

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

FILED/ACCEPTED
SEP 24 2007
Federal Communications Commission
Office of the Secretary

In the Matter of)
)
Waiver Requests by Clarity Media) DA 07-1946
Systems, LLC to Operate 257 Wireless Cable)
Stations in the 2 GHz Spectrum Reserved for)
CARS and BAS Services)

To: The Commission

REQUEST TO PROMPTLY DISMISS DEFECTIVE APPLICATION FOR REVIEW

Pursuant to Section 1.115(c) of the Commission's Rules, the Association for Maximum Service Television, Inc. ("MSTV") files this Request for prompt dismissal of the above-captioned Application for Review ("AFR") of Clarity Media Systems, LLC ("Clarity Media"). Clarity Media's recent amendments to its 257 applications for CARS licenses cannot be taken up as the Commission reviews the Media Bureau's Order denying those applications.¹ The Commission's rules do not allow parties seeking review of a Bureau action to sneak in such late-filed amendments, which were filed via an *ex parte* letter that Clarity Media did not serve on parties to this proceeding and on which the public has had no notice or opportunity to comment.² Therefore, the Commission should not provide further consideration to Clarity Media's AFR.

On September 6, 2007, Clarity Media submitted to the Office of Engineering and Technology (1) previously undisclosed engineering data concerning its proposed operations, and

¹ 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).

² See *Ex Parte* Letter from Howard A. Topel, Counsel to Clarity Media to Julius Knapp, Chief, OET, Sept. 6, 2007.

(2) a “new formulation for power and antenna height” at which its wireless video transmitters would be allowed to operate in the 2 GHz BAS band if the Commission were to grant the AFR.³ Such an amendment to the underlying, denied applications that are the subject of the AFR violates Section 1.115(c) of the Commission’s rules, which provides, “No application for review will be granted if it relies on questions of fact or law upon which the designated authority has been afforded no opportunity to pass.”⁴

The Media Bureau exhaustively considered Clarity Media’s 257 applications and waiver requests based on hundreds of pages of information submitted by the applicant and the extensive record compiled by parties concerned with the interference Clarity Media’s proposed, wireless cable operations would cause to electronic newsgathering (“ENG”) services. Clarity Media cannot now ask the Commission to overturn the Bureau’s decision based on new facts the Bureau and the public had no opportunity to consider. As the Commission has explained, permitting a party to amend its denied applications during the AFR stage would “both contravene the provisions of Section 1.115(c) and undermine the public interest benefit in discouraging the filing of defective applications.”⁵ The relief Clarity Media seeks would also be “costly in terms

³ In describing its new formulation, Clarity Media “proposes that its authorizations be conditioned on producing a maximum signal level at the fence line of the subject parking area of no more than -62.65 dBm.” It also newly proposes that “[s]uch a maximum signal level requirement could be implemented in conjunction with a requirement that in no case shall the transmitted power level exceed 100 mW/channel and a further requirement that the maximum transmit antenna height above ground be 15 meters or less.” *Id.* at 5.

⁴ 47 C.F.R. § 1.115(c).

⁵ *Applications of Lifetalk Broadcasting Ass’n*, Memorandum Opinion and Order, 13 FCC Rcd. 15179, 15180-81 ¶ 6 (1998).


of Commission resources expended in analyzing new proposals without the benefits of prior staff review.”⁶

Clarity Media’s amendments are additionally defective because of its failure to serve them on parties to the Bureau and Commission proceedings. These parties include three broadcast trade associations, the cable industry’s largest trade association, at least nine television station groups, and NASA. The public at large, of course, has also been deprived notice of Clarity’s amendments and has had no opportunity to provide its views to the Commission.

* * *

In furtherance of the Commission’s rules, basic principles of administrative fairness, and conservation of Commission resources, MSTV respectfully requests that the Commission promptly dismiss the Application for Review of Clarity Media Systems, LLC.

Respectfully submitted,



Jonathan D. Blake
Matthew S. DelNero
COVINGTON & BURLING LLP
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2401
Tel: (202) 662-6000
Fax: (202) 662-6291

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

September 24, 2007

⁶ *Id.*

CERTIFICATE OF SERVICE

I, Reta Bezak, a legal assistant at the law firm of Covington & Burling LLP, do hereby certify that on this 24th day of September, 2007, I caused a copy of the foregoing "Request to Promptly Dismiss Defective Application for Review" to be sent via first-class U.S. Mail, postage prepaid, to the following:

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

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

Marc Klaas
KlaasKids Foundation
P.O. Box 925
Sausalito, CA 94966

W. Henry Boze
Vice President, Television Engineering
Lincoln Financial Media Company
5710 Midlothian Turnpike
Richmond, VA 23225

James R. Bayes
Jake Riehm
Wiley Rein & Fielding LLP
1776 K Street, NW
Washington, DC 20006
Counsel for Lincoln Financial Media Company

Marsha J. MacrBride
Jane E. Mago
The National Association of Broadcasters
1771 N Street, NW
Washington, DC 20036

Daniel L. Brenner
Michael S. Schooler
National Cable & Telecommunications
Association (NCTA)
25 Massachusetts Avenue, NW
Washington, DC 20001-1431

Ira Goldstone
Chief Technology Officer
Tribune Broadcasting
5800 Sunset Boulevard
Los Angeles, CA 90028

Susan L. Fox
Vice President, Government Relations
The Walt Disney Company
1150 Seventeenth Street, NW, Suite 400
Washington, DC 20036

Thomas P. Van Wazer
Sidley Austin LLP
1501 K Street, NW
Washington, DC 20005
*Counsel for Tribune Broadcasting and
the Dispatch Broadcast Group*

Molly Pauker
Vice President, Corporate & Legal Affairs
Fox Television Stations, Inc.
5151 Wisconsin Avenue, NW
Washington, DC 20016

William H. Gerstenmaier
Associate Administrator for Space Operations
NASA Headquarters
Washington, DC 20546-0001

Marvin Rosenberg
Charles R. Naftalin
Holland & Knight LLP
2099 Pennsylvania Ave., NW
Washington, DC 20006
Counsel for Hubbard Broadcasting, Inc.

John R. Feore, Jr.
Scott S. Patrick
Robert J. Folliard, III
Dow Lohnes PLLC
1200 New Hampshire Avenue, NW
Washington, DC 20036
*Counsel for McGraw-Hill Broadcasting
Company, Inc. and Meredith Corp.*

Tom W. Davidson
Natalie G. Rosiman
Akin Gump Strauss Hauer & Feld LLP
1333 New Hampshire Avenue, NW
Washington, DC 20036
*Counsel for ABC Holding Company, Inc.,
American Broadcasting Companies, Inc.,
WTVD Television, LLC, and the ABC
Television Network*

David A. O'Connor
Amy S. Mushahwar
Holland & Knight LLP
2099 Pennsylvania Ave., NW
Suite 100
Washington, D.C. 20006
Counsel for Red River Broadcast Co., LLC

David D. Oxenford
Brendan Holland
Davis Wright Tremaine LLP
1500 K Street, NW, Suite 450
Washington, DC 20005
Counsel for Centex Television L.P.

Christopher D. Imlay
Booth, Freret, Imlay & Tepper, P.C.
14356 Cape May Road
Silver Spring, MD 20904-6011
Counsel for Society of Broadcast Engineers

Chriss Scherer
Dane E. Ericksen
Society of Broadcast Engineers, Inc.
9102 North Meridian Street, Suite 150
Indianapolis, IN 46260


Reta Bezak