

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
QUALCOMM Incorporated)	
)	WT Docket No. 05-7
Petition for Declaratory Ruling)	
)	
)	

**REPLY COMMENTS OF THE ASSOCIATION OF PUBLIC TELEVISION
STATIONS**

The Association of Public Television Stations (“APTS”)¹ hereby submits Reply Comments in the above captioned proceeding. Qualcomm has petitioned the Commission for changes in its rules and policies in three respects to support its new MediaFLO service at Channel 55 nationwide.² First, it requests that the Commission clarify that the procedures contained in the Office of Engineering and Technology Bulletin No. 69 (“OET-69”) are an acceptable means for demonstrating compliance with the interference protection criteria set forth in Section 27.60.³ Second, it asks the Commission to establish that a two percent *de minimis* level of interference is acceptable.⁴ Third, it asks the Commission to streamline the processing of OET-69

¹ APTS is a nonprofit organization whose members comprise the licensees of nearly all of the nation’s 357 CPB-qualified noncommercial educational television stations. APTS represents public television stations in legislative and policy matters before the Commission, Congress, and the Executive Branch and engages in planning and research activities on behalf of its members.

² See Qualcomm Incorporated, Petition for Declaratory Ruling that OET-69 is Acceptable to Demonstrate Compliance with Section 27.60, WT Docket No. 05-7 (filed Jan. 10, 2005).

³ *Id.* at 11-17.

⁴ *Id.* at 18-22.

showings by instituting a shortened public notice period and presuming that these showings are in the public interest.⁵

At present, there are seven analog and 13 DTV public television stations operating on channels 54, 55 and 56. APTS remains concerned that if the Commission were to act favorably on the Qualcomm petition, the increase in interference with these broadcast operations could jeopardize the mission of public television, which is to provide a free, universally accessible noncommercial educational television service to all Americans.

APTS agrees with the National Association of Broadcasters and the Association for Maximum Service Television, Inc., that the proper means for resolving these policy changes would be a formal notice-and-comment rulemaking, not the declaratory ruling that Qualcomm petitions the FCC to issue.⁶ This is because the petition seeks three substantive changes in the rule that were not contemplated in its initial promulgation.⁷

However, even if these substantive changes were initiated through a notice-and-comment rulemaking, APTS remains concerned that these changes would not be in the public interest. As NAB/MSTV points out, OET-69 was not designed to measure interference from non-DTV services using multiple transmitters within a single market, as is likely the case with the MediaFLO service.⁸ Moreover, as NAB/MSTV point out, Qualcomm's proposed use of OET-69 for services within a station's protected broadcast

⁵ *Id.* at 22-25.

⁶ See Joint Comments and Informal Objection of the Association for Maximum Service Television, Inc., and the National Association of Broadcasters, WT Docket No, 05-7, p. 6 et. seq. (March 10, 2005) (“Because it is a legislative rule, Section 27.60 may only be amended pursuant to a notice-and-comment rulemaking”).

⁷ *Id.* at 7.

⁸ *Id.* at 16.

contour raises additional concerns.⁹ In addition, APTS remains concerned that the increase in allowed interference from zero to two percent and the new “streamlined” procedures may unintentionally harm the ability of the American public to continue receiving the freely-available noncommercial educational television programming mandated by the Public Broadcasting Act of 1967 and subsequent amendments.¹⁰

Nor should the Commission be swayed by some of the blithe comments submitted in the record that downplay the importance of free, over-the-air television reception.¹¹ While it is frequently reported that 15% of U.S. television households rely exclusively on over-the-air reception of television signals,¹² the most recent evidence indicates that this figure is actually significantly higher-- approaching 19% nationwide.¹³ This national statistic, however, is an average, with significant variations from one market to another.¹⁴ Moreover, the Commission and the Government Accountability Office have recently concluded that these households are disproportionately African-American, Hispanic and

⁹ *Id.* at 17.

¹⁰ See, e.g. 47 U.S.C. §§ 396(a)(5), (a)(7), (a)(9).

¹¹ See Comments of Aloha Partners, L.P., WT Docket No. 05-7, p. 4 (Feb. 17, 2005); and Comments of the 700 MHz Advancement Coalition, WT Docket No. 05-7, p. 8 (March 10, 2005).

¹² *In re* Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, *Eleventh Annual Report*, FCC 05-13, at ¶ 81 (Jan. 4, 2005) (estimating over-the-air reliance to be 15.99 million households, or 14.75% of all TV households); and *Federal Communications Commission Media Bureau Staff Report Concerning Over-the-Air Broadcast Television Viewers*, 2005 FCC LEXIS 1332, ¶ 7 (2005) (citing 14.86%) (hereinafter “FCC OTA Staff Report”).

¹³ After considering evidence from a number of sources and making adjustments to its figures, the Commission currently estimates that the percentage of TV households that are over-the-air dependent could be as high as 19%. FCC OTA Staff Report, ¶ 7. Similarly, the Government Accountability Office (GAO) found that 19% or 20.8 million households rely exclusively on free over-the-air television. Statement of Mark L. Goldstein, United States Government Accountability Office, Testimony Before the Subcommittee on Telecommunications and the Internet, Committee on Energy and Commerce, House of Representatives, at 7 (Feb. 17, 2005) (hereinafter “GAO 2005 Testimony”).

¹⁴ FCC OTA Staff Report, ¶¶ 8 and 13.

low-income.¹⁵ Nor does this figure account for the millions of cable or DBS households that possess additional unconnected television sets that rely on over-the-air broadcast reception.¹⁶ And, important to public television stations is evidence that broadcast-dependent households are more likely than not to be frequent public television viewers.¹⁷ When evaluating the arguments put forth by Qualcomm and its supporters, the Commission should therefore be aware of the significant portion of the public that relies on over-the-air broadcast reception.

¹⁵ *Id.* at ¶ 11. GAO 2005 Testimony, at 7-8. Regarding whether age might be a determining factor for over-the-air reliant households, the American Association of Retired Persons recently testified that of the approximately 21 million over-the-air dependent households, 8.6 million include at least one person over the age of 50. Testimony of Lavada E. DeSalles on Behalf of AARP, Before the House Subcommittee on Telecommunications and the Internet of the House Committee on Energy and Commerce, at 5 (March 10, 2005) (citing Nielsen Media Research data).

¹⁶ The FCC has stated that the number of such sets may approach 30 million. FCC OTA Staff Report, ¶ 9. The GAO has separately estimated that these additional sets are present in 16% of cable households and one-third of DBS households. GAO 2005 Testimony, at 8-9. The National Association of Broadcasters has estimated that 18.3 million households with multiple sets may be affected. Testimony of K. James Yager, before the Subcommittee on Telecommunications and the Internet, Committee on Energy and Commerce, U.S. House of Representatives, at 3 (Feb. 17, 2005) (“Approximately 18.3 million MVPD households have one or more television sets that rely solely on over-the-air television reception”). Combined with TV sets in over-the-air dependent households, the FCC has estimated that the total number of broadcast-dependent TV sets would be 73 million. FCC OTA Staff Report, n. 15.

¹⁷ Comments of the Association of Public Television Stations, MB Docket No. 04-10, p. 9 (Aug. 11, 2004).

Conclusion

For the reasons stated above, APTS urges the Commission to deny Qualcomm's petition for a Declaratory Ruling or, in the alternative, initiate a formal notice-and-comment rulemaking concerning the issues raised by the petition.

Respectfully submitted,

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