

**Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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In The Matter Of	)	
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Service Rules for the 698-746, 747-762 and 777-792 MHz Bands	)	WT Docket No. 06-150
	)	
Revision of FCC's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems	)	CC Docket No. 94-102
	)	
Section 68.4(a) of the FCC's Rules Governing Hearing Aid-Compatible Phones	)	WT Docket No. 01-309
	)	
Biennial Regulatory Review- Amendment of Parts 1, 22, 23 27, and 90 to Streamline and Harmonize Rules Affecting Wireless Services	)	WT Docket 03-264
	)	
Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses & Revisions to Part 27 of the FCC's Rules	)	WT Docket No. 06-169
	)	
Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band	)	PS Docket No. 06-229
	)	
Development of Operational, Technical & Spectrum Requirements for Meeting Federal, State, & Local Public Safety Communications Requirements Through the Year 2010	)	WT Docket No. 96-86
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**COMMENTS OF QUALCOMM IN OPPOSITION TO GOOGLE'S  
PROPOSALS FOR SERVICE RULES FOR 700 MHz SPECTRUM**

Dean R. Brenner  
Vice President, Government Affairs  
QUALCOMM Incorporated  
2001 Pennsylvania Ave., N.W.  
Suite 650  
Washington, D.C. 20006  
(202) 263-0020

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## SUMMARY

QUALCOMM opposes the two proposals regarding the 700 MHz spectrum made in Google's May 21, 2007 ex parte letter. First, without saying so, Google seeks reconsideration five years too late of the flexible allocation of the Lower 700 MHz E Block made by the FCC in 2002 by proposing that the FCC now prohibit all uses of that spectrum other than what Google calls "interactive, two-way broadband services, connected to the public internet, and used to support innovative software-based applications, services, and devices."<sup>1</sup> Second, Google seeks confirmation that a 700 MHz licensee can institute what it describes variously as "dynamic spectrum management practices," a "dynamic auction mechanism," "real-time auctions," and "per-device registration fees."<sup>2</sup> Google goes so far as to ask that the FCC consider mandating that all or some licensees use these techniques, as Google vaguely describes them.<sup>3</sup>

Google's proposals would radically alter fundamental FCC policies for no good reason. The FCC should not prohibit some and permit other uses of the Lower 700 MHz E Block. Likewise, the FCC should not mandate a given business model or pricing technique, if that is what Google is suggesting. The FCC should reject both proposals.

Google's proposal that the FCC mandate that the Lower 700 MHz E Block be used only as Google seeks to dictate is contradicted by the Comments that Google filed earlier in these proceedings. There, Google asked the FCC to adopt a "highly flexible, marketplace-driven spectrum regime."<sup>4</sup> Now, Google seeks a spectrum regime devoted to promoting Google's

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<sup>1</sup> Google Ex Parte Letter, dated May 21, 2007, which is also Attachment A to Google's Comments (filed May 23, 2007) at Pages 4-5.

<sup>2</sup> Id. at Pages 4, 3.

<sup>3</sup> Id. at Page 4.

<sup>4</sup> Google Comments at Page 3.

business interests and nothing else by asking the FCC to dictate which services may, and which services may not, be deployed on the E Block, the antithesis of the flexible regulation Google purported to favor. As QUALCOMM has pointed out in its Reply Comments in these proceedings, for the past 15 years, the FCC has wisely abandoned the command and control approach epitomized by Google's proposal in favor of flexible allocations, such as the one governing the entire Lower 700 MHz Band, which allows the licensees to decide how they wish to use the spectrum.

QUALCOMM submits that the market, not the FCC and not Google's advocates, should determine the highest and best use for the E Block. The FCC was dead right in 2002, when it adopted a flexible allocation for the entire Lower 700 MHz Band "to allow service providers to select the technology they wish to use to provide new services the market may demand," and there is absolutely no reason for the FCC to change that policy now.<sup>5</sup> Indeed, restricting the use of the spectrum reduces its market value and is not in the public interest.

As QUALCOMM also pointed out previously, the market shows that, contrary to Google's claims, an unpaired block of 6 MHz in the Lower 700 MHz Band, such as the E Block, can be used to provide innovative and exciting one-way services. That is what QUALCOMM is doing on the adjacent D Block. In that unpaired 6 MHz, QUALCOMM is providing MediaFLO, a one-way, mobile TV service, bringing news, weather, children's programming, sports, and entertainment to mobile phone subscribers. MediaFLO will ultimately consist of numerous real-

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<sup>5</sup> In the Matter of Reallocation and Service Rules for the 698-746 MHz Spectrum Band, Report and Order, 17 FCC Rcd 1022, 1023 (2002).

time video, audio, and data streams. The FCC has found MediaFLO to be in the public interest.<sup>6</sup> Competing mobile video technologies, such as DVB-H also operate in a 6 MHz unpaired block.

Thus, Google was just wrong when it claimed that the E Block “appears to lack any immediate commercial value, due to the relatively limited bandwidth available and its unpaired nature.”<sup>7</sup> Even if Google were right that the spectrum lacked commercial value, that would not justify mandating the application that Google wants to deploy on it. In sum, there is no basis whatsoever for Google’s proposal that the FCC disregard its 2002 flexible allocation and limit the uses of the E Block to those services dictated by Google.

Google’s second proposal, in which Google asks the FCC to consider mandating the use of what Google calls “real time auctions,” is vague, but in any event, there is no legal or policy basis for any such mandate. Does Google mean that the FCC would award a license to a party who would then conduct real time auctions to pay the auction proceeds to the U.S. treasury? Or, is Google simply describing a pricing plan by which end users would pay the licensee a price for using the licensee’s spectrum based on a real time auction? Google’s filing is simply too vague.

In any event, there is no basis for the Commission to impose any such mandate. To the extent that Google is proposing that the licensee rather than the Commission auction the spectrum, such a proposal violates Section 309 (j) of the Communications Act, which requires the Commission to auction the spectrum. To the extent that Google is proposing that the Commission mandate that licensees charge end users a price based on a real time auction of the spectrum, Google ignores the fact that the Commission ruled just a few months ago that wireless broadband internet access is an information service under the Communications Act and, thus, not

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<sup>6</sup> Report and Order, In the Matter of QUALCOMM Incorporated Petition for Declaratory Ruling, 21 FCC Rcd 11683, 11697 (2006).

<sup>7</sup> See Google Ex Parte Letter, Attachment A to its Comments, at Page 4.

subject to any rate regulation, and that the Commission, likewise, has not regulated the rates of commercial mobile services for many years now.<sup>8</sup> In making its proposal, Google does not bother itself by stating just what legal authority the Commission has to dictate the pricing plan that a wireless licensee must use, and in any event, there is absolutely no reason for the Commission to do so. The Commission should reject both of Google's proposals.

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<sup>8</sup> See Declaratory Ruling, In the Matter of Appropriate Regulatory Treatment for Broadband Internet Access to the Internet Over Wireless Networks, 22 FCC Rcd 5901 (2007).

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**COMMENTS OF QUALCOMM IN OPPOSITION TO GOOGLE'S  
PROPOSALS FOR SERVICE RULES FOR 700 MHz SPECTRUM**

QUALCOMM Incorporated ("QUALCOMM"), by its attorneys and pursuant to the Public Notice released by the Wireless Telecommunications Bureau in these proceedings, DA 07-2197, released May 24, 2007, hereby submits its comments in opposition to the proposals made by Google in its ex parte letter of May 21<sup>st</sup>. In submitting this opposition, QUALCOMM

incorporates its Comments and Reply Comments filed in these proceedings on May 23 and June 4, 2007, respectively.

**I. The Commission Should Not Adopt Google’s Proposal to Revise Its 2002 Ruling and Prohibit All Services from the E Block Except for “Interactive, Two-Way Broadband Services, Connected to the Public Internet, and Used to Support Innovative Software-Based Applications, Services, and Devices”**

In its pleadings before the Commission relating to the 700 MHz spectrum, Google has taken fundamentally inconsistent positions. On the one hand, in its Comments filed on May 23, 2007, Google stated that the federal government “should have in place a highly flexible, marketplace-driven spectrum regime, one responsive to economic signals and the public interest.” Google Comments at Page 3. Google also stated that “too often, ‘command-and-control spectrum policies have an unfortunate tendency to lock in incumbent users and uses, while locking out new entrants and innovative uses of spectrum.” *Id.*

On the other hand, in its May 21 ex parte letter, Google asked that the Commission rule that the Lower 700 MHz E Block may be utilized only for “interactive two-way broadband services, connected to the public internet, and used to support innovative software-based applications, services, and devices.” Google Ex Parte (also Attachment A to Google’s Comments) at Page 5. Google’s twin positions are at war with one another, and Google does not even explain, much less justify, such a striking and direct inconsistency.

Furthermore, in making its proposal regarding the E Block, Google does not cite, much less deal with, the Commission’s 2002 ruling, in which the Commission adopted a flexible allocation for the Lower 700 MHz Band, including the E Block, permitting licensees “to select

the technology they wish to use to provide the services the market may demand.”<sup>9</sup> Indeed, the Commission, in justifying its ruling, noted that “flexible allocations can promote efficient spectrum markets, which in turn encourages efficient use of the spectrum.”<sup>10</sup>

There is no basis whatsoever for the Commission to reverse its 2002 flexible allocation for the E Block and to adopt Google’s proposal. As even Google itself acknowledges in one portion of its Comments, flexible allocations are the soundest policy for new spectrum bands. A flexible allocation allows licensees to use spectrum for the highest and best use, consistent with the market demand as perceived by the licensees who paid to acquire the spectrum licenses, rather than government fiat. Under the approach adopted by the Commission, Google is certainly entitled to step up and bid for the spectrum to deploy interactive two-way broadband services, connected to the public internet, and used to support innovative software-based applications, services, and devices, but others should be equally entitled to bid so that they can deploy the services of their choice. The Commission should not dictate the uses of the E Block. Rather, consistent with the Commission’s 2002 ruling in which the flexible allocation was made, the Commission should auction the Channel 56 E Block and let the market decide what service will be deployed on the spectrum.

Google does make a startling misstatement in its ex parte letter, which completely undermines its proposal that the Commission dictate Google’s preferred use as the only permissible of the E Block. Google states that this 6 MHz of spectrum “appears to lack any immediate commercial value, due to the relatively limited bandwidth available and its unpaired

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<sup>9</sup> In the Matter of Reallocation and Service Rules for the 698-746 MHz Spectrum Band, Report and Order, 17 FCC Rcd at 1023.

<sup>10</sup> Id. at 1029.

nature.”<sup>11</sup> This statement is just wrong. Contrary to Google’s claim, an unpaired block of 6 MHz in the Lower 700 MHz Band, such as the E Block, can be used to provide the public with innovative and exciting one-way services. QUALCOMM is doing that today with its MediaFLO service on the Channel 55 spectrum for which QUALCOMM holds licenses. In that unpaired 6 MHz block, QUALCOMM, through its MediaFLO USA subsidiary, is providing MediaFLO, a one-way, mobile TV service, bringing news, weather, children’s programming, sports, and entertainment to mobile phone subscribers. Today, this service is offered to subscribers of Verizon Wireless. By the end of the year, it will also be offered to AT&T Mobility subscribers. In the future, hopefully, it will be offered to subscribers of other carriers. Moreover, this service will ultimately consist of numerous real-time video, audio, and data streams.

Other mobile video technologies, such as DVB-H, also operate in a 6 MHz unpaired block of spectrum. Thus, Google was simply wrong in alleging that the Commission should dictate that the E Block be used for two-way services connected to the public internet for innovative software-based applications, devices, and services because otherwise, the spectrum is of no value and has no long-term commercial value. The truth is that the market has already proven that a 6 MHz block of unpaired spectrum in the Lower 700 MHz Band has substantial commercial value and has tremendously beneficial uses, which will drive economic growth in this country.

This is not a close case. For many years now, the Commission has gotten out of the business of dictating which uses of a new spectrum band are and are not permissible. In its ex parte letter, Google asks the Commission to get back into that business based on a fundamental

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<sup>11</sup> Google Ex Parte at Page 4.

misstatement about the use and value of the E Block. There is no legitimate basis of any kind for Google's proposal.

Finally, Google asks the Commission to apply an absurdly vague standard, and if the Commission adopts Google's proposal, it might very well ruin the value of the E Block. There is not a single Commission regulation today requiring that any licensee offer "software-based applications, services, and devices," or which requires the Commission to decide which software-based applications, services, and devices are "innovative." Were the Commission to adopt Google's proposal, the winning bidders would have to convince the FCC after the auction was over that their proposed services were "innovative" and sufficiently "software-based." The tortured history of the Commission's proceedings over the pioneer's preference, with which QUALCOMM is all too familiar, establish that the E Block spectrum will be tied up in endless litigation over whether proposed services are truly "innovative," and it is simply not within the Commission's purview to make such determinations in the first place. To its credit, ever since the pioneer's preference fiasco, the Commission has recognized that it should not put itself in the position of having to make such determinations.

It is highly ironic that Google, which purports to favor market-driven policies, would propose that the government, not the market, decide whether a given application qualifies as being "innovative." The Commission should not have to decide which applications are "innovative." The success of the Commission's system of auctions lies in the fact that the Commission simply awards the spectrum to the highest bidder so that the bidder can decide for itself, based on its own assessment of market demand, what services to offer.

In sum, Google has not made a well conceived proposal for Commission regulation of the E Block. For all of these reasons, the Commission should reject Google's proposal that the

Commission revisit the flexible allocation it made in 2002 and limit the uses of the E Block as Google has proposed.

**II. The Commission Should Not Mandate the Pricing Plans To Be Offered By 700 MHz Licensees**

Google's second proposal is equally ill conceived. Google asks the Commission to consider mandating that 700 MHz licensees use what Google calls, variously, dynamic spectrum management practices," a "dynamic auction mechanism," "real-time auctions," and "per-device registration fees."<sup>12</sup> Putting aside the vagueness of this concept, imagine the Commission having to engage in a new generation of price regulation—determining whether a licensee's pricing is truly "dynamic," and whether the licensee's billing system is genuinely applying a "real time auction." This is not a proposal for the modest, market-driven regulation that Google purports to favor. Rather, to the extent this proposal can be understood, it is a proposal for a radical new invasive regulatory paradigm—one in which the Commission would have to involve itself in the details of each licensee's pricing plans. There is absolutely no basis for this proposal, and, actually, Google offers none.

That conclusion is reached only if Google's proposal is definite enough to be understood. That is not the case, however. Google's proposal is entirely vague. Google's ex parte filing does not state whether it is suggesting that the licensee would replace the Commission as the party auctioning use of the spectrum, or that the licensee, having been the high bidder in a Commission-run auction, would then conduct a second, real time auction as it operates its business by providing use of the spectrum to end-users. If Google is proposing the former, the proposal would clearly violate Section 309 (j) of the Communications Act, which authorizes the Commission, not private parties, to auction spectrum licenses. If Google is proposing the latter,

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<sup>12</sup> Google Ex Parte Letter, dated May 21, 2007 at Pages 4-5.

the proposal runs afoul of the Commission's recent declaratory ruling that wireless broadband internet access is an information service over which the Commission lacks any authority to regulate rates or the like.<sup>13</sup> Google's ex parte letter is vague on this point, but either way, Google's proposal runs smack into insurmountable legal obstacles.

It may be that Google did not intend to make a serious proposal for a Commission mandate and, instead, Google was seeking a declaratory ruling under present Commission rules. In that case, the Commission should simply disregard Google's ex parte letter, and Google can file a petition for declaratory ruling, under Section 1.2 of the Commission's Rules. Nevertheless, the Commission should not provide any declaratory ruling in the absence of a clear statement from Google as to just precisely what declaration it is seeking.

### **III. Conclusion**

Wherefore, QUALCOMM respectfully requests that the Commission reject the proposals in Google's May 21<sup>st</sup> ex parte letter.

Respectfully submitted,

By: /s/Dean R. Brenner  
Dean R. Brenner  
Vice President, Government Affairs  
QUALCOMM Incorporated  
2001 Pennsylvania Ave., N.W.  
Suite 650  
Washington, D.C. 20006  
(202) 263-0020  
Attorney for QUALCOMM Incorporated

Dated: June 4, 2007

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<sup>13</sup> See Declaratory Ruling, In the Matter of Appropriate Regulatory Treatment for Broadband Internet Access to the Internet Over Wireless Networks, 22 FCC Rcd 5901 (2007).