

ASSOCIATION FOR **MAXIMUM SERVICE TELEVISION, INC.**



April 18, 2006

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Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Received & Inspected

APR 24 2006

FCC Mail Room

Re: Software for Evaluation of Interference from MediaFLO  
and other Part 27 Licensees; WT Docket No. 05-7

Dear Ms. Dortch:

To make a fully informed decision in this proceeding, the Commission must first determine the public interest impact of QUALCOMM's request for amendment of the Commission's rules so that its MediaFLO service may create up to two percent new interference to viewers of free, over-the-air television service. Such an analysis is impossible, however, without an accurate interference methodology that takes into account MediaFLO's use of multiple transmitters throughout the service areas of adjacent channel TV and DTV stations. In light of QUALCOMM's ongoing failure to produce such a methodology, last month, the Association for Maximum Service Television, Inc. ("MSTV") prepared and submitted a proposed engineering methodology that will accurately measure interference from MediaFLO to reception of over-the-air broadcasts.<sup>1</sup>

In response, QUALCOMM has opposed adoption of the new methodology under the assertion that such adoption would "delay QUALCOMM from launching MediaFLO" because "[t]here is no software available" to implement the methodology.<sup>2</sup> Such software exists, and with this letter, the Association for Maximum Service

<sup>1</sup> See Letter from David Donovan to Marlene H. Dortch, Secretary, FCC (filed March 31, 2006) (attaching revised OET-69 engineering methodology for use in evaluating impact of QUALCOMM's proposed revision of the interference standards of Section 27.60).

<sup>2</sup> Letter from Dean R. Brenner, QUALCOMM to Marlene H. Dortch, Secretary, FCC, at 2 (filed April 10, 2006).

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Television, Inc. ("MSTV") submits all necessary software to the Commission and QUALCOMM.

**So long as QUALCOMM makes available certain basic information about its proposed service, this software will allow the Commission to promptly and reliably estimate the real-world impact of QUALCOMM's requested interference allowance on viewers of over-the-air television services.** Using this software, MSTV or another party could provide an interference analysis for all affected stations in a **matter of days**. Unfortunately, QUALCOMM has repeatedly refused to make the locations of its transmitters public. As a result, it is impossible for the Commission to accurately assess the impact of QUALCOMM's request.<sup>3</sup> If QUALCOMM will not share such information with MSTV, it should make it available to the Commission, which can then conduct an interference analysis utilizing the methodology outlined in MSTV's earlier submission.<sup>4</sup>

Having provided both a comprehensive interference methodology and the software necessary to implement that methodology, MSTV hopes that QUALCOMM will allow this proceeding to move forward on the basis of facts and science rather than spurious lawyers' arguments. Rather than argue that the Commission "is not [legally] obligated to consider" MSTV's submission of the proposed interference methodology,<sup>5</sup> QUALCOMM should allow the Commission to obtain a true measure of interference from MediaFLO to over-the-air broadcasts.

Similarly, QUALCOMM should cease turning the proposed interference methodology on its head, mischaracterizing MSTV's proposal of a correction factor to the OET-69 methodology – which, as MSTV has explained, was never intended for use

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<sup>3</sup> See, e.g., Letter from David Donovan, MSTV to Dean R. Brenner, QUALCOMM (Jan. 12, 2006) (requesting information from QUALCOMM to enable evaluation of interference from MediaFLO to reception of over-the-air broadcast services). Indeed, QUALCOMM has even wavered on the question of *how many* stations would suffer loss of over-the-air service were its request for a new interference allowance granted, citing in various filings a "target list of 125 markets around the country," "30 target markets," "26 television stations," and "22 stations." See Letter from David Donovan, MSTV to Marlene H. Dortch, Secretary, FCC, at 6 (filed Jan. 12, 2006).

<sup>4</sup> MSTV would not object to the Commission's adoption of a standard Protective Order to maintain confidentiality of data submitted by QUALCOMM concerning transmitter placement. The Commission's use of such orders is commonplace and has consistently ensured protection of sensitive data. See, e.g., *Applications for Consent to the Assignment and/or Transfer of Control of Licenses*, Order Adopting Protective Order, DA 05-1673, MB Docket No. 05-192 (rel. June 16, 2005) (adopting Protective Order in Adelphia-TimeWarner-Comcast transaction).

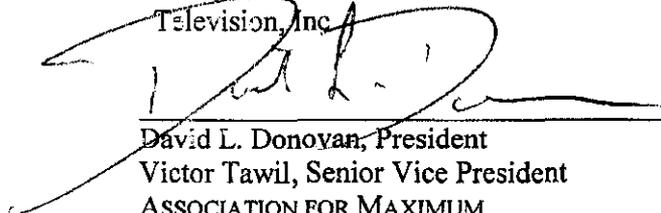
<sup>5</sup> Letter from Dean Brenner at 5. As QUALCOMM is aware, the Commission is fully entitled to consider any *ex parte* filing in this proceeding, which has been designated as a "permit-but-disclose" proceeding pursuant to Public Notice DA 05-87 (rel. Jan. 18, 2005).

in the Part 27 context – as a change in the D/U ratios of Part 27.<sup>6</sup> In fact, by providing for accurate measurement of interference from MediaFLO to over-the-air broadcasts, MSTV's proposed methodology will allow the Commission to determine whether a given operation meets the D/U ratios of Part 27.<sup>7</sup>

**The decision is now in QUALCOMM's hands.** It can either continue to withhold data and raise spurious procedural arguments against adoption of a reliable interference methodology, or it can allow this proceeding to move forward on the merits. Absent accurate interference assessment, the FCC lacks the necessary information to assess the true interference impact of QUALCOMM's request for a 2% waiver. If QUALCOMM makes necessary data available, the Commission can promptly and accurately evaluate the real-world impact of the request for a new two percent interference allowance on the public's television service.

Respectfully submitted,

Association for Maximum Service  
Television, Inc.



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cc: Dean Brenner, QUALCOMM

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<sup>6</sup> It is particularly ironic that QUALCOMM should describe MSTV's proposed interference methodology as a "rule change," when QUALCOMM's principle request – the creation of a two percent, "*de minimis*" interference allowance for Part 27 services – would substantively amend Section 27.60 of the Commission's rules. As MSTV has previously explained, such a rule change may only occur within the context of a notice-and-comment rulemaking and not, as in this proceeding, in the context of a Petition for Declaratory Ruling. *See, e.g.*, Comments of MSTV and NAB, WT Docket No. 05-7, at 5-8 (filed March 10, 2005) ("MSTV/NAB Comments").

<sup>7</sup> *See* 47 C.F.R. § 27.60 (0 dB at the hypothetical Grade B contour for an analog station or -23 dB at the equivalent Grade B contour for a DTV station). It is QUALCOMM's proposed use of OET-69 to measure interference from MediaFLO to over-the-air broadcasts which would effectively amend Part 27 by allowing operation by MediaFLO that would not, in reality, meet the D/U ratios of Part 27. *See* MSTV/NAB Comments at 13-18.

DOCKET NO.

05-7

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