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May 22, 2009

BY HAND DELIVERY

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

FILED/ACCEPTED**MAY 22 2009**Federal Communications Commission
Office of the Secretary

Re: *Ex Parte* Letter
DA 07-1946
Waiver Requests by Clarity Media Systems, LLC to Operate CARS Stations at
Flying J Travel Plazas

Dear Ms. Dortch:

T-Mobile USA, Inc. ("T-Mobile") hereby opposes Clarity Media Systems, LLC's ("Clarity's") Application for Review filed in the above-referenced un-docketed proceeding.¹ Clarity asks the Commission to overturn the Media Bureau's denial of its request for waiver of the Cable Television Relay Services ("CARS") rules so that Clarity can provide multichannel video programming distribution service in the 2025-2110 MHz band at "Flying J" truck stops throughout the country. Given that Clarity has chosen to proceed by waiver instead of rulemaking, there has not been an adequate opportunity for interested parties, including the Commission, to evaluate Clarity's claims that there will be no harmful interference from its proposed service to handsets operating in the adjacent Advanced Wireless Service ("AWS-1") band. The Commission should not authorize new service in the 2025-2110 MHz band that could cause harmful interference to adjacent-channel licensees without following the formal rulemaking process.

T-Mobile is the largest holder of AWS-1 spectrum in the country, including 131 licenses in the "A" block of the AWS-1 band (2110-2120 MHz). Since receiving its licenses, T-Mobile has been aggressively rolling out wireless broadband service in the AWS-1 band across the country. T-Mobile's current AWS-1 footprint includes more than 130 cities, covering more than 100 million pops. And by the end of 2009, T-Mobile expects to extend its broadband network to more than 300 cities and more than 200 million pops. Clarity's proposal to offer video programming services to long-haul truck drivers poses a risk of harmful interference to T-Mobile's customers in and around Flying J truck stops and could impede T-Mobile's rollout of wireless broadband service. Under no

¹ See Clarity Media Systems, LLC, *Application for Review*, DA 07-1946 (filed June 4, 2007).

circumstances should the Commission approve Clarity's proposed service without first seeking public comment and carefully considering all technical and policy issues raised by its request. Accordingly, T-Mobile urges the Commission to deny Clarity's Application for Review.

Despite its blanket assurance that AWS-1 licensees "need not be concerned about the prospect of harmful out-of-band emissions ("OOBE") from Clarity's proposed transmission system operations,"² Clarity offers scant detail on its proposed system design and technical parameters to support its claim. To be sure, Clarity does state that it intends to use the power necessary to produce a signal strength of -72 dBm at a distance of 150 to 300 meters around its proposed transmitter sites, and that this would translate to a maximum ERP per 6 MHz channel of between 10 and 50 mW and a transmitter output power per channel of between 1 and 5 mW.³ But as MetroPCS notes, without knowing the maximum transmit power at the antenna input, as well as the antenna profile, antenna height, and antenna downtilt, there is no way of evaluating the potential harmful interference to AWS-1 handsets.⁴

Clarity is equally vague about its system's OOBE limit and other specifications. Although it faults MetroPCS for assuming a $43 + 10 \log(P)$ OOBE limit in its analysis—arguing, erroneously, that this standard applies only to analog systems—Clarity never commits to a specific OOBE restriction, asserting instead that its "digital system" will operate with "emissions at substantially lower levels than those ascribed to it" by MetroPCS.⁵ Nor has Clarity spelled out its intended modulation scheme or proposed band edge. Without these critical specifications fully defined, there is no way for T-Mobile, other AWS-1 licensees, or the Commission itself to determine whether Clarity will cause harmful interference to adjacent licensees. Indeed, based on the limited record, it seems likely there would be an exclusion zone around each Clarity transmitter that would negatively impact T-Mobile customers in and around Flying J truck stops.

With so many unanswered questions surrounding Clarity's system design and technical parameters, the Commission should reject Clarity's Application for Review. An undocketed proceeding is ill-suited for gauging the effect of a new service on neighboring bands. Clarity's proposal—like any other seeking authority from the Commission—should be subject to a notice-and-comment rulemaking. It is only through an open and

² See *Ex Parte* Presentation of Clarity, DA 07-1946 (filed March 6, 2009) at 1 ("Clarity *Ex Parte*").

³ *Id.*

⁴ See *Ex Parte* Presentation of MetroPCS Communications, Inc., DA 07-146 (filed May 15, 2009) at 2.

⁵ See *Clarity Ex Parte* at 2.

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transparent process that the Commission can properly determine whether new service in the 2025-2110 MHz band will cause harmful interference to adjacent AWS-1 licensees.⁶

For the foregoing reasons, T-Mobile urges the Commission to deny Clarity's Application for Review. To the extent the Commission wants to consider alternative uses for the 2025-2110 MHz band, including potentially Clarity's proposed "trucker TV" service, it should initiate a rulemaking proceeding and allow all interested parties to offer their views on the technical, legal, and policy issues of such proposals.

Respectfully submitted,

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⁶ Such a proceeding would afford T-Mobile and others the same opportunity to conduct testing that Clarity extended to co-channel Broadcast Auxiliary Service incumbents.