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Federal Communications Commission
Office of the Secretary

December 3, 2009

BY HAND DELIVERY

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Written Ex Parte Presentation: DA 07-1946

Dear Ms. Dortch:

The Association for Maximum Service Television, Inc. ("MSTV")¹ hereby responds to the recent presentations made by Clarity Media Systems, LLC ("Clarity") in this proceeding.² Clarity proposes a pay, wireless cable service in a spectrum band that the Commission has reserved for electronic news gathering ("ENG") of emergency and other breaking news stories by local television stations (as well as relay services by cable operations and other backhaul microwave operations). Clarity's wireless cable service would risk interfering with these services, to the detriment of the public, and the Media Bureau appropriately denied Clarity's proposal. Pending before the Commission at this time is Clarity's Application for Review of the Media Bureau's denial. MSTV takes this opportunity to set the record straight on several issues.

The Media Bureau has appropriately determined that Clarity's proposal would not be in the public interest.³ Clarity proposes to use all of local broadcasters' ENG frequencies to transmit 70 channels of programming. The Bureau noted that Clarity's use of the 2 GHz band would leave no room for broadcasters to switch to a different ENG channel if Clarity caused

¹ MSTV is a nonprofit trade association of local broadcast television stations committed to achieving and maintaining the highest technical quality for the local broadcast system.

² See "Driver Presentations in DA-1946; Clarity Media Systems, LLC" and "Presentations from Safety Advocates in DA 07-1946" (both filed Nov. 23, 2009).

³ See *In the Matter of Waiver Requests by Clarity Media Systems, LLC to Operate CARS Stations at Flying J Travel Plazas*, Order, DA 07-1946, 22 FCC Rcd 8382 (2007) ("Denial Order").

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interference.⁴ It also pointed out that “the underlying purpose of the Part 78 CARS rules would not be served by grant of this request. In essence, Clarity has requested that the Commission waive the rules that form the foundation of the CARS regulatory framework.”⁵ The Media Bureau recognized that “the public interest is better served by ensuring that viewers are able to receive breaking local news, including natural and unnatural disasters, and coverage of live events through the services provided by the primary users of the 2025 to 2110 MHz band.”⁶ These conclusions were and remain correct, not, as Clarity would have it, “shockingly unbalanced.”⁷

Clarity’s recent filings reiterate the point that one of its 70 channels would provide Amber Alert information. But Clarity’s service would compromise public safety interests: it would operate on the entire spectrum band used by local broadcasters to cover emergencies and other on-location breaking news events. Interference from a Clarity site could cause the ENG teams covering a fire, shooting, toxic spill, bridge collapse, kidnapping, or other emergency to lose contact with their respective base stations—wiping out an entire community’s ability to learn important facts quickly and clearly. The Media Bureau correctly concluded that providing an additional method of distributing Amber Alerts “at the risk of interfering with broadcast station coverage that is distributing the same alerts to a much wider audience is not prudent.”⁸

MSTV is sympathetic to the desire expressed by truckers for another entertainment option during mandatory rest periods. But that desire is not compelling enough to

⁴ See Denial Order at para. 14.

⁵ See *id.* at para. 9.

⁶ See *id.* at para. 14.

⁷ See Application for Review of Clarity Media Systems LLC, at ii (June 4, 2007). Although Clarity has since proposed alterations to its system, MSTV and the National Association of Broadcasters (“NAB”) have shown that its system still would cause harmful interference to ENG receives located up to 30 kilometers outside the fence line of the parking lots in which the system is proposed to be used. See “Opposition of MSTV and NAB to the Request of Clarity Media Systems LLC,” DA 07-1946 (Aug. 21, 2008) (“MSTV and NAB Opposition”). See also MSTV’s *ex parte* filing dated Sept. 26, 2008.

⁸ See Denial Order at para. 14. See also *id.* at para. 12 (noting that “emergency information is critical in real-time”). Relatedly, the comments from the truckers themselves indicate that they anticipate using Clarity’s proposed service for entertainment purposes; it is not clear how many truckers would use their “down time” to watch the Amber Alert channel.

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risk interference to broadcasters' ENG operations. And Clarity's proposed services can already be delivered without the use of these frequencies.⁹

MSTV has articulated its procedural concerns many times in this proceeding, and will not restate them in detail here, other than to note the basic principle that the Commission should not tolerate a request for a nationwide, non-conforming use that would require waiver of nearly a dozen CARS rules.¹⁰ A reallocation of this spectrum, if any, should be considered in a rulemaking proceeding that provides notice to the public and opportunity for comment.¹¹ It is not only local broadcasters that are concerned by Clarity's proposals. Cable operators have objected to Clarity's proposal,¹² as have licensees with operations on channels adjacent to the CARS/ENG band.¹³ And the many filings made by first responders in the FCC's "white spaces" proceeding illustrate the importance of protecting local broadcasters' ability to provide emergency alerts and other public safety information.¹⁴ A rulemaking proceeding also would provide an opportunity to assess the Media Bureau's concern that other entities providing rest

⁹ See Denial Order at para. 15 (pointing out that Clarity "could purchase spectrum at auction, pursue using unlicensed spectrum, install cable at its truck stops, or negotiate spectrum leases," and rejecting the costs and burdens of seriously pursuing these alternatives as sufficient grounds to justify the waivers that Clarity seeks). See also MSTV's "Comment on the Interrelationship Between Clarity's Experimental Application and the Media Bureau's Denial of Clarity's Waiver Requests," DA 07-1946 and FCC File No. 0692-EX-PL-2007 (April 22, 2008) ("April 22, 2008 Letter") at n.13-14 (identifying several spectrum and non-spectrum alternatives).

¹⁰ See, e.g., April 22, 2008 Letter at Attachment A (identifying eleven Part 78 rules that would need to be waived, including rules explicitly prohibiting use of CARS spectrum to deliver multi-channel video service to viewers, limiting CARS licensees to relay services, limiting eligibility to certain categories of licensees, requiring frequency coordination, and specifying a maximum bandwidth one-seventh that proposed by Clarity). See also MSTV and NAB Opposition at 9-15 (addressing certain procedural arguments in more detail).

¹¹ See 47 C.F.R. § 2.102(b) (stating that exceptions to allocations may be made without rulemakings only "on a temporary basis" for "projects of short duration or emergencies"); 47 C.F.R. § 2.102(a) (requiring frequency assignments, licensing, and actual usage to be in accordance with the Table of Frequency Allocations).

¹² See Reply Comments of the National Cable & Telecommunications Association, at 3 (Oct. 23, 2006) (explaining that Clarity's always-on service that uses virtually all of the channels within the 2 GHz BAS band would "simply ensure that, in certain locations, a significant swath of spectrum is *never* available for use, even if late-breaking news occurs in or near those locations").

¹³ MetroPCS became involved in this proceeding when it determined that Clarity's proposal raised interference concerns for MetroPCS's AWS-1 operations.

¹⁴ See MSTV's "Written Ex Parte Presentation: DA 07-1946" (Nov. 7, 2008).

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and recreation services could request me-too waivers, exacerbating interference concerns and further confirming that a rulemaking would be the appropriate context in which to consider Clarity's claims.¹⁵

Clarity asks the Commission to overrule the Media Bureau's considered judgment, create a new allocation process that would bypass notice-and-comment rulemaking and consideration of alternative uses and spectrum, and authorize by waiver a nationwide service that would compromise critical ENG services. Clarity's proposed service would compromise public safety by occupying the entirety of the spectrum band used by local broadcasters for critical ENG operations. The Commission should not permit the risk of potential interference to such operations in order to provide Clarity with the opportunity to provide a wireless cable entertainment service to truckers. The Commission should protect the public and affirm the Media Bureau's decision.

Respectfully submitted,



Jonathan D. Blake
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Maximum Service Television, Inc.*

cc: Hon. Julius Genachowski and Sherrese Smith, Esq.
Hon. Michael Copps and Mr. Joshua Cinelli
Hon. Robert McDowell and Angela Giancarlo, Esq.
Hon. Meredith Attwell Baker and Brad Gillen, Esq.
Hon. Mignon L. Clyburn and Richard Kaplan, Esq.
William Lake, Esq.
Mr. Julius Knapp
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¹⁵ See Denial Order at n.42 (observing that "similar service waivers could come from other chains of truck stop travel plazas, RV parks, campgrounds, etc., adding hundreds and perhaps thousands of potential new users which would further restrict viability of the 2 GHz band for ENG use").