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October 9, 2007

BY HAND DELIVERY

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

Re: Denial of 257 Applications for CARS Licenses and Related
Waiver Requests of Clarity Media Systems, LLC (DA 07-1946)

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. §1.1206, this letter reports on an *ex parte* meeting concerning the above-referenced proceeding. At the request of Roy Stewart, Senior Deputy Chief of the Media Bureau, representatives of the Association for Maximum Service Television, Inc. ("MSTV"), National Association of Broadcasters ("NAB"), ABC Television Network, Society for Broadcast Engineers, McGraw-Hill Broadcasting Company, Meredith Corp., Gannett Co., Inc., Belo Corp., Lincoln Financial Media, Liberman Broadcasting, Inc., and Landmark Communications, Inc. (collectively, the "Broadcast Representatives")¹ and Clarity Media Systems, LLC ("Clarity Media") attended a meeting at the Commission on Friday, October 5, 2007. Commission representatives included Mr. Stewart, John Wong, Sarah Mahmood, Keith Larson, and John Gabrysch of the Media Bureau and Julius Knapp, Ron Chase, Bruce Romano, and Ira Keltz of the Office of Engineering and Technology ("OET").

One day prior to the meeting, the Bureau provided the attached agenda to the parties. Messrs. Stewart and Wong instructed that the discussion be limited to the 29 technical questions included in that agenda.

¹ The Broadcast Representatives included David Donovan (MSTV), Victor Tawil (MSTV), Larry Walke (NAB), Tom Davidson (Akin Gump, counsel to ABC), Bill Beam (ABC), Scott Patrick (Dow Lohnes, counsel to McGraw-Hill Broadcasting Co. and Meredith Corp.), Marnie Sarver (Wiley Rein, counsel to Gannett Co., Inc., Belo Corp., Lincoln Financial Media, Liberman Broadcasting, Inc., and Landmark Communications, Inc.), Jerome Kalke (SBE), Howard Fine (SBE), Dane Ericksen (SBE), and the undersigned (Covington & Burling LLP, counsel to MSTV).

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First, during the meeting it was revealed that in its filings and *ex parte* meetings, Clarity Media has consistently failed to take account of the link budget and related technical showings filed by MSTV over twelve months ago. Indeed, as recently as Sept. 6, 2007, in a signed statement to the Commission, Clarity Media incorrectly asserted that “there were no link budgets, credible broadcaster-supplied technical analyses, or any other of the usual types of submissions that are proffered to bolster claims of the potential for interference from those who claim they would be victimized by Clarity.”² At the meeting on Friday, Clarity Media reiterated this incorrect assertion, and the Bureau attendees pointed out Clarity Media’s serious omission in this regard. In fact, Clarity Media could easily have located MSTV’s link budget and related technical analysis by referring to the clearly labeled Engineering Statement in the Comments and Petition to Deny of MSTV and NAB, submitted on Sept. 22, 2006, and timely filed on Clarity Media and its counsel.³

Second, on the subject of testing, the Broadcast Representatives noted the absence from the technical agenda of the suitability of other spectrum bands for Clarity Media’s commercial, wireless cable service. Clarity Media has yet to carefully study such other bands. For example, in July, when the Bureau granted Clarity Media a 45-day extension of the pleading cycle in this proceeding so that it could study use of 5 GHz unlicensed spectrum,⁴ six working days later Clarity Media declared that band “incompatible” based on business considerations such as the desire for “regulatory protection against future spectrum uses.”⁵ Accordingly, the Broadcast Representatives urged that any future testing focus first and foremost on spectrum bands such as the 3.6 GHz nonexclusive bands, the 700 MHz, 1.7/2.1 GHz and 2.5 GHz licensed bands, and the 5 GHz unlicensed band that Clarity Media failed to consider in July.

Third, other topics discussed included:

- The three, preliminary demonstrations of Clarity Media’s wireless cable service, which failed to examine the extent to which acknowledged “noise” created by Clarity Media’s transmissions would degrade ENG capabilities;
- The complex coordination process which local television stations and national networks undertake in covering late-breaking news events;

² Letter from Howard A. Topel and Stephen D. Baruch, Counsel to Clarity Media to Julius Knapp, Chief, OET, at 2 (Sept. 6, 2007).

³ See Joint Comments and Petition to Deny of MSTV and NAB, DA 06-1664 (Sept. 22, 2006).

⁴ See *Application for Review of Waiver Requests by Clarity Media Systems, LLC*, Order, DA 07-1946 (July 6, 2007) (extending by 45 days the deadline for the filing of Clarity Media’s reply).

⁵ Letter from Howard A. Topel, Counsel to Clarity Media to Marlene H. Dortch, Secretary, FCC, Att. at 1, July 16, 2007.

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- Clarity Media's acknowledgement that it would not participate in such coordination given that it would occupy all ENG channels; and
- The challenges facing the Broadcast Representatives as the industry works to improve public safety communications by completing the transition to a narrower, digital BAS band plan.⁶

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As indicated above, no discussion was permitted of the legal and policy issues that compel denial of Clarity Media's pending Application for Review, notwithstanding that grant of the relief requested by Clarity Media would be unlawful.⁷

Please direct any questions concerning this matter to the undersigned.

Sincerely,



Matthew S. DelNero

cc: Howard A. Topel, *counsel to Clarity Media Systems LLC*
Roy Stewart
Julius Knapp
John Wong
Sarah Mahmood
Keith Larson
John Gabrysch

⁶ By relocating to the narrower, digital BAS band plan, broadcasters will free up spectrum for use by Sprint Nextel, which will relocate from the 800 MHz band and thereby address interference issues in that band, which is used extensively by the public safety community. *See Improving Public Safety Communications in the 800 MHz Band*, Report and Order, 19 FCC Rcd 14969 (2004). *See also* Joint Petition for Waiver of Sprint Nextel, MSTV, NAB and SBE, WT Docket No. 02-55, at 2-3 (Sept. 4, 2007) (explaining the need for additional time to complete the BAS transition and noting, "Given the dynamic channel coordination among multiple BAS licensees in a market, careful frequency and operational coordination is essential to preventing BAS service disruptions which can compromise homeland security and national emergency preparedness").

⁷ *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 (2007) ("In essence, Clarity has requested that the Commission waive the rules that form the foundation of the CARS regulatory framework"); Request of MSTV to Promptly Dismiss Defective Application for Review, DA 07-1946, at 2 (Sept. 25, 2007), *citing* 47 C.F.R. § 1.115(c) (requesting prompt dismissal of Clarity Media's Application for Review in light of its late-filed amendments to denied applications).

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Ron Chase
Bruce Romano
Ira Keltz