



PUBLIC NOTICE

Federal Communications Commission
1919 M St., N.W.
Washington, D.C. 20554

DA 97-423

February 25, 1997

**EX PARTE STATUS CLARIFIED: IN THE MATTER OF QUALCOMM
INCORPORATED, REQUEST FOR PIONEER'S PREFERENCE**

GEN Docket No. 90-314
File No. PP-68

The Court of Appeals for the D.C. Circuit recently vacated the Commission's decision to deny QUALCOMM, Inc.'s request for a broadband Personal Communications Services (PCS) pioneer's preference, and remanded the matter for further proceedings. *Freeman Engineering Associates, Inc. v. FCC*, D.C. Cir. No. 94-1779 (Jan. 7, 1997). The Office of Engineering and Technology (OET) requested comment from QUALCOMM as to what action OET should recommend to the Commission in light of the remand. *Public Notice*, DA 97-351 (released Feb. 18, 1997). QUALCOMM filed comments on February 24, 1997.

This remand proceeding is a restricted, adjudicative proceeding since QUALCOMM's pioneer's preference request is formally opposed. Accordingly, *ex parte* presentations concerning the merits or the outcome of this proceeding are prohibited. See 47 C.F.R. §§ 1.1202(d), 1.1208(c); Establishment of Procedures to Provide a Preference to Applicants Proposing an Allocation for New Services, 6 FCC Rcd 3488, 3493 ¶ 42 (1991). QUALCOMM has requested clarification on the restricted aspects of this proceeding, "including whether, for example, a discussion of remedy in the event of a grant of the QUALCOMM Incorporated pioneers' preference application is permissible." Letter to William Kennard and Andrew Fishel from Veronica M. Ahern, February 20, 1997.

Any *ex parte* discussions regarding the remedy in the event of a grant of a preference, in addition to any discussions concerning whether or not a preference should be granted, would be "directed to the merits or outcome" of the proceeding and considered prohibited *ex parte* presentations. 47 C.F.R. §§ 1.1202(a), 1.1208(c).

With regard to the issue of a remedy, this raises the "possibility of a conflict between the applications" filed by certain broadband PCS auction winners and QUALCOMM's preference request in the market for which it seeks a pioneer's preference. See 47 C.F.R. § 1.1208(c)(1)(i)(C). QUALCOMM requested a preference for the "southern Florida area, or whatever region the Commission defines to include Miami and surrounding communities." QUALCOMM Request at 2, May 4, 1992. The winners of the A and B block broadband PCS licenses in the Miami-Ft. Lauderdale, Florida, Major Trading Area (MTA -- M015) were Sprint Spectrum L.P., formerly WirelessCo., L.P., (A block), and PrimeCo Personal Communications, L.P. (B block). In light of the possible conflict between QUALCOMM's preference application and the previously granted applications for the A and B block licenses in the Miami-Ft. Lauderdale MTA, Sprint Spectrum and PrimeCo are deemed parties to this proceeding for purposes of the ex parte rules.

Prior to the issuance of the February 18, 1997, Public Notice, the remaining original parties to this proceeding (including a representative of GTE Mobilenet, the party that filed a formal opposition) met with Commission staff and discussed the merits and the outcome of this proceeding. While such discussions were not prohibited, QUALCOMM is requested to serve Sprint Spectrum and PrimeCo with a brief summary of the substance of its presentation to the staff. Two copies of the summary should also be sent to the Secretary for inclusion in the record.

Finally, we note that, pursuant to the February 18, 1997, Public Notice, interested parties may file reply comments in this proceeding by March 20, 1997, which must be served on all parties to this proceeding. Any persons filing comments that formally oppose QUALCOMM's preference request will also be deemed parties to this proceeding for purposes of the ex parte rules. See 47 C.F.R. § 1.1202(e).

By the Chief, Office of Engineering and Technology, and the General Counsel