

September 26, 2008

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

FILED/ACCEPTED

SEP 26 2008

Federal Communications Commission
Office of the Secretary

Re: DA 07-1946

Dear Ms. Dortch:

The Association for Maximum Service Television, Inc. (“MSTV”)¹ writes to correct a central error in the “Reply of Clarity Media Systems, LLC.”² Despite the documented evidence that Clarity’s wireless cable service would cause electronic newsgathering (“ENG”) activities of local television stations to fail on a regular basis, Clarity relies throughout its reply on the mistaken assertion that its “Opponents have never alleged nor shown ‘harmful interference.’”³ It is therefore necessary to clarify the record. In fact, this has been fundamental misconception on which Clarity has relied throughout this proceeding.

MSTV has repeatedly shown that Clarity’s service will cause harmful interference. It has documented that “Clarity will cause harmful interference to ENG receivers

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 DA 07-1946 (filed Sep. 3, 2008).

³ Reply at iii. *See also id.* at 6 (“MSTV and NAB never once make a claim or showing regarding harmful interference”).

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located up to 30 km outside the fence line of parking lots”⁴ and that “[t]his harmful interference is reason enough to deny Clarity’s Request.”⁵ In other filings, MSTV has explained that “Clarity’s proposed operations are calculated, using the methodology recognized by the FCC as appropriate for microwave operations, to cause interference resulting in loss of service”⁶ and that “interference that would de-rate receive equipment in the public’s critical ENG service is harmful.”⁷

Harmful interference is:

Interference which endangers the functioning of a radionavigation service or of other safety services or seriously degrades, obstructs, or repeatedly interrupts a radiocommunication service operating in accordance with [the ITU] Radio Regulations.⁸

As MSTV has consistently stated in the record, Clarity’s service will cause harmful interference in many circumstances and in many locations. Clarity’s service will obstruct, seriously degrade, and repeatedly interrupt broadcasters’ ENG operations. It also will “endanger the functioning”

⁴ Opposition of MSTV and NAB to the Request of Clarity Media Systems LLC, at 2 (filed Aug. 21, 2008). *See also* the Engineering Statement attached thereto at 3.

⁵ *Id.* at 5.

⁶ Ex Parte Presentation at 1 (filed March 20, 2008) (“interference resulting in loss of service” is “harmful interference”).

⁷ Opposition to Motion to Strike MSTV’s Informal Objection at 3 (filed in this proceeding on Feb. 25, 2008).

⁸ 47 C.F.R. § 2.1 (emphasis added).

of ENG operations, which often are used to report public safety emergencies ranging from hurricanes and fires to terrorist attacks, shootings, bridge collapses, and kidnappings.⁹ ENG operations enable broadcasters to provide live, on-the-scene coverage from these major, and sadly not uncommon, events. The public relies on local broadcasters to provide real-time reporting of these events, and lives and property are threatened when ENG links are interrupted.

From distances of 30 kilometers or less, Clarity's system will cause threshold interference to ENG receivers.¹⁰ Threshold degradation causes links to fail when they are at or close to their limit. This means that links that are reliable today could fail tomorrow. For example, a link that could have been established at 50 kilometers from the ENG receiver may fail, forcing reporters to abandon live coverage of a news event until they can move in close enough – perhaps several kilometers – to establish a reliable link. Links that would have been at or close to their limit from the scene of a forest fire or an incoming hurricane may fail, causing live coverage of these emergencies to fail. ENG links may be at or close to their limit for any number of reasons and this situation is not limited to the edge of their service area. Examples that are common during emergency coverage include smoke and/or heat from forest or other fires, the activity of other ENG trucks, rain, wind, an inability to establish a line-of-site

⁹ See 47 C.F.R. § 2.1 (defining a “safety service” to include any radiocommunication service used, even temporarily, for the “safeguarding of human life and property”). Because of the important, topical nature of ENG reports (for example, several years ago concerning the Beltway snipers), even the loss of a few images or words due to interference must be considered “harmful.”

¹⁰ See Engineering Statement, *supra* n.5, at 1.

connection to the receiver, topography, foliage, and signal noise and reflections. Links may also be on the margin due to distance – for example, a truck may be able to establish a link to the receiver at 50 kilometers but not at 55 kilometers.

Interruption in service from ENG links caused by Clarity's wireless cable service can only be described as harmful interference. Clarity, however, seems to argue that because its wireless cable system will not destroy ENG links in each and every instance of operation, the interference should be deemed not "harmful" and, therefore, permitted. Such an approach to harmful interference — allowing supposedly secondary users to interfere some or much of the time, so long as the incumbent services can work occasionally — would upend the Commission's core responsibility to manage the radio-spectrum and prevent disruption of services upon which the public relies. The Commission should not allow Clarity, particularly in an adjudication, to cause such a dramatic shift in federal policy.

Clarity's mistaken reliance on an indefensibly lax understanding of what constitutes harmful interference compounds its mistake in relying on four days of tests at two sites, using one ENG transmission mode and one ENG receiver and assuming a single interference measure (a D/U ratio of 12dB) to make conclusions about operations at 250 sites (and others that will follow suit) in a variety of terrain and other site-specific circumstances, where multiple types of ENG equipment will be involved, multiple transmission modes may be operated, and much higher interference measures would have to be taken into account.

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In short, Clarity's reply and its experiment show why its 250 applications and 11 waiver requests must not be granted.

Sincerely,



David L. Donovan, President
Victor Tawil, Senior Vice President



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Maximum Service Television, Inc.*

CERTIFICATE OF SERVICE

I, Kathryn Bowers, a secretary at the law firm of Covington & Burling LLP, do hereby certify that on this 26th day of September, 2008, I caused a copy of this letter to be sent via first-class U.S. Mail, postage prepaid, to the following:

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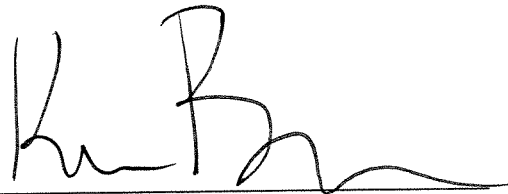
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