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April 22, 2008

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: Ex **Parte** Communication  
DA 07-1946; File No. 0692-EX-PL-2007

Dear Ms. Dortch:

On Monday, April 21, 2008, David Donovan, President of the Association for Maximum Service Television, and its undersigned counsel met with Amy Blankenship, Legal Advisor to Commissioner Tate, with respect to Clarity's application for review of the Media Bureau's denial of the **above-**referenced applications and with respect to Clarity's above-captioned experimental application. Though the latter is opposed by MSTV, Julius Knapp, Chief of the Office of Engineering and Technology, indicated prior to the meeting that OET would be treating that proceeding as a "**permit** but disclose" matter going forward.

The topics discussed included:

Clarity has asked for 11 rule waivers which are not consistent with the underlying purpose of the FCC's rules and, therefore, waivers may not properly be granted. The spectrum is reserved for the relay of signals used for infrastructure purposes and the Commission has explicitly ruled out using the spectrum for direct delivery of video programs to the general public.<sup>1</sup> At most, the issues Clarity raises should be dealt with in a rulemaking proceeding rather than in an application for review of the Media Bureau's decision on the underlying applications. A rulemaking would enable the Commission to determine, among other things, whether other spectrum would be more suitable for Clarity's proposed operations.

- Clarity's proposed operations would cause loss of service based on the FCC's own methodology for determining harmful interference to microwave operations. The extent

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<sup>1</sup> See 47 C.F.R. § 78.18 and MSTV and NAB's Joint Opposition to Applications for Review, DA 06-1664, at 8-11 (filed June 19, 2007).

of interference would likely depend on the topography of individual sites.

Grant of the Clarity applications would open the door to numerous other proposals with similar or worse interference implications.

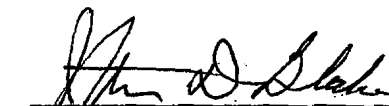
- Clarity's proposal to use a 1-800 number to report and remedy interference is inadequate on its face.

Clarity has proposed to operate across all ENG channels, apparently seven days a week, 24 hours a day. As documented in **MSTV** Engineering Reports, the interference zone created by Clarity's proposal would extend well beyond truck stock parking lots. It would impair live local news gathering operations for kilometers. It could knock out on-site news reports for all stations in the market who sought to cover a particular news event close to the Clarity truck stock in question.

- Broadcasters' ENG services provide breaking news coverage to over a 100 million households, such as in the case of Katrina, 9/11, the shootings at Virginia Tech and Southern Illinois university and the Minneapolis bridge collapse, as well as local weather problems, **traffic** snarl-ups, fires, and other emergencies -- and, yes, Amber Alerts. The public interest benefits of these services far outweigh those of Trucker TV, even with its **useful** but limited proposed Amber Alert coverage (one out of 70 channels). Just one instance where broadcast coverage of a breaking news emergency (including missing children) was interfered with by Clarity's operations would be one too many. In evaluating Clarity's application for review, the Commission needs to appreciate the risks at stake.

MSTV knows of no instance where an experimental application has been granted to permit operations authorization of which has been denied by the Media Bureau. Permitting experimental operations, whose purpose in this circumstance is to circumvent that adverse decision and which would apparently have no involvement of FCC personnel, would undermine national spectrum allocations policy, would constitute an abdication of the FCC's traditional core allocations function and would return the country to a regulatory regime that predates the **1927** Radio Act.

Respectfully Submitted,



Jonathan D. Blake  
Counsel to MSTV

cc: Amy Blankenship  
Julius Knapp  
David Donovan

**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 April, 2008, I caused a copy of the foregoing "Ex Parte Communication" to be sent via first-class U.S. Mail, postage prepaid, to the following:

Hon. Kevin J. Martin, Chairman  
Michelle Carey, Legal Advisor for Media Issues  
Federal Communications Commission  
445 Twelfth Street, S.W. - Room 8-B201  
Washington, D.C. 20554

Hon. Michael J. Copps, Commissioner  
Rick **Chessen**, Senior Legal Advisor; Media Advisor  
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Hon. Jonathan S. Adelstein, Commissioner  
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Federal Communications Commission  
445 Twelfth Street, S.W. - Room 8-A302  
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Hon. Deborah Taylor Tate, Commissioner  
Chris Moore, Legal Advisor  
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Hon. Robert M. **McDowell**, Commissioner  
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