

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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Federal Communications Commission
Bureau / Office

In the Matter of)
)
Clarity Media Systems, LLC) File No. 0692-EX-PL-2007
Application for Experimental License)

To: Office of Engineering and Technology
Experimental Licensing Branch

Opposition to Motion to Strike MSTV Informal Objection

The Association for Maximum Service Television, Inc. ("MSTV")¹ respectfully requests that the Office of Engineering and Technology ("OET") deny Clarity Media Systems, LLC ("Clarity")'s "Motion to Strike MSTV Informal Objection" and dismiss the above-captioned application for an experimental license. MSTV's filing was timely and complied with applicable procedural rules. Moreover, the proposed experiment cannot result in a viable technology and therefore is not eligible for an experimental license. Finally, grant of the application would be detrimental to the public interest because of interference to critical electronic newsgathering ("ENG") services.

I. THE PROPOSED EXPERIMENT CANNOT RESULT IN A VIABLE SERVICE AND WOULD CAUSE INTERFERENCE CONTRARY TO THE PUBLIC INTEREST, RENDERING IT INELIGIBLE FOR AN EXPERIMENTAL LICENSE.

Clarity is not eligible for an experimental license, because the Commission requires that "[e]ach applicant for an authorization in the Experimental Radio Service must enclose with the application a narrative statement describing in detail ... how the program of

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.

experimentation has a reasonable promise of contribution to the development, extension, or expansion, or utilization of the radio art, or is along lines not already investigated.”² In light of the Media Bureau’s denial of Clarity’s applications and rejection of Clarity’s requests for nearly a dozen waivers of the Part 78 rules, the proposed experiment cannot result in a viable technology.³ Clarity has filed an Application for Review (“AFR”) of the Media Bureau’s decision. Unless and until the Commission acts favorably on Clarity’s AFR, the Media Bureau’s decision that Clarity cannot legally operate a wireless cable service using 2 GHz spectrum stands. Thus, the proposed experiment does not have a “reasonable promise of contribution” to the public interest and it is not eligible under Section 5.63(a) of the Commission’s rules.⁴ MSTV reiterates that the Media Bureau has already determined that Clarity has other spectrum alternatives and does not need to encroach on the 2 GHz spectrum.⁵

Further, Clarity’s proposed experiment would harm the public interest because of the risk of interference. The Media Bureau cited multiple interference concerns in the Denial Order, and it concluded that “[w]e are not convinced that the potential benefits cited by Clarity

² 47 C.F.R. § 5.63(a) (emphasis added).

³ 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 (May 3, 2007) (“Denial Order”).

⁴ See *id.* at para. 9 (observing that, “[i]n essence, Clarity has requested that the Commission waive the rules that form the foundation of the CARS regulatory framework.”).

⁵ See *id.* at para. 15. MSTV respectfully requests that, if OET decides to grant Clarity’s application, it require Clarity seriously to pursue testing of these alternatives. MSTV believes that Clarity and its \$10 billion parent company, Flying J Inc., could avoid the public interest harms of operating a wireless cable system in the 2 GHz spectrum if they invested as much effort at exploring these options as they have in trying to obtain spectrum outside of the auction process and at odds with nearly a dozen CARS rules. These alternatives include the 5 GHz unlicensed spectrum, the 3.6 GHz nonexclusive bands, the 700 MHz spectrum, and the 1.7/2.1 GHz and 2.5 GHz licensed bands (including leased access from BRS/EBS licensees).

outweigh the cost to the public in terms of potential harmful interference to BAS, CARS, and NASA communications.”⁶ For example:

- “Clarity has not addressed [NASA’s] concerns” regarding the risk of interference to (and from) NASA’s use of the 2 GHz spectrum for essential communications during the launch process and emergency communications if a space craft starts to tumble during its mission;⁷
- “Clarity has not demonstrated that its proposed system will not cause harmful interference to BAS/ENG operations”;⁸
- “Clarity’s proposed 24-hour hotline for shutting down service in case of interference does not assuage our concerns here”;⁹ and
- “[T]he possibility that entities other than Clarity could request similar waivers would further increase interference concerns and make it even more difficult for broadcasters to determine the source of interference.”¹⁰

As MSTV showed in the Engineering Statement attached as Attachment B to its filing, Clarity’s proposed experiment is deeply flawed. MSTV respectfully submits that interference that would de-rate receive equipment in the public’s critical ENG service is harmful. TSB-10-F is the standard¹¹ for determining potential microwave interference by users of the 2

⁶ See *id.* at para. 13.

⁷ See *id.* at para. 11.

⁸ See *id.* at para. 10. See also *id.* at para. 12 (noting that “emergency information is critical in real-time” and ruling that “[i]nterference to analog BAS reception from Clarity’s digital system would look like noise with no identifying characteristics, making it difficult for broadcasters to determine the source”).

⁹ See *id.* at para. 12 (further observing that “Clarity’s proposal would occupy 84 MHz out of the 85 MHz in the BAS/ENG band, leaving broadcasters no room to switch channels if they experience unidentifiable interference on one or more channels”).

¹⁰ See *id.* at n.42 (explaining that “ [o]ther similar service waivers could come from other chains of truck stop travel plazas, RV parks, campgrounds, etc., adding hundreds and perhaps thousands of potential new users which would further restrict viability of the 2 GHz band for ENG use.”)

¹¹ See Telecommunication Systems Bulletin TSB-10-F, “Interference Criteria for Microwave Systems,” Telecommunication Industry Association (adopted May 31, 1994). ENG operations are microwave operations.

GHz ENG band, and the Commission has embraced its use.¹² The methodology used by Clarity is not a recognized interference standard. The attached Engineering Statement explains in more detail why TSB-10-F is the appropriate technical standard in this case.

As MSTV has demonstrated, reducing transmitter output power from 200 mW to 50 mW per 6 MHz channel “would still create significant areas of impaired operation for BAS services.”¹³ In light of the predicted interference to ENG operations, this experiment would not be in the public interest.

II. MSTV’S FILING COMPLIED WITH APPLICABLE PROCEDURAL RULES AND WAS TIMELY.

MSTV’s filing complied with all of the applicable procedural rules, and OET should consider it on its merits. Section 5.95 of the Commission’s rules¹⁴ refers the reader to Sections 1.41 through 1.52. MSTV’s Petition to Deny complied with all of the applicable rules, and it was timely because none of the referenced Part 1 rules provides a deadline for filing oppositions to applications for experimental licenses.

¹² See, e.g., *In the Matter of Amendment of Part 2 of the Commission’s Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems*, Eighth Report And Order, ET Docket No. 00-258, 20 FCC Rcd 15866, at para. 28 (rel. Sept. 29, 2005) (observing that, “[u]nder Section 24.237, PCS licensees operating in the 1850-1990 MHz band and AWS licensees operating in the 2110-2155 MHz band must, prior to commencing operations, perform certain engineering analyses to ensure that their proposed operations do not cause interference to incumbent fixed microwave services. Part of that analyses calls for the use of TIA Telecommunications Systems Bulletin (TSB) 10-F, or its successor standard, to determine when proposed PCS or AWS operations might cause interference to existing fixed microwave stations....); *id.* at n.87 (adding that “[t]he Commission also adopted TIA TSB 10-F as the criteria for determining potential MSS-ancillary terrestrial component (ATC) to FS interference and Nextel to Broadcast Auxiliary Service (BAS) interference”); see generally 47 C.F.R. §§ 24.237(a); § 24.602(j); § 101.79; and § 101.105(a)(5).

¹³ See MSTV’s Petition, Attachment B at 3.

¹⁴ 47 C.F.R. § 5.95.

First, MSTV notes that its filing complied with all of the applicable rules. For example:

- Section 1.41, which applies to “requests,” provides that “[e]xcept where formal procedures are required under the provisions of this chapter, requests for action may be submitted informally. Requests should set forth clearly and concisely the facts relied upon, the relief sought, the statutory and/or regulatory provisions (if any) pursuant to which the request is filed and under which relief is sought, and the interest of the person submitting the request.” MSTV provided a clear and concise statement of the facts relied upon, the relief sought, and the regulatory provisions pursuant to which the request was filed and under which relief was sought, as well as a description of MSTV’s interest in submitting the request.
- Section 1.47, which applies to “documents,” provides for service and proof of service. MSTV served Clarity and Clarity’s counsel.
- Section 1.49, which applies to “pleadings and documents,” specifies formatting rules, with which MSTV complied.
- Section 1.51(c)(2), which applies to “papers,” specifies that “[i]f the paper filed related to matters to be acted on by staff officials under delegated authority, an original and 4 copies shall be filed.” MSTV complied with this rule.
- Section 1.52, which applies to “all petitions, motions, pleadings, briefs, and other documents,” specifies subscription and verification rules, with which MSTV complied.

Second, unless and until the Commission revises its rules, there is no specific deadline for opposing applications for experimental applications. Therefore MSTV’s filing was timely. Section 1.45 provides the following timeline:

(a) *Petitions*. Petitions to deny may be filed pursuant to §1.939 of this part.

(b) *Oppositions*. Oppositions to any motion, petition, or request may be filed within 10 days after the original pleading is filed.

(c) *Replies*. The person who filed the original pleading may reply to oppositions within 5 days after the time for filing oppositions has expired. The reply shall be limited to matters raised in the oppositions, and the response to all such matters shall be set forth in a single pleading; separate replies to individual oppositions shall not be filed.

This timeline plainly does not specify any deadline for filing informal objections. It is quite clear that the Petition to Deny was not a “Reply,” and thus not subject to subsection (c)’s 5-day deadline. Nor was the Petition to Deny an “Opposition” to an original pleading. To put it simply, Clarity’s application for an experimental license was an application, not a pleading. Therefore, MSTV was not subject to subsection (b)’s 10-day deadline.¹⁵

That leaves subsection (a), which applies to petitions to deny. Assuming for the sake of argument that Section 1.45(a) applies to informal objections to experimental license applications – which it does not – MSTV’s filing was still timely.¹⁶ Section 1.45(a) refers the reader to Section 1.939 of the Commission’s rules. That rule provides in relevant part:

(a) *Who may file.* Any party in interest may file with the Commission a petition to deny any application listed in a Public Notice as accepted for filing, whether as filed originally or upon major amendment as defined in §1.929 of this part.

...

(2) Petitions to deny for non-auctionable applications that are subject to petitions under § 309(d) of the Communications Act must comply with the provisions of this section and must be filed no later than 30 days after the date of the Public Notice listing the application or major amendment to the application as accepted for filing.¹⁷

¹⁵ Clarity argues that MSTV’s filing was subject to the 10-day filing deadline applicable to Oppositions to original pleadings. If that were true, then Clarity’s filing would appear to be a late-filed Reply (filed 9 days after MSTV’s filing). Incidentally, MSTV notes that it received Clarity’s Motion on February 19, 2008, and it has responded within 5 days.

¹⁶ Clarity argues that because MSTV’s pleading was styled as a Petition to Deny instead of an “Informal Objection,” it is somehow defective. If “Informal Objection” would have been a more appropriate title for its filing, MSTV requests that the Office of Engineering and Technology’s entertain MSTV’s filing on its merits and treat it as an informal objection.

¹⁷ 47 C.F.R. § 1.939 (emphasis added).

Thus, even if this rule applied to informal objections, the relevant date to start a 30-day clock would be the date of Public Notice. Clarity's application for an experimental license has never been listed as accepted for filing in a Public Notice – experimental applications virtually never are.¹⁸ Therefore, there is no deadline for interested members of the public to file in opposition to Clarity's application for an experimental license. Consequently, MSTV's filing was timely.¹⁹

* * *

For the reasons set forth above, MSTV respectfully requests that the OET dismiss Clarity's Motion and the above-captioned application for an experimental license.

¹⁸ *But see* "Office of Engineering and Technology Declares Hughes Network Systems Sub, LLC Application for Modification of License of Station WD2XU and Aeronautical Radio, Inc. Application for New License, in the Experimental Radio Service, To Be a 'Permit-But-Disclose' Proceeding For Ex Parte Purposes," Public Notice, 20 FCC Rcd 19850 (Dec. 21, 2005) (in a rare move, putting experimental radio licensing proceedings on public notice and designating them as "permit-but-disclose" proceedings for *ex parte* purposes).

¹⁹ This is consistent with the informal nature of experimental applications. *See In the Matter of Implementation of LPTV Digital Data Services Pilot Project*, Order, 16 FCC Rcd 9734, at para. 18 (rel. April 27, 2001) (stating that "[w]e intend to accept these applications [for participation in a pilot project] in the same manner used in processing other experimental applications.... Informal objections can be filed any time before the application is granted.").

Despite seeming to demand strict adherence to the text of the Commission's rules, Clarity offers no support for the proposition that it triggered a 10- or 30- day clock, specific only to MSTV, by mailing a copy of its application to MSTV. Sending a copy of a license application to interested parties does not start a filing window under any of the relevant rules.

Respectfully submitted,

/s/

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*Counsel for the Association for Maximum
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February 22, 2008

ATTACHMENT

ENGINEERING STATEMENT
ON BEHALF OF MSTV
IN FURTHER SUPPORT OF PETITION TO DENY
NEW EXPERIMENTAL RADIO SERVICE LICENSE
BY CLARITY MEDIA SYSTEMS, LLC
(FILE NO. 0692-EX-PL-2007)

FEBRUARY 2008

COHEN, DIPPELL AND EVERIST, P. C.
CONSULTING ENGINEERS
RADIO AND TELEVISION
WASHINGTON, D. C.

TIA TSB 10-F is the only specifically-referenced standard for defining microwave interference of which we are aware based upon this firm's experience, extensive research, and consultation with industry experts and FCC staff. The 8 dB D/U ratio methodology proposed by Clarity is not so recognized. Furthermore, TSB 10-F defines "harmful interference" because it specifies the level at which the interfering microwave signal obstructs the ENG signal.

Comsearch, indisputably the preeminent commercial provider of microwave interference analysis, describes its BAS interference analysis as follows:

"The first phase of the coordination process is a detailed interference analysis. Prior to filing for a license with the FCC, an applicant is required to perform appropriate engineering studies to avoid causing interference into other users. The interference criteria are found in Section 101.105 and in TIA Bulletin 10F.

The interference objective criteria are designed to limit receiver threshold degradation to no more than 1 dB and also (for analog receivers) to prevent interference from causing excessive noise in the demodulated base band signal. These criteria are appropriate to use initially because if satisfied, they ensure that operation of a new radio system will have minimal impact on existing environment systems. Interference in excess of the criteria would reduce the receiver fade margin and/or violate base band noise requirements."¹

¹ "Recent Regulatory Changes Affecting the Broadcast Auxiliary Spectrum: What You Need to Know", by Chris Hardy and Greg Macey, Bulletin TP-100317-EN (03/05) © 2005 Andrew Corporation. Copy available here: http://www.andrew.com/search/bn_TP-100317-EN.aspx.

In specifying interference standards, the Commission's Rules refer in various places to "alternative generally acceptable good engineering standards". However, where this phrase is used, it does not refer to an alternative to threshold degradation (such as D/U ratios cited by Clarity) as the definition of interference. Rather, the phrase allows other methods to calculate the threshold. To wit, Section 101.105(b) states.

. . "interference protection criteria to be afforded, regardless of system length, or type of modulation, multiplexing, or frequency band, must be such that the interfering signal does not produce more than 1.0 dB degradation of the practical threshold of the protected receiver. The "practical threshold" of the protected receiver can be based upon the definition in TSB 10, referenced in paragraph (c) of this section, or upon alternative generally acceptable good engineering standards."

We are unaware of any recognized industry distinction between "interference" and "harmful interference." By its very nature, all interference is "harmful." The threshold degradation method of defining interference is up-to-date. It is used for essentially all microwave frequencies, including ENG. In the FCC's recent specification of interference for 70 to 80 GHz microwave bands, newly adopted in 2005, threshold degradation is again used:

Section 101.105(a)(5)(i)

“(5) 71,000-76,000 MHz; 81,000-86,000 MHz. In these bands the following interference criteria shall apply:

(i) For receivers employing digital modulation: based upon manufacturer data and following TSB 10-F or other generally acceptable good engineering practice, for each potential case of interference a threshold-to-interference ratio (T/I) shall be determined that would cause 1.0 dB of degradation to the static threshold of the protected receiver.”

Threshold degradation, as has been consistently applied in MSTV’s analysis, is used as the standard definition of microwave interference precisely because it specifies where interference (harmful, deleterious, adverse or otherwise) begins. It incorporates the concept of effective derating, or diminishing the capacity of the receiving equipment to overcome the myriad of environmental and operating factors that tend to reduce the reliability of a microwave link. Desired to undesired signal levels (“D/U ratios”), 8 dB or otherwise, are not specified as the standard definition of microwave interference because a D/U ratio defines only a failure point under otherwise ideal conditions.

COHEN, DIPPELL AND EVERIST, P. C.

City of Washington)
) ss
District of Columbia)

Ross J. Heide, being duly sworn upon his oath, deposes and states that:

He is a graduate of the Massachusetts Institute of Technology in Operations Research and Management Science, a Registered Professional Engineer in the District of Columbia, and employed by Cohen, Dippell and Everist, P.C., Consulting Engineers, Radio - Television, with offices at 1300 L Street, N.W., Suite 1100, Washington, D.C. 20005;

That the attached engineering report was prepared by him or under his supervision and direction and

That the facts stated herein are true of his own knowledge, except such facts as are stated to be on information and belief, and as to such facts he believes them to be true.

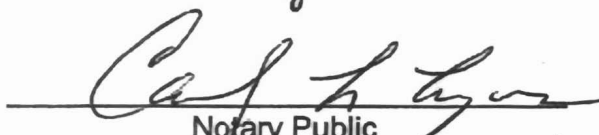




Ross J. Heide
District of Columbia
Professional Engineer
Registration No. PE900748

Subscribed and sworn to before me this 22nd day of February, 2008.





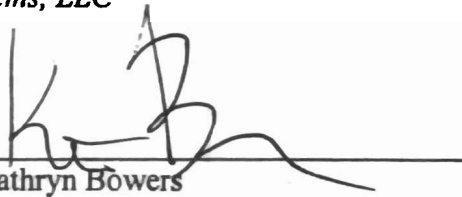
Notary Public
My Commission Expires: 2/28/2008

CERTIFICATE OF SERVICE

I, Kathryn Bowers, a secretary at the law firm of Covington & Burling LLP, do hereby certify that on this 22nd day of February, 2008, I caused a copy of the foregoing "Opposition to Motion to Strike MSTV Informal Objection" to be sent via first-class U.S. Mail, postage prepaid, to the following:

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