act of 1934, as amended, provides the appropriate vehicle for resolving this matter.²⁹ Section 316(a) permits the Commission to modify a station license if the action will promote the public interest, convenience, and necessity.³⁰ In this connection, we note that the proposed modifications would serve the public interest by allowing Clayton and Cherokee to operate their respective public safety communications systems without interfering with one another.

8. We propose to modify the station licenses now held by Clayton and Cherokee in order to eliminate the interference problem. APCO, the certified frequency coordinator for these frequencies, has recommended these changes. For Clayton's Station KNCW943, we propose to change its ERP of 475 watts to 75 watts at all locations and to reduce the authorized antenna height for transmitting on the subject frequency from 83 meters to 50 meters at its location at 7946 North McDonough Street, Jonesboro, Georgia. For Cherokee's Station WPBI872, we propose that the license be modified to require the use of an antenna with a 5dB gain antenna with the primary lobe facing away from Clayton with a mechanical beam tilt of minus two degrees. We would also increase Cherokee's ERP from 75 watts to 100 watts.

9. In accordance with Section 1.87(a) of the Commission's Rules,³¹ we will not issue modification orders until Clayton and Cherokee have received notice of our proposed action and have had an opportunity to interpose a protest. To protest the modification, Clayton or Cherokee must, within thirty days of the release date of this *Memorandum Opinion and Order*, submit a written statement with sufficient evidence to show that the modification would not be in the public interest. The protest must be

²⁵ Telephone Conversation with Cindy Ward, Director of Cherokee County 911 (June 5, 2001) (returning Branch's telephone call at the request of R. Mark Mahler).

²⁶ *See id.*

²⁷ Telephone Call to Brett W. Lavender, Technical Support Manager, Clayton County Communications Department (June 5, 2001) (voice mail).

²⁸ Telephone Conversation with Brett W. Lavender, Technical Support Manager, Clayton County Communications Department (June 14, 2001).

²⁹ 47 U.S.C. § 316(a)(1).

³⁰ *Id.*

³¹ 47 C.F.R. § 1.87(a).

filed with the Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., Room TW-A325, Washington, D.C. 20554. If no protest is filed, Clayton and Cherokee will have waived their right to protest the modification and will be deemed to have consented to the modification of their license.

10. Accordingly, pursuant to Sections 4(i) and 316(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 316(a), and Section 1.87 of the Commission's Rules, 47 C.F.R. § 1.87, IT IS PROPOSED that the license for Station KNCW943, held by Clayton County, Georgia, BE MODIFIED to change its ERP of 475 watts to 75 watts at all locations and to reduce the authorized antenna height for transmitting on frequency 158.730 MHz from 83 meters to 50 meters at its location at 7946 North McDonough Street, Jonesboro, Georgia.

11. IT IS FURTHER PROPOSED, pursuant to Sections 4(i) and 316(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 316(a), and Section 1.87 of the Commission's Rules, 47 C.F.R. § 1.87, that the License for Station WPBI872 held by Cherokee County, Georgia, BE MODIFIED to increase the ERP from 75 watts to 100 watts and to require the use of an antenna with a 5dB gain antenna with the primary lobe facing away from Clayton with a mechanical beam tilt of minus two degrees.

12. IT IS ORDERED that copies of this *Order* shall be sent by Certified Mail, Return Receipt Requested, to Bret W. Lavender, Technical Support Manager, County of Clayton, 1383 Government Circle, Jonesboro, Georgia 30236; and to R. Mark Mahler, County Attorney, County of Cherokee, 90 North Street, Suite 310, Canton, Georgia 30114.

13. These actions are taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

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