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March 6, 2007

BY HAND DELIVERY

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MAR - 6 2007

Federal Communications Commission
Office of the Secretary

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

Re: Reiteration of Opposition to Clarity Media System's Proposed
Wireless Cable Service in the ENG Spectrum (DA 06-1664)

Dear Ms. Dortch:

The recent amendment to the CARS applications and associated waiver requests of Clarity Media Systems, LLC ("Clarity") is wholly inadequate to protect the electronic newsgathering ("ENG") activities of local television stations, cable operators, and television networks.¹ Accordingly, the Association for Maximum Service Television, Inc. ("MSTV") respectfully urges the Commission to promptly deny Clarity's applications.

First, Clarity's "operating protocol" for shutdown of its service incorrectly assumes that affected ENG users will be able to identify Clarity as the source of interference. In fact, Clarity's service (even at the "lower" power level it proposes) will cast a wide net of interference for miles beyond the immediate perimeter of its 250+ travel plazas,² making such identification unlikely. Unless Clarity suggests that broadcasters and cable operators should execute the shutdown procedures as a matter of routine practice before initiating an ENG transmission, the protocol is of little use.

¹ See Clarity Media Systems, LLC, Amendment, FCC Form 327 (filed Jan. 18, 2007) (amending Clarity's lead application to license a wireless cable venture as a "CARS" service).

² As ABC has demonstrated, Clarity's service will degrade ENG operations within a *sixty kilometer* radius. See Comments of ABC Holding Company, Inc., *et al.*, DA 06-1664, at 13 (filed Sept. 22, 2006). Also, as depicted in the attached interference diagram, even at the "lower" power operation proposed in Clarity's amendment, a wide swath of a station's service area will be blanketed with interference.

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Second, even when a station is able to identify Clarity's wireless cable service as the source of interference, the shutdown will often only come *after* the harm is done. As the National Cable & Telecommunications Association ("NCTA") has explained, "ENG services need to clear spectrum *at the moment* of the news event ... [and] simply do not have time to identify the interfering source, contact the appropriate parties and then request cessation of the interfering signal."³ By the time the shutdown occurs, "the moment would be over, the news would be lost, and the mobile unit would have long since moved to another location."⁴ It is only by stopping interference *before* it occurs that ENG operations will be protected.

Third, Clarity continues to insist upon authorization for a fixed, "always-on" operation, despite the fact that CARS licensees are allowed only to make intermittent, mobile transmissions.⁵ Parties to this proceeding have already demonstrated that such a fixed service, which will continuously transmit video programming throughout the entire 2 GHz BAS band, is incompatible with ENG uses.⁶

Fourth, Clarity's amendment fails to address the many legal defects of its applications. Most notably, by authorizing operation of a wireless cable service in a band allocated only to BAS and CARS, grant of Clarity's application would constructively amend the Table of Allocations outside of a notice-and-comment rulemaking – a plain violation of the Administrative Procedure Act.⁷ Also, despite its self-serving efforts to shirk the "cost involved in auction licensing,"⁸ Clarity cannot lawfully obtain a commercial license outside of the auction process mandated by Section 309(j) of the Communications Act.⁹

Simply put, Clarity's proposed wireless cable service seriously endangers ENG operations, which the Commission has called "a critical part of the broadcasting system by which

³ Reply Comments of NCTA, DA 06-1664, at 3 (filed Oct. 23, 2006) (emphasis added).

⁴ Opposition of Centex Television Ltd. Partnership, D 06-1664, at 8 (filed Sept. 22, 2006). *See also* Comments of Red River Broadcast Co., LLC, DA 06-1664, at 5 (filed Sept. 22, 2006) ("[S]hould interference occur, broadcasters can ill-afford delays in shutting down the interfering multichannel video system.").

⁵ *See, e.g.*, 47 C.F.R. § 78.18(a)(6).

⁶ *See, e.g.*, Comments of Dispatch Broadcast Group, DA 06-1664, at 4 (filed Sept. 25, 2006).

⁷ *See, e.g.*, Comments of MSTV and NAB, DA 06-1664, at 9-13 (filed Sept. 22, 2006) (describing in detail the requirements of the APA with respect to amendment of an agency's substantive rules and noting that Clarity's applications seek to amend the Table of Allocations in contravention of those requirements).


⁸ Clarity Lead Application at 27.

⁹ Moreover, Clarity has numerous alternatives to the BAS/CARS spectrum by which it could lawfully launch a new wireless cable service.

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information and entertainment is provided to the American public.”¹⁰ Only by prompt denial of Clarity’s applications can the Commission protect the public’s access to breaking news, sports and other “on-the-scene” coverage.

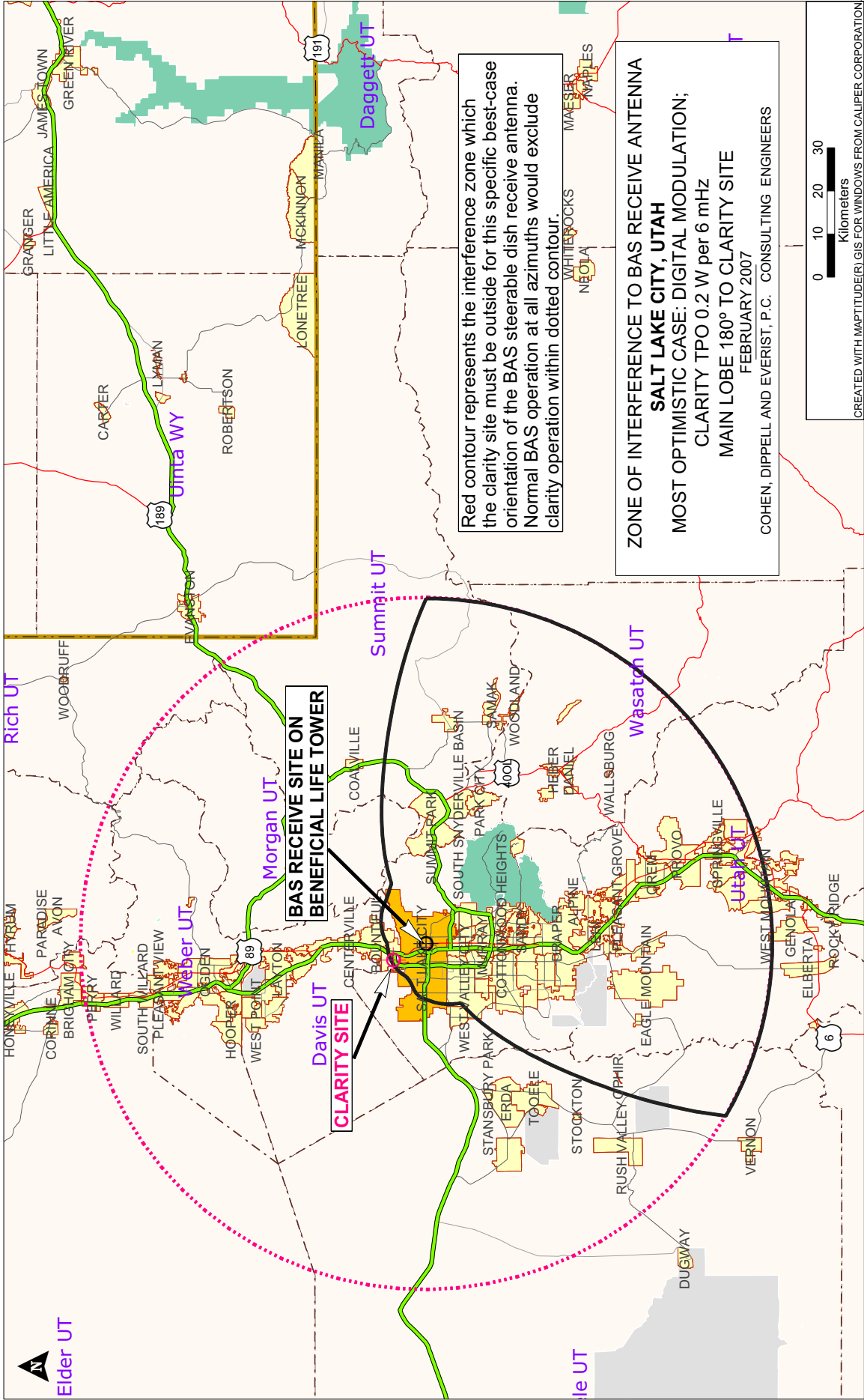
Sincerely,

A handwritten signature in black ink, appearing to read "Matthew S. DelNero". The signature is fluid and cursive, with a horizontal line extending from the end.

Matthew S. DelNero
Counsel to MSTV

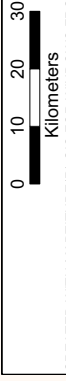
cc: Howard A. Topel, *Counsel to Clarity*

¹⁰ *Improving Public Safety Communications in the 800 MHz Band*, Report and Order, 19 FCC Rcd 14969, 15095 ¶ 250 (2004).



Red contour represents the interference zone which the clarity site must be outside for this specific best-case orientation of the BAS steerable dish receive antenna. Normal BAS operation at all azimuths would exclude clarity operation within dotted contour.

ZONE OF INTERFERENCE TO BAS RECEIVE ANTENNA
SALT LAKE CITY, UTAH
MOST OPTIMISTIC CASE: DIGITAL MODULATION;
CLARITY TPO 0.2 W per 6 mHz
MAIN LOBE 180° TO CLARITY SITE
 FEBRUARY 2007
 COHEN, DIPPELL AND EVERIST, P.C. CONSULTING ENGINEERS



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