

CONCLUSION

For the foregoing reasons the Commission should reverse its dismissal of QUALCOMM's pioneer's preference application and consider the application on its merits.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Susanne M. Gyldenvand, certify that on this 20th day of October, 1997, I caused copies of the foregoing Petition for Reconsideration of QUALCOMM Incorporated to be served by hand delivery or United States mail, first-class, postage prepaid, on the parties on the attached service list.

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Before the
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In the Matter of)	
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Dismissal of All Pending Pioneer's Preference Requests)	CC Docket No. 92-297, RM-7872, PP-22
)	ET Docket No. 94-124, RM-8784
)	GEN Docket No. 90-314, PP-68
)	GEN Docket No. 90-357, PP-25
)	IB Docket No. 97-95, RM-8811
)	RM-7784, PP-23
)	RM-7912, PP-34 <i>et. al.</i>
)	
Review of the Pioneer's Preference Rules)	ET Docket No. 93-266
)	(Docket Terminated)

PETITION FOR RECONSIDERATION
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SUMMARY

On September 18, 1997, the Commission dismissed QUALCOMM's pioneer's preference application and terminated the pioneer's preference program. The Commission argued that the dismissal was mandated by language in the 1997 Budget Act that prohibited the FCC from providing preferential treatment to pioneer's preference winners by precluding the filing of mutually exclusive applications after August 5, 1997.

The Commission is wrong. The Budget Act did not mandate dismissal of QUALCOMM's application. First, the Commission's interpretation of the Budget Act violates the rule against retroactive application of the law. Except when expressly ordered by Congress, laws may not be applied retroactively to affect a party's substantive rights. QUALCOMM's right to a fair hearing on the merits of its pioneer's preference request vested in 1994. Absent express Congressional intent to the contrary, the Commission may not apply newly created laws or pioneer's preference rules to QUALCOMM's application.

Second, the FCC's interpretation of the limiting language of Section 309(j)(13) of the Communications Act and the Budget Act is flawed. The FCC's Order implies that the FCC does not have discretion regarding its decision to terminate the entire pioneer's preference program. A plain reading of the applicable language of the Budget Act and Section 309(j)(13) suggests that Congress intended

only to limit the Commission's authority to preclude the filing of mutually exclusive applications, not to terminate the entire program.

Third, the Commission's dismissal of QUALCOMM's applications violates QUALCOMM's right to due process of law. When the Commission created the pioneer's preference program, it created a government benefit that triggers due process protections. Because QUALCOMM satisfied all of the requirements for a pioneer's preference, QUALCOMM had a legitimate claim of entitlement to a pioneer's preference that cannot be dismissed without a fair hearing on the merits of QUALCOMM's application.

Finally, The Commission's actions in the Order violate the notice and comment requirements of the Administrative Procedures Act. The APA requires the Commission to seek notice and comment before altering its rules in a manner that affects the substantive rights or interests of parties before the FCC. The FCC did not seek comment on its decision to terminate the pioneer's preference program or dismiss QUALCOMM's application. Accordingly, the Commission's action is arbitrary and capricious and should be reconsidered.