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

REPLY TO OPPOSITION OF QUALCOMM INC.

The Association for Maximum Service Television, Inc. ("MSTV") hereby responds to the Opposition of Qualcomm Inc. ("Qualcomm") to MSTV's Petition for Reconsideration and/or Clarification of the *Qualcomm Order*.[1] Qualcomm's reply highlights its intention to use artificially inflated estimates of the number of viewers served by a DTV station, which in turn allows Qualcomm to underreport the percentage of actual viewers with which its MediaFLO service will interfere. The Commission accordingly should clarify that Qualcomm must calculate interference to stations based on actual baseline population information, as published by the Commission.

A DTV station rarely serves all persons within its noise-limited contour. Interference from other stations and sources, as well as terrain limitations, naturally prevent some "viewers" within that contour from receiving the station's signal. Qualcomm's use of the *entire* population within a DTV station's noise-limited contour to measure that station's

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[1] *See* Opposition of Qualcomm Inc. to Petition for Reconsideration and/or Clarification, WT Docket No. 05-7 (filed Nov. 21, 2006) ("Qualcomm Opposition"); Petition for Reconsideration and/or Clarification of MSTV, WT Docket No. 05-7 (filed Nov. 13, 2006); *Qualcomm Inc. Petition for Declaratory Ruling*, Order, WT Docket No. 05-7, FCC 06-155, at 17 ¶ 31 (rel. Oct. 13, 2006) ("*Qualcomm Order*").

population baseline is accordingly inappropriate. MSTV agrees with Pappas Southern California License, LLC ("Pappas") that the Commission should "unambiguously instruct[]" Qualcomm to calculate interference to viewers based on "correct total-service-area population values."[2]

In measuring interference between DTV stations, the Commission has consistently calculated a station's baseline population based upon the number of potential viewers within that contour *minus* those persons predicted to not receive the station's signal for a variety of reasons. The Commission has reiterated this fundamental point as recently as its October 2006 *Seventh Further Notice of Proposed Rulemaking* concerning the DTV Table of Allotments, in which it wrote, "Under the procedure in *OET Bulletin No. 69*, the predicted geographic area and population served by a TV station are reduced by any interference it receives from other stations."[3] Similarly, in deciding in 2000 whether to adopt a *de minimis* interference threshold for Class A stations, as calculated via OET-69 analysis, the Commission noted that "[b]aseline populations would have to account for interference already caused to Class A stations by other full-service, LPTV and TV translator stations."[4]

Throughout the course of this proceeding, Qualcomm has maintained that OET-69 is an appropriate tool for measuring interference from its MediaFLO service because "from the perspective of measuring interference, MediaFLO has characteristics similar to a lower

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[2] *See* Comments of Pappas Southern California License, LLC, WT Docket No. 05-7, at 4 (filed Nov. 22, 2006).

[3] *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, Seventh Further Notice of Proposed Rulemaking, MB 87-268, FCC 06-150, at ¶ 19 (rel. Oct. 20, 2006).

[4] *Establishment of a Class A Television Service*, 15 FCC Rcd 6355, 6386 ¶ 74 n.135 (2000).

power DTV signal – both are noise-like signals operating in a 6 MHz channel."[5] Based on Qualcomm's repeated representations, the Commission concluded that "the Qualcomm transmitters should be analyzed in the same manner as a potentially interfering full service DTV station or digital LPTV station for purposes of determining the received interfering signal level."[6] After two years of such representations to the Commission, it is troubling that within days of release of the *Qualcomm Order*, Qualcomm has sought to modify the OET-69 interference prediction methodology in a manner that will undercount the level of interference its transmitters will cause to DTV stations.[7]

To illustrate the effect of Qualcomm's inaccurate approach to calculating a DTV station's population baseline, consider two stations that each provide service to an *actual* population of 800,000 viewers. For station A, the number of viewers is the same as population within its noise-limited contour. For station B, the population within its noise-limited contour is 1,000,000, but due to terrain limitations or interference from other stations, the population actually served by station B is only 800,000 viewers – the same amount as station A. Under Qualcomm's approach, assuming a permitted 0.5% interference level, Qualcomm could cause interference to 4,000 viewers of TV station A (*i.e.*, 0.5% of its 800,000 viewers). On the other hand, Qualcomm could interfere with *5,000* viewers of TV station B (*i.e.*, 0.5% of that station's noise-limited population of 1,000,000 people, notwithstanding that it only serves 800,000 actual

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[5] Letter from Dean Brenner, Qualcomm to Marlene H. Dortch, Secretary, FCC, at 3-4 (filed June 20, 2006).

[6] *Qualcomm Order* at ¶ 23.

[7] In contrast with Qualcomm's refusal to utilize accurate population baselines, MSTV notes approvingly Qualcomm's acknowledgement that it is required to consider all of its transmitters (including those operating at under 1 kW ERP) in calculating interference to broadcast television stations, and that the technical parameters of all such transmitters are to be included in its engineering studies. *See* Qualcomm Opposition at 7.

viewers). To have a result in which one TV station can lose 25% more viewers than another station, even though both stations serve exactly the same number of viewers, cannot be what the *Qualcomm Order* permitted or intended.

Qualcomm devotes much of its Opposition to critiquing MSTV's reference to the 1998 DTV Table of Allotments, in which the Commission published population baselines for DTV stations, taking into account interference and other factors that limit the station's actual service. Qualcomm appears to imply that since *some* figures in the 1998 Table *might* be outdated, its sole recourse is to use the noise-limited contour approach, despite that approach's absolute failure to accurately measure the population served by a station. This is a red herring at best. So long as it is consistent, Qualcomm could use population figures from the more recent table published by the Commission in December 2004, which calculated a station's baseline population using 2000 (rather than 1990, as in the 1998 Table) census data, after factoring in interference from other stations and terrain limitations.[8] Qualcomm should not, however, be allowed to use a methodology which fails to consider the real-world factors that limit the number of viewers actually served by a station.

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[8] *See DTV Channel Election Information*, Public Notice, DA 04-3992, Table II (rel. Dec. 21, 2004). *See also Advanced Television Systems and Their Impact on the Existing Television Broadcast Service*, 19 FCC Rcd 18279, 18294 ¶ 38 (2004) ("All analyses of service and reduction of service due to interference will be based on population only. We will use population from the year 2000 census in determining the populations served by stations and the impact of interference on stations' service. In this regard, the more up-to-date population data from the year 2000 census will provide a more accurate indication of the station service and impacts of interference on that service than the older year 1990 population data used in computing the service data for the initial DTV Table of Allotments").

CONCLUSION

To prevent Qualcomm from unlawfully creating interference in excess of the thresholds established by the *Qualcomm Order*, MSTV urges the Commission to announce that Qualcomm will only be allowed to take advantage of the interference thresholds in markets where it submits an accurate OET-69 study. Such a study must measure interference as a percentage of the station's actual baseline population, taking account interference from other sources and terrain limitations. Also, as documented comprehensively in MSTV's Petition, the Commission should clarify that the general interference waiver granted to Qualcomm will not apply in situations where a party raises unique, market-specific concerns.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Susan Baurenfeind, Assistant to David Donovan of the Association for Maximum Service Television, Inc., do hereby certify that on this 1st day of December, 2006, I caused a copy of the foregoing "Reply to Opposition of Qualcomm Inc." to be sent via first-class U.S. Mail, postage prepaid, to the following:

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