

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

RECEIVED - FCC

APR 25 2006

In the Matter of)
)
Clarity Media Systems LLC Request for)
Authority to Operate an MVPD Service in)
2 GHz Band)

Federal Communication Commission
Bureau / Office

To: Chief, Engineering Division, Media Bureau

EMERGENCY REQUEST

It has come to the attention of the Association for Maximum Service Television, Inc. ("MSTV") that Clarity Media Systems, LLC ("Clarity") recently sent Pre-Coordination Notices ("PCNs") to various licensees of Broadcast Auxiliary Service ("BAS") equipment, requesting pre-coordination in connection with its Community Antenna Relay Service ("CARS") applications. On its face, however, the supposed "CARS" service described by Clarity in its PCNs – a fixed, direct-to-consumer, multichannel video programming distribution ("MVPD") service – does not qualify for a CARS license.¹ Nor is Clarity, which is not a cable operator or owner, eligible to hold a CARS license.² Simply put, as a *relay service*, a CARS station license does not authorize the delivery of an MVPD service directly to consumers.

¹ See 47 C.F.R. § 78.11(a)(6)(ii) (prohibiting fixed use of 2 GHz spectrum by CARS licensees). See also *id.* at § 78.11 (defining permissible service of a CARS station). For example, Section 78.11(a) notes that CARS stations are authorized only to relay certain signals "intended for use by one or more cable television systems or other eligible systems."

² *Id.* at § 78.11(c) (providing that CARS station licenses may be issued only to "cable television owners or operators or other eligible system owners or operators, and to cooperative enterprises owned by cable television owners or operators or other eligible system owners or operators").

Indeed, Clarity's proposed MVPD service is so fundamentally different from a CARS service that any "CARS application" by it would, in effect, be a Petition for Rulemaking to authorize a new MVPD service in the congested 2 GHz band. It would be inappropriate to allow Clarity to proceed with pre-coordination as though it were preparing to file a routine CARS license when it in fact seeks revision of the Commission's rules.

Moreover, Clarity's pre-coordination activities come at a cost. In addition to their substantial day-to-day responsibilities, local broadcasters' engineering resources are stretched thin in connection with the relocation of BAS facilities to the new 2 GHz band plan. If Clarity is allowed to submit PCNs at this time, local broadcasters will need to undertake evaluation of likely interference from Clarity's new MVPD service, distracting them from the BAS relocation process. In light of this public interest harm, Clarity should thus only be allowed to submit PCNs to local broadcasters if it can first demonstrate good cause, via a Petition for Rulemaking, for introduction of a new MVPD service into the congested spectrum at 2025-2110 MHz.³

*

*

*

³ In addition to these immediate concerns, it bears mention that operation of Clarity's MVPD service in the 2 GHz band would undermine important electronic newsgathering and other services currently licensed in the band; MSTV will document these objections if and when Clarity files a Petition for Rulemaking or similar request.

To avoid unnecessary burden on local broadcasters and uphold the Commission's rules concerning CARS station licenses, MSTV respectfully requests that the Commission issue an Order directing Clarity to (1) cease and desist from sending PCNs to BAS licensees and (2) notify any broadcast licensee to which a PCN has been sent that the request is withdrawn.

Respectfully Submitted,



Jonathan D. Blake
Matthew S. DelNero
COVINGTON & BURLING
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2401

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

David Donovan
Victor Tawil
THE ASSOCIATION FOR MAXIMUM SERVICE
TELEVISION, INC.
4100 Wisconsin Avenue, N.W.
Washington, D.C. 20016

April 25, 2006

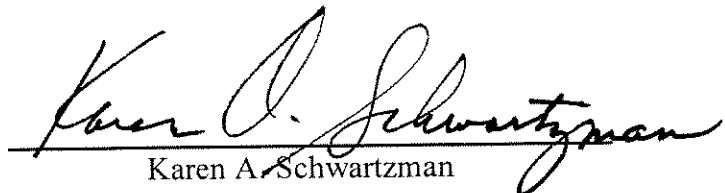
CERTIFICATE OF SERVICE

I, Karen A. Schwartzman, a secretary at the law firm of Covington & Burling, do hereby certify that on this 25th day of April, 2006, I caused a copy of the foregoing "Emergency Request" to be sent via first-class U.S. Mail, postage prepaid, to the following:

Clarity Media Systems, LLC
4185 Harrison Blvd.
Suit 301
Ogden, UT 84403

Howard A. Topel
Leventhal Senter & Lerman PLLC
2000 K Street, NW
Suite 600
Washington, DC 20006-1809
Counsel for Clarity Media Systems LLC

Wayne S. Reese
Munn-Reese, Inc.
385 Airport Drive - PO Box 220
Coldwater, MI 49036-0220
Engineering Consultant for Clarity Media Systems LLC


Karen A. Schwartzman