

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

To: The Commission

**PETITION FOR RECONSIDERATION AND/OR CLARIFICATION OF THE
ASSOCIATION FOR MAXIMUM SERVICE TELEVISION, INC.**

In denying Qualcomm, Inc.’s request for a broad “declaration” that the rules allow it and other 700 MHz entrants to interfere with up to two percent of the viewing public, and instead restricting Qualcomm’s relief to a more limited interference waiver, the *Qualcomm Order* acknowledged the importance of “sustain[ing] a minimally disruptive transition to DTV for consumers.”¹ In furtherance of that principle, the Commission should make clear that Qualcomm cannot take advantage of that waiver in markets where the proposed interference would cause unique, market-specific harms not contemplated by the *Qualcomm Order*. It also should remind Qualcomm to demonstrate that the aggregate of *all* of its transmissions in a market comply with the interference thresholds, as calculated in strict accordance with the OET-69 methodology. The Association for Maximum Service Television, Inc. (“MSTV”) accordingly submits this Petition for Reconsideration and/or Clarification.

¹ *Qualcomm Inc. Petition for Declaratory Ruling*, Order, WT Docket No. 05-7, FCC 06-155, at 17 ¶ 31 (rel. Oct. 13, 2006) (“*Qualcomm Order*”).

The Waiver Should Not Apply Where a Party Raises Market-Specific Concerns

In adopting, by waiver, the interference limits specified in the *Qualcomm Order* – namely, 0.5 percent through October 12, 2007, 1.0 percent from then until October 12, 2008, and 1.5 percent from then until February 17, 2009 – the Commission relied generally on the belief that such interference would be only “*de minimis*.” It did not consider whether, in any particular market, interference from Qualcomm’s operation would indeed be “*de minimis*” as to affected stations and their viewers. Nor could it. Qualcomm refused repeated requests for data concerning its proposed transmitter locations and other operating parameters, stating only that its operation would affect an unspecified “30 target markets.”² Only since release of the *Qualcomm Order* has Qualcomm publicly divulged information concerning its transmitters.

As MSTV and other concerned parties have repeatedly emphasized, “a reliable estimate of harm [from Qualcomm] to over-the-air viewers ... requires specific analysis of transmitter placement.”³ Because the Commission and the public did not previously have the benefit of transmitter data, the interference thresholds of the *Qualcomm Order* should be viewed only as presumptions that the Wireless Telecommunications Bureau (“Bureau”) can use in evaluating an application by Qualcomm. If a party raises an objection showing that the real-world effect of Qualcomm’s proposed operation would be more than *de minimis*, a lower (possibly zero percent) interference threshold should instead be used.

² See Letter from Dean R. Brenner, Qualcomm to Marlene H. Dortch, Secretary, FCC, WT Docket No. 05-7 (Dec. 16, 2005).

³ Letter from David Donovan, MSTV to Marlene Dortch, FCC, WT Docket No. 05-7 (Jan. 12, 2006), at 4.

For example, MSTV previously raised the possibility of a transmitter, placed by Qualcomm in an area with a large Spanish-speaking population, that would operate on a frequency adjacent to that market's only Spanish-language television station.⁴ Although Qualcomm's interference analysis may show that it would interfere with only 0.5 percent of the population within that station's service area, a much higher percentage of the station's actual viewership would lose service. Moreover, licensees may raise particular concerns about a negative effect on the DTV transition when Qualcomm interferes with a digital station operating on channel 54, 55 or 56. Finally, application of the waiver may be inappropriate if interference from Qualcomm primarily affects the ability of viewers in a community to receive that community's only station of license. In these and other situations, automatic application of the interference waiver would cause a significant disruption to viewers, despite the *Qualcomm Order's* express desire to avoid such disruption.

Unfortunately, the *Qualcomm Order* is ambiguous as to whether the Bureau is required to consider market-specific concerns. Specifically, although the *Qualcomm Order* states that Qualcomm must file an application and engineering study for any market where it hopes to utilize the interference waiver, and that such application will be placed on Public Notice "for comment," it also "anticipate[s]" that any objection "will focus on whether Qualcomm meets the interference protection requirements, within the *de minimis* thresholds established herein, rather than whether such *de minimis* thresholds are appropriate."⁵

⁴ *Id.*; see also Comments of Pappas Southern California License, LLC, WT Docket No. 05-7, at 8 (filed March 10, 2005).

⁵ *Qualcomm Order* at ¶ 36.

In limiting the anticipated scope of objections, the Commission presumably intended merely to discourage generalized objections to the establishment of interference thresholds for Qualcomm's operation during the DTV transition. Through informal discussions with Bureau staff, however, MSTV has learned that the Bureau will evaluate Qualcomm's applications *solely* to determine whether its operations would be within the interference thresholds established by the *Qualcomm Order*. The Bureau's apparent interpretation is particularly troubling given the recent announcement that Qualcomm has filed applications to take advantage of the interference thresholds in at least *nine* markets.⁶ Timely clarification, or in the alternative, reconsideration, is thus necessary to ensure that the viewing public is protected from excessive interference.

The Commission Should Remind Qualcomm To Disclose All Transmitter Locations

The *Qualcomm Order* states that Qualcomm must publicly file a modification application and comprehensive engineering statement whenever it seeks to operate within the interference thresholds of the waiver.⁷ This disclosure and threshold limit applies with respect to all of Qualcomm's transmissions that potentially affect co-channel and adjacent-channel television stations, and contains no exemption based on the power of Qualcomm's base stations.⁸

⁶ See *Wireless Telecommunications Bureau: Market-Based Applications Accepted for Filing*, Public Notice (rel. Nov. 1, 2006) (announcing acceptance for filing of Qualcomm's applications in Atlanta, New Orleans, Nashville, New York, Los Angeles, Norfolk/Richmond, Philadelphia, St. Louis and Indianapolis area markets).

⁷ *Qualcomm Order* at ¶ 36 (“[T]o the extent that Qualcomm seeks to operate within the *de minimis* thresholds established in this order, it will be required to file a Form 601 modification application and appropriate engineering study, which will be placed on Public Notice for comment”).

⁸ 47 C.F.R. § 27.50(c)(5) (“Licensees intending to operate a base or fixed station at a power level greater than 1 kW ERP must provide advanced notice of such operation to the Commission and (continued...)”).

Although the language of the *Qualcomm Order* is clear on its face, the Commission should clarify that the disclosure requirement applies to all of Qualcomm's operations, including those from transmitters operating under 1 kW ERP, and that *all* transmissions must be considered when determining compliance with the interference thresholds of the *Qualcomm Order*.⁹ Without such direction, there is some risk that Qualcomm may interpret Section 27.50(c)(5) – which exempts Part 27 licensees only from notifying other Part 27 licensees of operations below 1 kW ERP – to exempt it from notifying television stations and the public in those cases. By reminding Qualcomm of its obligations, the Commission will ensure that broadcasters will have notice of the new interference their viewers will receive from Qualcomm, and allows the Commission to determine whether Qualcomm has, in fact, complied with the interference thresholds of the *Qualcomm Order*.

to licensees authorized in their area of operation. Licensees that must be notified are all licensees authorized under this part to operate a base or fixed station on an adjacent spectrum block at a location within 75 km of the base or fixed station operating at a power level greater than 1 kW ERP”).

⁹ Data disclosed in Qualcomm's engineering statement should include, at a minimum, transmitter location, power levels, antenna coordinates, antenna height above ground, and vertical antenna pattern.

**The Commission Should Ensure That Qualcomm
Strictly Adheres to the OET-69 Methodology**

The *Qualcomm Order* requires Qualcomm to use the existing OET-69 methodology to demonstrate compliance with its waiver's *de minimis* interference thresholds.¹⁰ A review of Qualcomm's recent filings in nine markets, however, reveals that in allegedly demonstrating compliance with the thresholds, Qualcomm has used inaccurate calculations of affected DTV stations' population baseline figures. Instead of relying on the population baselines provided by the Commission and called for by the OET-69 methodology,¹¹ Qualcomm has calculated the interference percentage based upon population within a station's DTV noise limited contour. Use of the wrong baseline inappropriately inflates the population served by affected DTV stations and thereby underestimates the interference caused to DTV stations.¹²

Particularly in light of the *Qualcomm Order's* finding that "Qualcomm transmitters should be analyzed in the same manner as a potentially interfering full service DTV station ... for purposes of determining the received interfering signal level,"¹³ Qualcomm should

¹⁰ The *Qualcomm Order* adopted the existing OET-69 methodology with certain minor modification (e.g., reliance on the Part 27 D/U ratios, rather than the Part 73 D/U ratios, and analysis of the impact of multiple MediaFLO transmitters on affected stations). See *Qualcomm Order* at ¶ 18.

¹¹ See *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order*, 13 FCC Rcd. 7418, 7450-51 ¶ 80 (1998) ("The station population values for existing NTSC service and DTV service contained in Appendix B of this Memorandum Opinion and Order are to be used for the purposes of determining whether a power increase or other change is permissible under this *de minimis* standard").

¹² For example, in computing the DTV population baseline of WPHL-DT in Philadelphia, Qualcomm used the noise limited contour population of 8,298,389 instead of the DTV baseline population of 7,152,760, a difference of 1,145,629. Qualcomm thus underestimates the interference threshold to WPHL-DTV by 0.0645%. See Qualcomm, Inc., FCC Form 601, File No. 0002786940, Ex. 2 at 2 (filed Oct. 23, 2006).

¹³ *Qualcomm Order* at ¶ 23.

not be allowed to arbitrarily modify the OET-69 methodology in calculating the population served by a DTV station. Accordingly, the Commission should carefully review any application by Qualcomm seeking to take advantage of the interference thresholds of the *Qualcomm Order*, and should recalculate interference estimates based upon correct DTV population baselines.

CONCLUSION

To protect the public and uphold the Commission's goal of minimizing disruption to viewers during the DTV transition, MSTV respectfully requests that the Commission clarify, or in the alternative, reconsider, the *Qualcomm Order* to provide that the interference waiver granted to Qualcomm will not apply in situations where a party raises unique, market-specific concerns. Furthermore, the Commission should remind Qualcomm of its obligation to demonstrate that the aggregate of interference from *all* of its transmissions to an affected station comply with the applicable threshold, which must be calculated in strict compliance with the OET-69 methodology.

Respectfully submitted,

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