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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE
Federal Communications Commission
WASHINGTON, DC 20554

In the Matter of	)	
	)	
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, *et al.*
	)	
Review of the Pioneer's Preference Rules	)	ET Docket No. 93-266
	)	(Docket Terminated)

OPPOSITION OF PRIMECO PERSONAL COMMUNICATIONS, L.P. AND SPRINT PCS

SPRINT PCS

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November 20, 1997

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SUMMARY

By Order issued September 18, 1997, the Commission dismissed QUALCOMM's request for pioneer's preference. The Commission based its dismissal upon the accelerated termination date of the pioneer's preference program contained in Section 309(j)(13)(F), as amended by the Balanced Budget Act of 1997.

On October 20, 1997, QUALCOMM filed a petition for reconsideration arguing that the Commission's interpretation of the Balanced Budget Act amendment was erroneous, and that dismissal of its then-pending preference request constituted an improper retroactive application of the statute and a denial of due process. Thereafter, QUALCOMM improperly supplemented its petition to raise new arguments. QUALCOMM asserted that the Commission previously interpreted Section 309(j)(13) to apply only to pioneer's preference requests filed after September 1, 1994. QUALCOMM concluded therefore that because its request had been filed prior to that date, it was error to dismiss the application based upon the Budget Act amendment.

QUALCOMM's petition is without merit and should be dismissed. The Balanced Budget Act amendment terminated the preference program thereby ending the Commission's authority to grant QUALCOMM a pioneer's preference. QUALCOMM's arguments that the amendment did not impair the Commission's ability to grant QUALCOMM benefits *other* than licensing preference are unsupported.

The Commission was required by the *Freeman Engineering* case to reconsider its denial of pioneer's preference to QUALCOMM. The decision, however, did not require that QUALCOMM be granted a pioneer's preference. The subsequent termination of the pioneer's preference program by statutory amendment rendered additional Commission procedures meaningless.

Moreover, dismissal of QUALCOMM's application did not violate QUALCOMM's procedural rights. QUALCOMM had no entitlement or vested right subject to due process and Administrative Procedure Act protections. Dismissal of QUALCOMM's pioneer's preference request was lawful and also was the only resolution available to the Commission after the Balanced Budget Act amendment. Further procedures associated with QUALCOMM's application would be pointless, because the Commission cannot grant the relief sought.

Finally, QUALCOMM's argument that the Commission improperly reversed itself in applying the Section 309(j)(13)(F) sunset date to requests for pioneer's preference filed *before* September 1, 1994 is without merit. The Commission's action is wholly consistent with its prior decisions to treat requests for pioneer's preference filed *prior* to September 1, 1994 *the same as* requests filed *after* that date. Further, the Commission action is consistent with the language of Section 309(j)(13)(F), and with the legislative history of that amendment, which terminated the pioneer's preference program.

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	)	(Docket Terminated)

OPPOSITION OF PRIMECO PERSONAL COMMUNICATIONS, L.P. AND SPRINT PCS

PrimeCo Personal Communications, L.P.[1/] ("PrimeCo") and Sprint PCS[2/] hereby file this opposition to the petition for reconsideration filed by QUALCOMM Incorporated ("QUALCOMM") in the above-captioned proceeding on October 20, 1997.

1/ PrimeCo is a limited partnership comprised of PCSCO Partnership (owned by Bell Atlantic Personal Communications, Inc.) and PCS Nucleus, L.P. (owned by AirTouch PCS Holding, Inc. and U S WEST PCS Holdings, Inc.). PrimeCo is the B Block broadband PCS licensee for the Miami-Ft. Lauderdale MTA. PrimeCo is also the licensee, or owns a majority ownership interest in the licensee in the following broadband PCS MTAs: Chicago, Milwaukee, Richmond-Norfolk, Dallas-Ft. Worth, San Antonio, Houston, New Orleans-Baton Rouge, Jacksonville, Tampa-St. Petersburg-Orlando, and Honolulu.

2/ Sprint Spectrum L.P (d/b/a Sprint PCS) and its general partner Sprint Spectrum Holding Company, L.P. are Delaware limited partnerships formed by non-publicly traded subsidiaries of the following publicly-traded companies: Sprint Corporation; Tele-Communications, Inc.; Comcast Corporation; and Cox Communications, Inc. Sprint PCS holds a number of broadband PCS licenses in various markets, including the Miami-Ft. Lauderdale MTA.

I. INTRODUCTION/BACKGROUND

QUALCOMM submitted an application for a pioneer's preference to the Commission on May 4, 1992, requesting a preference for certain experimental work the company had conducted in the PCS frequency bands in San Diego, California. On February 4, 1994, the Commission denied QUALCOMM's application,[3] and QUALCOMM ultimately appealed that decision to the U.S. Court of Appeals for the District of Columbia Circuit in the consolidated case of *Freeman Engineering Associates v. FCC*.[4]

During the pendency of this proceeding, the Commission allocated the broadband PCS spectrum and established spectrum blocks. Thereafter, the Commission undertook the A and B Block broadband PCS auctions in which Sprint PCS and PrimeCo won the A and B Block licenses, respectively, for the Miami-Ft. Lauderdale MTA. PrimeCo and Sprint PCS paid for their licenses, filed all necessary FCC applications and received final license grants. These licenses were not conditioned upon the outcome of the pending QUALCOMM matter.

Since the license grants, both PrimeCo and Sprint PCS have made enormous capital and labor investments in building out their Miami systems in reliance on the finality of their licenses and the "high" expectancy of license renewal.[5] Each company has undertaken an aggressive build-out schedule and expended scores of millions of dollars in capital investment, microwave relocation and system expenses. These aggressive build-out activities will continue;

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[3] *In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services,* Third Report and Order, GEN Docket No. 90-314, 9 FCC Rcd 1337 (1994)("*Third R&O*").

[4] *Freeman Eng'g Assocs. v. FCC*, 103 F.3d 169 (D.C. Cir. 1997).

[5] *Amendment of the Commission's Rules to Establish New Personal Communications Services*, Second Report and Order, 18 FCC Rcd 7700, 7753 (1993); *see also* 47 C.F.R. § 24.16 (1996).

for example, PrimeCo intends to more than double the number of its existing cell sites in the Miami-Ft. Lauderdale market by the end of next year. Based upon their extensive efforts to date, the companies' systems currently cover a population of approximately 4 million people, out of an available population of 5 million.

On January 7, 1997, the *Freeman Engineering* Court remanded QUALCOMM's pioneer's preference application on the ground that the Commission had inconsistently applied its pioneer's preference rules to the detriment of QUALCOMM.[6/] The Commission denied QUALCOMM's application for pioneer's preference based upon the "developed specifically for a particular service" standard.[7/] In a previous case involving a pioneer's preference application filed by Omnipoint Communications, however, the Court found that the Commission had granted a preference based upon application of a different standard — the "associated with a licensable service" test.[8/] The *Freeman* Court found this application of two standards to be arbitrary and capricious and remanded the matter for "further proceedings to remedy this inconsistency."[9/]

On February 18, 1997, the Office of Engineering and Technology issued a *Public Notice* requesting comments and reply comments regarding what action it should recommend to the Commission in light of the court's remand.[10/] QUALCOMM submitted short comments on

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6/ 103 F.3d at 180.

7/ *Id.*; *Third R&O* at 1346.

8/ *Freeman Engineering,* 103 F.3d at 180.

9/ *Id.*

10/ *Filing Period Announced for Comments on QUALCOMM's Pioneer's Preference Application*, DA 97-351 (rel. Feb. 18, 1997).

February 24, 1997, urging the Commission to grant its application for pioneer's preference on an expedited basis.

On February 25, 1997, the Commission issued a *Public Notice* clarifying the *ex parte* status of QUALCOMM's application. The *Public Notice* concluded for the first time that PrimeCo and Sprint PCS should be treated as parties to that proceeding because 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."[11/] Accordingly, PrimeCo and Sprint PCS each submitted reply comments demonstrating: (1) the remand order did not find that QUALCOMM was entitled to a pioneer's preference, nor did it mandate the award of such preference; and (2) in any event, there was no basis for the Commission to revoke the Miami-Ft. Lauderdale licenses of PrimeCo or Sprint PCS in order to grant QUALCOMM a pioneer's preference.

On September 11, 1997, the Commission released a decision denying all pending applications for pioneer's preferences, including QUALCOMM's application.[12/] The Commission's decision was based upon the Balanced Budget Act of 1997 ("Budget Act"),[13/] which, among other things, amended Section 309(j)(13)(F) of the Communications Act to accelerate termination of the pioneer's preference licensing program.[14/] After enactment of the Budget Act

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11/ *Ex Parte Status Clarified: In the Matter of QUALCOMM Incorporated, Application for Pioneer's Preference*, DA 97-423 (rel. Feb. 25, 1997).

12/ *Dismissal of All Pending Pioneers Preference Requests*, FCC 97-309 (rel. September 11, 1997)("*Dismissal Order*").

13/ Pub. L. 105-33, 111 Stat. 251 (1997).

14/ *Dismissal Order* at ¶ 3. As originally enacted, Section 309(j)(13)(F) of the Communications Act provided:

on August 5, 1997, the Commission concluded that it no longer had authority to grant any applicant a pioneer's preference and dismissed all requests pending as of that date.[15]

On October 9, 1997, QUALCOMM filed a motion with the Court to enforce the mandate of *Freeman Engineering,* arguing that the Commission: (1) misconstrued the Budget Act; (2) acted arbitrarily and capriciously; and (3) failed to provide a hearing, denying QUALCOMM due process. On November 5, 1997, the Court dismissed QUALCOMM's motion for failure to exhaust administrative remedies. The Court held that the "appropriate procedure for QUALCOMM to seek relief is to petition to the Commission to reconsider its decision dismissing QUALCOMM's application."[16]

Prior to the Court's order, on October 20, 1997, QUALCOMM filed the instant petition for reconsideration. In its petition, QUALCOMM asserts that the Commission's interpretation of the Budget Act is erroneous. According to QUALCOMM, the dismissal of its request for a pioneer's preference is an improper retroactive application of the Budget Act and is based upon an erroneous reading of the Budget Act amendment.[17] QUALCOMM also asserts

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> The authority of the Commission to provide preferential treatment in licensing procedures (by precluding the filing of mutually exclusive applications) to persons who make significant contributions to the development of a new service or to the development of new technologies that substantially enhance an existing service shall expire on September 30, 1998.

47 U.S.C. § 3309(j)(13)(F). The Budget Act amended this provision by striking "September 30, 1998" and inserting "the date of enactment of the Balanced Budget Act of 1997." Pub. L. No. 105-33, 111 Stat. 259, § 3002(a)(1)(F).

15/ *Dismissal Order* at ¶ 5.

16/ *Freeman Engineering*, No. 94-1779 (D.C. Cir. Nov. 5, 1997)(order denying motion to enforce mandate).

17/ *See* QUALCOMM Petition at Summary.

that the Commission's action constitutes denial of due process and a violation of the Administrative Procedure Act ("APA").[18]

PrimeCo and Sprint PCS submit that QUALCOMM's Petition is without merit. The Commission properly concluded that the Budget Act amendments to Section 309(j)(13)(F) terminated its authority to grant any applicant a pioneer's preference. Further, such a conclusion is *not* improperly retroactive. Finally, there has been no violation of QUALCOMM's due process rights or the APA's procedural requirements. The Commission should therefore affirm its dismissal of QUALCOMM's request for pioneer's preference.

II. THE BUDGET ACT ELIMINATED THE FCC'S AUTHORITY TO GRANT QUALCOMM A PIONEER'S PREFERENCE

QUALCOMM argues that the Budget Act does not prohibit the Commission from granting QUALCOMM a pioneer's preference.[19] This argument is patently false. By its terms, Section 309(j)(13) prohibits the Commission from extending preferential licensing treatment to pioneers, except under certain narrowly drawn circumstances. Section 309(j)(13)(A) states:

> the Commission shall *not* award licenses pursuant to a preferential treatment accorded by the Commission to persons who make significant contributions to the development of a new telecommunications service or technology, *except in accordance with the requirements of this paragraph.*[20]

Section 309(j)(13)(F) sets a sunset date for the Commission's authority to provide such licensing preferences. Thus, when the Budget Act became law and the preference program was terminated, the Commission was no longer authorized to grant licenses based upon preferential

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[18] *Id.*

[19] *Id.* at 10.

[20] 47 U.S.C. § 309(j)(13)(A)(emphasis supplied).

treatment. The validity of this conclusion is confirmed by the Conference Report, which states that the "Senate recedes to the House on the acceleration of the termination date of the Commission's program that provides for preferential treatment in licensing (*i.e.*, 'pioneer's preference')."[21/]

QUALCOMM does not dispute the clear language of the Budget Act, but instead offers the peculiar argument that the concept of pioneer's preference is broader than the program of preferential license treatment established by the Commission in 1991. According to QUALCOMM, "absent any specific reward from the Commission, there is value to preference winners in simply being recognized as a 'Pioneer.' In addition, preference winners could receive benefits such as bidding credits, extended payment terms, rights of first refusal, and a host of other benefits."[22/] In QUALCOMM's view then, the Budget Act only terminated "the Commission's ability to reward pioneers by precluding the filing of mutually exclusive applications" and left untouched the Commission's authority to reward pioneers through other means.[23/]

PrimeCo and Sprint PCS take no position herein on whether QUALCOMM might receive some benefit other than one of the Miami licenses that PrimeCo and Sprint PCS purchased at auction. PrimeCo and Sprint PCS note, however, that no such benefits can be awarded in this proceeding. The Communications Act contains no provision dealing specifically with pioneer's preference other than Section 309(j)(13). In establishing pioneer's preference the Commission made clear that it was "adopting rules that provide preferential treatment in its

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21/ H.R. Conf. Rep. 217, 105th Cong., 1st Sess. 573 (July 30, 1997).

22/ QUALCOMM Petition at 12.

23/ *Id.* at 11.

licensing processes."[24] The Commission has not instituted, or expressed an intent to institute, a formal proceeding to consider whether to adopt pioneer's benefits other than the now-defunct licensing preference program. Moreover, the courts have recognized that the Commission's pioneer's preference program is nothing more than "the preference to file a license application without being subject to competing applications."[25] Thus, there is no basis to award QUALCOMM any such "other benefits" within the context of this proceeding.

In sum, the Budget Act terminated the Commission's authority to grant QUALCOMM the one benefit (licensing preference) that was available to pioneers. While QUALCOMM desires to now obtain a benefit other than the now-defunct licensing preference, there is no basis to suggest that QUALCOMM is in any way entitled to such a benefit.

III. THE COMMISSION PROPERLY GAVE PROSPECTIVE EFFECT TO THE BUDGET ACT

QUALCOMM's argument that the *Dismissal Order* was an improper "retro-active" application of the Budget Act is also without merit.[26] QUALCOMM cites to the Supreme Court decision in *Landgraf v. USI Film Products, et al.*, 511 U.S. 244, 114 S.Ct. 1483, 1499 (1994), for the proposition that, absent clearly expressed Congressional intent, statutes will not be given retroactive effect. According to QUALCOMM, because the Budget Act makes no reference to retroactive application, the Commission's *Dismissal Order* is retroactive and therefore presumptively unlawful.

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[24] *Id.* at 3489 ¶ 1 (emphasis added).

[25] *See Freeman Engineering*, 103 F.3d at 174; *Mobile Communications Corp. of America v. FCC*, 77 F.3d 1399, 1402-03 (D.C. Cir. 1996).

[26] QUALCOMM Petition at 9-10.

QUALCOMM's analysis is erroneous. A "statute does not operate 'retroactively' merely because it is applied in a case arising from conduct antedating the statute's enactment, . . . or upsets expectations based upon prior law."[27]

> When a case implicates a federal statute enacted after the events in suit, the court's first task is to determine whether Congress has expressly prescribed the statute's proper reach. If Congress has done so, of course, there is no need to resort to judicial default rules. When, however, the statute contains no such express command, *the court must determine whether the new statute would have retroactive effect, i.e., whether it would impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed.*[28]

The *Dismissal Order* was not retroactive in any of these three ways. On its face, the *Dismissal Order* does not increase QUALCOMM's liability for past conduct, nor does it impose new duties with respect to transactions already completed. Further, and contrary to QUALCOMM's claims, the *Dismissal Order* does not improperly impair rights QUALCOMM previously possessed. The D.C. Circuit's *Freeman Engineering* decision was entirely prospective in effect and vested no substantive rights in QUALCOMM. The Court in *Freeman Engineering* found that the Commission had improperly applied two different standards to two similar applications for pioneer's preference and accordingly remanded the matter for "further proceedings to remedy this inconsistency."[29] Put simply, the Commission was ordered to

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[27] 114 S.Ct. at 1499 (footnotes and citations omitted)

[28] *Id.* at 1505(emphasis supplied). While this formulation may not be the exclusive definition of presumptively impermissible retroactive legislation, it is "influential" and has been relied upon in dealing with FCC matters. *See Hughes Aircraft Co. v. U.S. ex rel. William J. Schumer*, 117 S.Ct. 1871, 1876 (1997); *DIRECTV, Inc. v. FCC*, 110 F.3d 816, 826 (D.C. Cir. 1997).

[29] *Freeman Engineering*, 103 F.3d at 180.

reconsider its denial of pioneer's preference to QUALCOMM given the apparent inconsistency in the standards applied.[30] That decision neither mandated the application of any specific standard nor required that QUALCOMM's request be granted; no substantive right was ever created.

QUALCOMM argues, however, that because a pioneer's preference could entail a substantive benefit in addition to (or in lieu of) the procedural preference mentioned in Section 309(j)(13), and because QUALCOMM believed itself to be qualified to receive a pioneer's preference, it had a constitutionally-protected entitlement to pioneer's preference. In QUALCOMM's view, the *Dismissal Order* improperly impaired that constitutionally-protected entitlement insofar as it implemented the Budget Act by dismissing its pioneer's preference request without a hearing.[31] These arguments are also without merit.

The simple filing of an application with the FCC creates no vested rights in the applicant.[32] Further, *nothing* in the FCC's rules or decisions, or in the *Freeman Engineering* decision, requires the grant of QUALCOMM's pioneer preference. At most QUALCOMM had an expectation based upon the original wording of Section 309(j)(13)(F) that through additional Commission procedures (following the *Freeman Engineering* remand) it would receive procedural preference with regard to a PCS license. Such an expectation, however, does not

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[30] *Id.*

[31] QUALCOMM Petition at 15-20.

[32] *Chadmoore Communications, Inc. v. FCC*, 113 F.3d 235, 241 (D.C. Cir. 1997). *See also DIRECTV*, 110 F.3d at 826 (policy decision to change auction satellite channels not retroactive even if it upset expectations of existing licensees); *Multistate Communications, Inc. v. FCC*, 728 F.2d 1519, 1525-26 at n. 12 (D.C. Cir. 1984) (FCC not required to conduct comparative hearing after Congress alters legislation to require issuance of license to one of applicants, even though other applications filed before Congress enacted the legislation).

equate to the substantive governmental benefits such as welfare benefits, disability benefits, franchises or licenses which may give rise to a constitutionally-protected interest.[33] The fact that the Budget Act, as implemented in the *Dismissal Order*, upset this expectation, does not render that decision improperly retroactive.[34]

IV. THE COMMISSION DID NOT VIOLATE QUALCOMM'S DUE PROCESS RIGHTS OR THE REQUIREMENTS OF THE APA

QUALCOMM also argues that the *Dismissal Order* violated its procedural due process rights to a "fair hearing" and the notice and comment requirements of the APA.[35] The basis of these claims is that Commission deprived QUALCOMM of a constitutionally-protected entitlement to a substantive federal benefit without appropriate procedures.[36] Again, QUALCOMM's argument is baseless.

As discussed above, the Budget Act terminated the Commission's pioneer preference program effective August 5, 1997. Further, the Commission's *Dismissal Order* properly effectuated this statutorily-fixed expiration date. Thus, insofar as there was no longer a pioneer's preference program, QUALCOMM could have no entitlement to such a benefit which could possibly give rise to vested interest subject to due process and APA protections. Consequently,

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[33] *See Goldberg v. Kelly*, 397 U.S. 254 (1970); *Matthews v. Eldridge*, 424 U.S. 319 (1976); *Bell v. Burson*, 402 U.S. 535 (1971).

[34] *See DIRECTV*, 110 F.3d at 826 ("As the Supreme Court has explained: 'Even uncontroversially prospective statutes may unsettle expectations and impose burdens on past conduct: a new property tax or zoning regulation may upset the reasonable expectations that prompted those affected to acquire property; a new law banning gambling harms the person who had begun to construct a casino before the law's enactment or spent his life learning to count cards.'"(citation omitted)).

[35] QUALCOMM Petition at 18-21.

[36] *Id.* at 18, 21.

dismissal of QUALCOMM's pioneer's preference request was not only lawful but also was the only reasonable avenue available to the Commission. Further procedures associated with QUALCOMM's application would be meaningless.[37]

V. THE COMMISSION DID NOT REVERSE ITSELF REGARDING APPLICATION OF A SUNSET DATE FOR PIONEER'S PREFERENCE

On November 6, 1997, QUALCOMM took the unusual step of filing comments upon its own petition for reconsideration. QUALCOMM asserts therein that in 1995 the Commission interpreted Section 309(j)(13)(F) to apply only to applications accepted for filing after September 1, 1994.[38] QUALCOMM argues that it is reversible error for the Commission now to interpret Section 309(j)(13)(F) to require dismissal of *all* pending requests for pioneer's preference, including those such as QUALCOMM's which were filed before September 1, 1994, without a reasoned explanation of the action.

QUALCOMM's "comments" are procedurally improper. Section 1.429(d) of the Commission's rules requires that petitions for reconsideration "and any supplement thereto" must be filed within 30 days of the Commission action being challenged.[39] QUALCOMM acknowledged that its peculiar filing was intended to supplement its petition "to assure that every issue QUALCOMM might raise in judicial review of the disposition of the Petition is

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[37] *See generally Richardson v. Belcher*, 404 U.S. 78, 81 (1971) (only due process restriction on congressional power to make substantive changes to laws providing entitlement to public benefits is non-arbitrariness requirement; no *Goldberg*-type hearing is required to reduce benefits).

[38] QUALCOMM Comments at 4 citing *Review of Pioneer's Preference Rules*, 10 FCC Rcd 4523, 4526 (1995)("*Second R&O*").

[39] 47 C.F.R. § 1.429(d); *see also* 47 C.F.R. § 1.106(f).

before the Commission."[40] The comments, however, were filed outside the 30 day window for supplementing petitions for reconsideration and were filed without a request for leave to file. Therefore, the comments are improper under Section 1.429(d) and should be dismissed.

In any event, QUALCOMM's comments are substantively without merit. QUALCOMM cites to three instances in the *Second R&O* in which the Commission states that the GATT legislation which implemented Section 309(j)(13)(F) does not apply to requests for pioneer's preference filed before September 1, 1994.[41] QUALCOMM fails to state, however, that, in each instance, the Commission decided to treat applications filed *before* September 1, 1994 *the same as* applications filed *after* that date.[42] In the Commission's view, there was no valid reason to distinguish between requests for pioneer's preference solely on the basis of the date upon which they were filed.[43] By dismissing *all* pending requests for pioneer's preference, including those filed before September 1, 1994, the *Dismissal Order* is consistent with the *Second R&O*. Moreover, the *Dismissal Order* is consistent with language of Section

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[40] QUALCOMM Comments at 1.

[41] *Id.* at 5 (citing *Second R&O*, 10 FCC Rcd at 4526, 4528, and 4533).

[42] *Second R&O*, 10 FCC Rcd at 4526 (In the Commission's view, the GATT legislation required the Commission to maintain pioneer's preference for applications filed after September 1, 1994. The Commission therefore refused to repeal the pioneer's preference program for requests filed before September 1, 1994 because to do so would accord inconsistent treatment to the earlier filed applications.); *id.* at 4528 (In the Commission's view, the GATT legislation established a specific payment formula for applications filed after September 1, 1994. The Commission therefore refused to apply a different payment formula for requests filed before September 1, 1994.); *id.* at 4533 (The Commission elected to apply the rule changes implementing the GATT legislation to applications filed before September 1, 1994.).

[43] 10 FCC Rcd 4526, 4528, and 4533.

309(j)(13)(F), as amended by the Budget Act, and with the legislative history of this provision which sets forth Congress' intent to terminate the entire pioneer's preference program.[44/]

CONCLUSION

For the foregoing reasons, PrimeCo and Sprint PCS urge the Commission to reject QUALCOMM's Petition for Reconsideration in all particulars.

Respectfully submitted,

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44/ H.R. Conf. Rep. 217 at 573 ("Senate recedes to the House on the acceleration of the termination date of the Commission's program that provides for preferential treatment in licensing (*i.e.*, 'pioneer's preference')").

CERTIFICATE OF SERVICE

I, Shelia L. Smith, hereby certify that on this 20th day of November 1997, copies of the foregoing Opposition of PrimeCo Personal Communications, L.P. and Sprint PCS were served on the following by U.S. first-class, postage-prepaid mail to:

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