



QUALCOMM Incorporated

2001 Pennsylvania Ave., NW ■ Suite 650 ■ Washington, DC 20006 ■ Tel: 202.263.0020

[www.qualcomm.com](http://www.qualcomm.com)

June 20, 2006

**Via ECFS**

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

**Re: Written Ex Parte Presentation in WT Docket No. 05-7**

Dear Ms. Dortch:

On behalf of QUALCOMM Incorporated (“QUALCOMM”), I am writing in response to the June 13, 2006 *ex parte* letter filed in the above-referenced proceeding by the Association of Maximum Service Television, Inc. (“MSTV”). MSTV’s letter merely repeats a series of meritless arguments that MSTV has previously made in this proceeding, consistent with MSTV’s efforts to obstruct the Commission from issuing the requested declaratory ruling to clarify its rules and to prevent QUALCOMM from launching its highly beneficial and innovative MediaFLO service around the country. As QUALCOMM shows herein yet again, MSTV’s arguments have no legal or technical merit and provide no basis for the Commission to delay this proceeding any longer.

MSTV begins by claiming erroneously that “it is QUALCOMM’s request to operate outside of and to ignore the current Commission’s rules and regulations that are at issue;” QUALCOMM “now wants to change both the methodology and the current interference protection afforded broadcasters by the rules;” and that “the current rules provide for no interference. . .”<sup>1</sup> As in their past filings, MSTV makes these claims without quoting or even citing the Commission’s rules. In truth, QUALCOMM’s Petition for Declaratory Ruling requests that the Commission clarify Section 27.60 (b) (1) (iii) of its rules because that rule, while part of the flexible Part 27 framework, is vague. The rule permits QUALCOMM to file engineering studies justifying the separation between its transmitters and potentially affected TV/DTV stations, but it does not state: a) what methodology QUALCOMM may use in such studies; b) what level of interference will be deemed justified; and, c) how the Commission will process such studies. QUALCOMM has never sought to operate outside of or to ignore the Commission’s rules.

Similarly, QUALCOMM is not seeking to change the methodology or the interference protection set forth in the Commission’s rules. In fact, Section 27.60 (b) (1) (iii) does not specify any methodology, and so there cannot be any basis to suggest that QUALCOMM is trying to change the permitted methodology. In its Petition for Declaratory

---

<sup>1</sup>MSTV Ex Parte Letter (June 13, 2006) at Pg. 1.

Ruling, QUALCOMM asks the Commission to declare that a particular methodology, known as OET-69, is permissible for use in calculating interference from QUALCOMM's MediaFLO transmitters to potentially affected TV/DTV stations.

Moreover, the Commission's rules do not provide for no interference. Rather, Section 27.60 states that Part 27 licensees, such as QUALCOMM, must operate to "reduce the potential for interference," not eliminate all interference or operate with zero interference, contrary to MSTV's claims. There will always be some level of interference caused when a Part 27 licensee, such as QUALCOMM, goes on the air, as the Commission's rules recognize. The question is, under Section 27.60 (b) (1) (iii), what level will be deemed justified. It is MSTV, not QUALCOMM, which is trying to re-write the Commission's rules.

MSTV goes on to claim that QUALCOMM is ignoring MSTV's assertions that the D/U ratio for real-world DTV receivers is not a single value but is a function that varies depending on the field strength of the desired signal, such that in a strong signal situation, the D/U needed for protection from interference is on the order of 10 dB more restrictive than the value needed in a weak to moderate situation than is contemplated under the DTV channel allotment process, as shown by the ATSC A/74 DTV receiver standards.<sup>2</sup> QUALCOMM has not ignored the A/74 recommendations, although those recommendations have not been implemented by the Commission in any of its rules and even though there is no legal basis for the Commission to adjust the Part 27 D/U ratios based on the A/74 recommendations in this proceeding, as MSTV proposed over a year after the comment deadline in this proceeding. QUALCOMM stated in its April 10, 2006 ex parte letter that it recognizes that the A/74 recommendations have a basis in field measurements.<sup>3</sup> QUALCOMM went on to point out, however, that MSTV is proposing the use of the A/74 recommendations in a selective, self serving manner. MSTV has proposed a 10 dB adjustment to the A/74 recommendation for weak signal scenarios, a 5 dB adjustment for strong signal scenarios, and MSTV ignored the A/74 recommendation altogether for moderate signal scenarios. There is no technical basis for this sort of cherry picking. MSTV's most recent letter just pretends that these fundamental flaws in their arguments do not exist.

In the same vein, QUALCOMM noted that in the strong signal scenario, MSTV made the unrealistic assumption that a 10 dB gain TV receive antenna will be used in strong signal conditions, locations where there is no economic or performance incentive to install more expensive and bulky high gain antennas. QUALCOMM also questioned why MSTV would use a linear interpolation between the strong and weak signal scenarios. MSTV has never provided a justification for this method, which differs from the method used in A/74, their alleged technical basis. For all of these reasons, the record is clear that MSTV is not presenting good faith technical analyses. Rather, MSTV is just trying to delay the Commission from ruling on QUALCOMM's Petition for Declaratory Ruling with these baseless filings.

---

<sup>2</sup> *Id.*

<sup>3</sup> QUALCOMM Ex Parte Letter (April 10, 2006) at Page 8.

Equally without merit is MSTV's response to QUALCOMM's argument that the Commission has granted numerous applications in which full power analog and full power digital television stations, as well as low power television stations, have been permitted to use the OET-69 methodology and the existing D/U ratios to locate their stations within the Grade B contour of an adjacent channel station, in many cases without being co-located with the adjacent channel station.<sup>4</sup> MSTV has not asked that the Commission rescind any of these actions wherein a DTV station was affected because the D/U ratios do not reflect the A/74 recommendations, and, in their latest filing, MSTV ignored the precedents in which the applicants were full power analog or full power DTV stations, who enjoyed the benefit of using OET-69 in the same manner about which MSTV now complains so loudly. Instead, MSTV states irrelevantly that digital low power stations must meet a D/U ratio that is more stringent than the D/U ratio that governs full power television stations and Part 27 licensees. The grants in question involved analog low power stations. In any event, the larger point remains unchallenged. Full power analog, full power DTV and low power television stations have all been permitted to use OET-69 and the existing D/U ratios, without any adjustment based on the A/74 recommendations, to locate their transmitters within the Grade B contour of adjacent channel television stations on a non-co-located basis. MSTV is using the A/74 recommendations in an unprecedented, unsupported, and self-serving manner.

MSTV's response to QUALCOMM's showing that there is a large protective margin to the interference that MediaFLO is predicted to cause under the OET-69 methodology and the extant Part 27 D/U ratios is just as telling. MSTV does not and cannot contest any of these facts; 1) MediaFLO will meet the Part 27 D/U ratios, which are up to 17 dB more protective of the TV and DTV stations than the Part 73 D/U ratios; 2) the Part 27 emission mask produces a first adjacent side-band power level that is 17 dB below that of a comparable full power DTV signal; 3) MediaFLO will use an emission mask that is even more conservative than the Part 27 emission mask; and, 4) MediaFLO will operate with a signal strength that is 3 dB less than the signal assumed in the engineering exhibits to QUALCOMM's Petition for Declaratory Ruling.<sup>5</sup> MSTV does concede that the Part 27 D/U ratios are 3 dB more protective than the Part 74 D/U ratios, but never deals with any of the foregoing facts because they completely undermine MSTV's arguments in this proceeding.

MSTV simply says, in a conclusory and non-scientific manner, that the OET-69 methodology was not intended to take into account high-powered operations within the service area.<sup>6</sup> As already shown herein and in QUALCOMM's prior filings, the Commission has allowed many full power analog and full power DTV stations have been allowed to use OET-69 to locate their operations within the service area—operations at a much higher power than MediaFLO will use. The fact that OET-69 was not invented to calculate interference from MediaFLO to TV/DTV stations is irrelevant. As QUALCOMM has shown, from the perspective of measuring interference, MediaFLO has characteristics similar to a lower power

---

<sup>4</sup> *Id.* at Pg. 3, citing QUALCOMM Reply Comments (filed March 25, 2005) at Pg. 10, n.30, 31.

<sup>5</sup> QUALCOMM Ex Parte Letter (April 10, 2006) at Pg. 7.

<sup>6</sup> MSTV Ex Parte Letter (June 13, 2006) at Pg. 2.

DTV signal—both are noise-like signals operating in a 6 MHz channel. Under these circumstances, and in light of the Commission’s precedents, it is entirely appropriate for the Commission to permit QUALCOMM to use the OET-69 methodology.

MSTV says, again, that the appropriate protections need to be increased on the order of 10 dB beyond the current OET-69 levels, based on the ATSC A/74 measurements and recommendations.<sup>7</sup> This is simply a belated attempt by MSTV to change the Commission’s rules, which contain the D/U ratios that OET-69 would use. Moreover, MSTV is not seeking an across the board incorporation of the A/74 recommendations, but instead wants the Commission to implement A/74 in the highly selective and self serving manner described *supra*

MSTV argues that the Commission should maintain the current no interference standard for operations under Part 27. As we have shown repeatedly in this proceeding, and at the outset of this letter, there is no such standard—Section 27.60 of the Commission’s Rules does not say what MSTV wants it to say. MSTV says that it wants any interference analysis to be computed correctly, but as QUALCOMM has shown, QUALCOMM is not proposing any incorrect computations, and in fact, in light of the conservative Part 27 D/U ratios, the conservative Part 27 emission mask, and the even more conservative emission mask employed by MediaFLO, the interference from MediaFLO will be even less than will be predicted by OET-69.

MSTV ends its letter by making the absurd claim that the Commission must determine the location of QUALCOMM’s transmitters prior to making a decision in this proceeding. There is no legal, technical, or even logical basis for MSTV’s claim, which is simply made for delay and which is fundamentally inconsistent with the very notion of a declaratory ruling. QUALCOMM is requesting a declaratory ruling to obtain clarification as to the vague aspects of Section 27.60 (b) (1) (iii) of the Commission’s rules. The locations of QUALCOMM’s transmitters are not needed to rule on QUALCOMM’s request that the Commission fill in the gaps in the rule by deciding if OET-69 is an appropriate methodology for use in engineering studies, what the legal standard should be in evaluating such studies are submitted, or how to process such studies—the issues at stake in this proceeding. MSTV does not and cannot show that the Commission needs any additional information beyond what is contained in QUALCOMM’s Petition for Declaratory Ruling in order to issue the requested declaratory ruling. The locations of particular QUALCOMM transmitters should have no bearing at all on how the Commission rules on QUALCOMM’s Petition for Declaratory Ruling, which seeks clarification on the legal standards that will govern QUALCOMM’s engineering studies, under Section 27.60 (b) (1) (iii).

As QUALCOMM has explained previously, before QUALCOMM can go on the air in a particular market by virtue of Section 27.60 (b) (1) (iii), the Commission’s rules require it to file an engineering study, which will set forth the proposed technical parameters, including the location of QUALCOMM’s proposed transmitter location or locations to serve the market in question, and the potentially affected parties and the Commission will be able to review and

---

<sup>7</sup> *Id.* at Pg. 2.

evaluate the engineering study before QUALCOMM is permitted to go on the air in the market in question. At this time, until the Commission rules on QUALCOMM's Petition for Declaratory Ruling and provides the requested clarifications of Section 27.60 (b) (1) (iii), the Commission has no need for the locations of QUALCOMM's transmitters, which remain confidential other than a small number of transmitters in markets for which QUALCOMM is not availing itself of Section 27.60 (b) (1) (iii) and for which QUALCOMM has already filed the required notifications with the Commission.

For its part, MSTV filed comments and reply comments on QUALCOMM's Petition for Declaratory Ruling without suggesting that they could not do so without knowing the location of QUALCOMM's transmitters. Rather, MSTV started making this claim much later in this proceeding in order to forestall a ruling.

For all of these reasons, QUALCOMM respectfully requests that the Commission disregard MSTV's baseless arguments and issue a ruling to grant QUALCOMM's Petition for Declaratory Ruling as soon as possible.

Respectfully submitted,

/s/ Dean R. Brenner

Dean R. Brenner  
Vice President, Government Affairs

Cc: Hon. Kevin J. Martin  
Hon. Michael J. Copps  
Hon. Jonathan S. Adelstein  
Hon. Deborah Taylor Tate  
Hon. Robert McDowell  
Donna C. Gregg, Esq.  
Julius P. Knapp  
Catherine W. Seidel, Esq.  
Heather Dixon, Esq.  
Bruce Gottlieb, Esq.  
Barry Ohlson, Esq.  
Aaron Goldberger, Esq.  
Angela Giancarlo, Esq.