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Federal Communications Commission  
Office of the Secretary

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May 22, 2009

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

**Re: *Ex Parte* Presentation in DA 07-1946:  
Response of Clarity Media Systems, LLC to  
*Ex Parte* Letter from Metro PCS Communications, Inc.**

Dear Ms. Dortch:

By this letter, Clarity Media Systems, LLC ("Clarity") responds to the recent *ex parte* submission from MetroPCS Communications, Inc. ("Metro") in the above-referenced proceeding. See Letter dated May 15, 2009, from Counsel to Metro to the Secretary, FCC, in DA 07-1946 ("Metro Letter"). In the Metro Letter, Metro belatedly responds to Clarity's March 6, 2009 letter that itself responded to an earlier Metro letter presenting concerns about the prospect of harmful interference from Clarity's proposed travel plaza-based television transmission systems in the 2025-2109 MHz band to advanced wireless systems operating in the "AWS-1" band at 2110-2155 MHz. See Letter dated March 6, 2009, from Counsel for Clarity to the Secretary, FCC, in DA 07-1946 ("March 6 Letter").

Clarity showed in its March 6 Letter that Metro's concerns are based on inaccurate information and assumptions, and that there is no prospect of harmful out-of-band emissions ("OOBE") from Clarity's proposed transmission system operations to AWS operations in the near-adjacent 2110-2155 MHz band. Metro claims now that Clarity, in last winter's March 6 Letter, "fails to fully address the interference concerns ..." raised by Metro, and that "[a]t the very least, additional information is needed ..." before the Commission can accept Clarity's demonstration that there is no prospect of harmful OOBE to AWS from Clarity's proposed operations. Metro Letter at 1. Clarity responds here to Metro's follow-up, and reiterates that Clarity's rural low-power systems will not cause any harmful interference to users of AWS systems.

Clarity notes at the outset that Metro offers no response to Clarity's observation that Metro's failure to interject its concerns until this very late stage of a long-running proceeding is quite troubling. *See* March 6 Letter at 2-3. Auction 66, at which Metro acquired its AWS-1 band licenses, was held in 2006, contemporaneous with the comment period in response to the public notice on Clarity's waiver requests. If Metro was legitimately concerned about harmful OOB, one would expect it to have acted in a timely fashion to protect its \$1.4 billion investment. It could also have responded to Clarity's Application for Review of the 2007 Media Bureau decision in DA 07-1946. While there is no prospect of harmful OOB to AWS-1 operators, as Clarity demonstrated in the March 6 Letter, Metro's refusal to use any of the multiple opportunities it had to participate earlier in this proceeding should be binding on it. At the very least, Metro's credibility is negatively impacted by its failure to respond to Clarity's interposition of the timeliness issue – especially given the paucity of technical information and the sensationalistic nature of allegations it proffers in the latest letter that was itself more than two months in the making.

There are numerous substantive defects in Metro's response. For example, Metro notes that in the March 6 Letter, Clarity reported that it proposes to use only the power necessary to produce a signal strength level of -72 dBm on the principal azimuth of a 120° sectorized directional antenna at a distance of 150 to 300 meters, depending on the size of the truck parking area to be served. Metro claims, without any substantiation whatsoever, that at a transmitter power output ("TPO") per channel of between 1 mW and 5 mW, "there will likely be an exclusion area around each Clarity transmitter where AWS-1 handset users are affected." Metro Letter at 2. Metro's assessment of a likely exclusion area is curious, given that 1) the interference case here is an OOB case, not a co-frequency signal; and 2) Metro contends in the very next paragraph that it does not have the parameters from Clarity it needs to conduct an evaluation. *Id.* If Metro does not have parameters, on what Earthly basis can it declare that harmful OOB warranting an exclusion area is likely? Metro seems set on being inflammatory.<sup>1</sup> The reality is that at the extremely low TPO levels Clarity will use – levels that Clarity has demonstrated through meticulous experimentation will result in little or no exclusion zone for *co-frequency* receivers – the chance that any AWS receiver in another band will receive harmful interference is zero.

Metro exacerbates its flawed assumptions when it claims that truck drivers will possess AWS-1 devices and may be interfered with while at Flying J Travel Plazas. Metro Letter at 2. This claim too ignores the record. The record of the instant proceeding demonstrates that truck drivers are a credit-challenged group that will have little use for the urban-centric AWS devices

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<sup>1</sup> Clarity's parameters (including Maximum Transmit Power at the antenna input; antenna profile information; antenna height, and antenna downtilt) and the coordinates of each of its proposed transmitter locations are all a matter of record in the proceeding into which Metro now interjects itself. Had it participated in a timely and constructive manner, it would have had this information in due course and could have satisfied itself that there is no OOB issue.



that Metro and other operators will be offering and less of an ability to afford the service even if it were useful to them. Metro is grasping at straws.

With respect to Metro's assertion that AWS customers "will be using their handsets in the heart of areas serviced by Clarity's transmitters, ..." (Metro Letter at 2) Clarity finds this to be disingenuous given that in the preceding paragraph Metro asks Clarity to provide the coordinates from which Clarity transmitters will operate. Clarity emphasized in its March 6 Letter that Clarity operations in the 2025-2109 MHz band will occur primarily at exurban or rural highway travel plazas, and that the pin-hole nature of each Clarity system's coverage means that there is no way that Clarity's transmission system could create service disruptions for any AWS operation. March 6 Letter at 2. Metro's response ignores this fact, and fabricates an interference scenario that is totally unrealistic. It cannot be credited.

Clarity has gone to great lengths to identify and address all technical concerns that existing service operators may have from Clarity's system. In a showing that is completely unanswered in the latest Metro Letter, Clarity demonstrated 1) that Metro's initial use of incorrect parameters for Clarity's transmission system led to a "substantial overstatement" of the potential interference effects of Clarity's transmission system on near adjacent-band AWS operations; 2) that operators of AWS systems in the near adjacent 2110-2155 MHz band will not have any technical issues with respect to out-of-band emissions from their new spectrum neighbors; and 3) that any OOB level from a Clarity transmitter operating in 2025-2109 MHz would be well below the threshold noise level of an AWS receiver in the 2110-2155 MHz band.

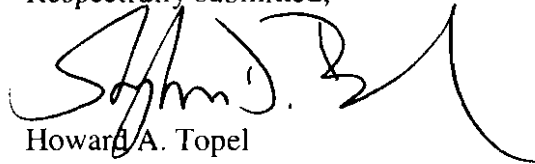
Clarity transmission systems at 250 mostly exurban and rural travel plazas cannot and will not produce harmful OOB that causes receiver overload in the near adjacent-band AWS. The Commission should reject Metro's latest set of unsubstantiated assertions.

LSI

Marlene H. Dortch  
May 22, 2009  
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The above-referenced proceeding has been designated as permit-but-disclose for *ex parte* purposes. The original and one copy of this letter are submitted for inclusion in the file of the proceeding.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Howard A. Topel', with a large, sweeping flourish extending to the right.

Howard A. Topel  
Stephen D. Baruch

*Attorneys for Clarity Media Systems, LLC*

cc (by U.S. Mail and e-mail): Rick C. Chessen  
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