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May 9, 2008

Julius P. Knapp, Chief
Office of Engineering and Technology
Federal Communications Commission
445 12th Street, SW – 7th Floor
Washington, DC 20554

**Re: File No. 0692-EX-PL-2007
DA 07-1946**

Dear Mr. Knapp:

On behalf of the Association for Maximum Service Television, Inc. (“MSTV”), we are writing in response to your letter of April 24, 2008, in which you advised MSTV of the grant of the above-referenced application for an experimental license filed by Clarity Media Systems, LLC (“Clarity”).

In the letter, you state that “[b]ased on the information before us, the proposed experimental license...is not expected to cause harmful interference.”¹ We respectfully request that OET explain what is “the information before us” that is the factual basis for this conclusion and that it place this information in the record for both of the above-referenced dockets.

In its decision denying Clarity’s CARS applications and waiver requests, the Media Bureau cited the risk of harmful interference as one of the reasons that Commission policy and procedure necessitated denial of the applications and waivers.² OET’s conclusion conflicts with the Media Bureau’s decision. This is particularly confusing given that MSTV has demonstrated that the TSB-10-F standard is the appropriate interference methodology to apply in this case, and that using this methodology, Clarity’s proposed operations will cause harmful

¹ See Letter from Julius P. Knapp, Federal Communications Commission, to David Donovan, MSTV (April 24, 2008), at 2.

² See *Waiver Requests By Clarity Media Systems, LLC To Operate CARS Stations At Flying J Travel Plazas*, Order, DA 07-1946, 22 FCC Rcd 8382, at paras. 10-13 (May 3, 2007).

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interference to BAS/ENG operations.³ If OET prepared technical studies contrary to MSTV's engineering analyses, or if it relied on studies submitted or presented by Clarity (which MSTV has not seen), then OET should release them for public review and comment.⁴ We believe that this request is consonant with the D.C. Court of Appeal's recent observation that "[w]here... an agency's determination is based upon a complex mix of controversial and uncommented upon data and calculations, there is no APA precedent allowing an agency to cherry-pick a study on which it has chosen to rely in part."⁵

We also ask that the license be modified to specify the maximum power that Clarity sought in its application.⁶ The experimental license provides for a maximum power of 0.5 W effective radiated power ("ERP") per each 6 MHz channel. Clarity's CARS applications, which were denied by the Media Bureau, requested authority to operate at 0.5 W ERP. We believe that OET should hold Clarity to the representations made in the application for the experimental license (*i.e.*, that Clarity could perform the experiment with 50 mW per channel). An authorization for 0.5 W is ten times the power that Clarity represented as the maximum per-channel power necessary for its experiment, and it creates an undue risk of interference to critical BAS/ENG operations.

Finally, we note and hereby preserve for the record in both of the above-captioned proceedings the arguments that MSTV raised in its "Comment On The Interrelationship Between Clarity's Experimental Application And The Media Bureau's Denial Of Clarity's Waiver Requests" ("Comment"). MSTV filed the Comment on April 22, 2008. The OET's decision to grant the experimental license the next day does not address the issues set forth in the Comment. We therefore expressly preserve the ability to argue the points made in that filing before the full Commission in connection with Clarity's Application for Review, in which proceeding that Comment was also filed.

³ See, e.g., the Engineering Statement attached as Attachment B to MSTV's Petition to Deny, File No. 0692-EX-PL-2007 (filed Feb. 6, 2008); see also the Engineering Statement attached to MSTV's Opposition to Motion to Strike (filed Feb. 22, 2008).

⁴ OET, in the letter of April 24, 2008, determined to treat this proceeding as a "permit but disclose" proceeding. Prior to that determination, it was a restricted proceeding. MSTV believes that Clarity was not treating it as such. MSTV filed its opposition to the experimental license on February 6, 2008. In April, MSTV received notices that Clarity met with the staff on February 20, 2008 and March 5, 2008 to discuss the experimental license application.

⁵ *American Radio Relay League, Inc. v. FCC*, No. 06-1343, 2008 WL 1838387, at *7 (D.C. Cir. April 25, 2008) (citations and quotation marks omitted).

⁶ See 47 C.F.R. § 5.83 (providing that recipients of experimental licenses accept such licenses with the "express understanding" that "said grant is subject to change or cancellation by the Commission at any time without hearing if in its discretion the need for such action arises").

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Sincerely yours,

A handwritten signature in black ink, appearing to read "Jonathan D. Blake".

Jonathan D. Blake
Eve R. Pogoriler

*Counsel to the Association for
Maximum Service Television, Inc.*

cc:

Matthew Berry, General Counsel
Marilyn Sonn, Assistant General Counsel
Ajit Pai, Deputy General Counsel

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CERTIFICATE OF SERVICE

I, Kathryn Bowers, a secretary at the law firm of Covington & Burling LLP, do hereby certify that on this 9th day of May, 2008, I caused a copy of the foregoing letter to be sent via first-class U.S. Mail, postage prepaid, to the following:

Hon. Kevin J. Martin, Chairman
Elizabeth Andrion, Acting Legal Advisor for Media Issues
Federal Communications Commission
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Washington, D.C. 20554

Hon. Michael J. Copps, Commissioner
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Federal Communications Commission
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Hon. Jonathan S. Adelstein, Commissioner
Rudy Brioché, Legal Advisor for Media Issues
Federal Communications Commission
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Hon. Deborah Taylor Tate, Commissioner
Chris Moore, Legal Advisor
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Federal Communications Commission
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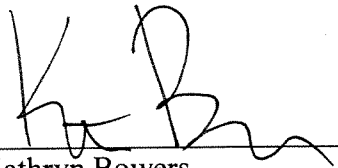
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