

**VIA HAND DELIVERY**

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

**REDACTED – FOR PUBLIC INSPECTION**

October 24, 2011

Re: WT Docket No. 11-18

Dear Ms. Dortch:

QUALCOMM Incorporated (“QUALCOMM”) hereby submits a Notice of Ex Parte to the Federal Communications Commission, pursuant to the First Protective Order (“Protective Order”) entered in this proceeding.<sup>1</sup>

This Notice of Ex Parte reflects discussions held between QUALCOMM representatives and FCC staff concerning the Commission’s review of the AT&T-Qualcomm transaction. These communications are described in greater detail in the Notice of Ex Parte itself.

Pursuant to the Protective Order:

1. CONFIDENTIAL information is marked, “CONFIDENTIAL INFORMATION - SUBJECT TO PROTECTIVE ORDER IN WT DOCKET NO. 11-18 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION – ADDITIONAL COPYING PROHIBITED”; and
2. REDACTED – FOR PUBLIC INSPECTION information is marked, “REDACTED – FOR PUBLIC INSPECTION”.

Finally, pursuant to the Protective Order, QUALCOMM is also submitting two copies of the CONFIDENTIAL version of this Notice to Kathy Harris of the Wireless Telecommunications Bureau by hand delivery.

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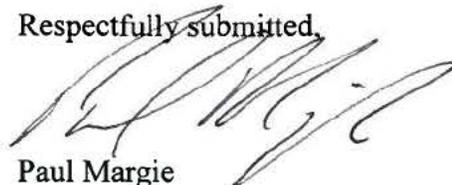
<sup>1</sup> *Applications of AT&T Mobility Spectrum LLC and Qualcomm Inc. for Consent to the Assignment of Lower 700 MHz Band Licenses*, WT Docket No. 11-18, Protective Order, DA 11-806 (rel. May 20, 2011).

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QUALCOMM requests the return of all CONFIDENTIAL information at the conclusion of this proceeding.

Please do not hesitate to contact the undersigned if you have any questions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Paul Margie', written over a horizontal line.

Paul Margie  
*Counsel to QUALCOMM Incorporated*

Enclosures



**QUALCOMM Incorporated**

1730 Pennsylvania Ave., NW Suite 850 Washington, DC 20006 Tel: 202.263.0020

www.qualcomm.com

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

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**Re: Notice of Oral Ex Parte Presentation  
WT Docket No. 11-18**

Dear Ms. Dortch:

On October 20, 2011 Peggy Johnson, Executive Vice President and President of Qualcomm Global Market Development, and I met with Chairman Genachowski and Josh Gottheimer, Senior Counselor to the Chairman. We discussed the proposed assignment of licenses from Qualcomm to AT&T, the subject of the above-captioned docket.

Ms. Johnson and I urged the FCC to move rapidly to approve the transaction because of the substantial public interest benefits from the transaction. In particular, we explained that swift approval of the transaction will fulfill the Commission's goal of fostering mobile innovation in the United States since approval will position AT&T to become the world's first wireless carrier to deploy innovative supplemental downlink technology, which will support much faster downloads. We also noted that the Commission has stated that it relies upon the secondary market to address the problem of under-utilized spectrum, and that is precisely why the Commission should rapidly approve the AT&T-Qualcomm transaction. The unpaired spectrum that Qualcomm proposes to assign to AT&T is unused, and approval will ensure that the unpaired spectrum is put to its highest and best use for the public. In addition, we explained that *[begin confidential]*

*[end confidential]*.

Finally, I provided the Chairman with a copy of the document that I am filing with this notice.

Pursuant to the Commission's rules, I am filing a copy of this notice and the accompanying document electronically in the above-referenced docket.

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Respectfully submitted,

/s/ Dean R. Brenner

Dean R. Brenner  
Vice President, Government Affairs

Cc: Hon. Julius Genachowski  
Josh Gottheimer

Enclosure



# INNOVATION POLICY BLOG

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### Good Spectrum Lying Dormant



If you want to understand how problematic our spectrum allocation practices are in the United States, you need look no further than the kerfuffle around the transfer of Channel 55 licenses from Qualcomm to AT&T. The transfer should be a no-brainer: Qualcomm isn't using the spectrum and AT&T has an immediate need for it. Qualcomm bought their licenses fair and square, and they're happy with the price AT&T is willing to pay. The new use is similar to the old use in all the relevant technical dimensions, the amount of spectrum is relatively trivial (6 MHz in the D block, and another 6 MHz in the E block in a few markets,) so there's no real competitive impact. What's not to like?

Oddly, the FCC docket for the transaction (WT [11-18](#)) is full of objections. Before we get to them, here's the background: Qualcomm originally bought their spectrum licenses in order to operate an innovative mobile TV system called FLO TV. The previous owner had bought them at auction, so the transfer to Qualcomm was relatively straightforward (except for some complications that arose from a special bidding credit the previous owner was awarded as an "entrepreneur.") Qualcomm's FLO TV system wasn't a commercial success, largely because mobile users are much more interested in personalized,

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on-demand video than in the broadcast mode video that FLO TV was built to provide. So Qualcomm shut down the network they built for FLO TV and offered its spectrum up for sale. Nobody's using this spectrum today, but it's ready to go as soon as the sale is approved.

AT&T's need for spectrum is well known. As the first network to adopt the iPhone in the U. S., AT&T has been slammed with demand for bandwidth far in excess of what its current spectrum allocation can absorb. At the same time, they're fenced in by local zoning boards in places like New York and San Francisco that won't let them build more towers to use their current allocation more efficiently. AT&T now has two U. S. competitors selling the revolutionary iPhone 4S, so they need to address their spectrum crunch immediately, not in five or ten years. They've upgraded most of their network to the 4G-ish HSPA+ standard that supports downloads as fast as 14.4 Mbps, and is getting ready to offer true LTE over the 700 MHz spectrum they bought at auction a couple of years ago as soon as it's cleared and ready to go. AT&T customers will only get close to peak speed in densely populated areas if enough spectrum is available, however. Their planned use for Qualcomm's spectrum is something called "supplemental downlink" that speeds up smartphone downloads in just these situations. Most cellular handsets sold in the U. S. today are smartphones, so making supplemental downlink available is a good thing all the way around.

The FCC is in the middle of this transaction because the Communications Act of 1934 directs the agency to examine spectrum license transactions to ensure they're in the public interest. This stipulation hails from a time when the FCC allocated licenses for free, so its relevance in the modern scenario where they're bought at auction is questionable. The traditional method for determining "public interest" is a so-called "spectrum screen" that examines concentrations of ownership in particular frequencies but not in all the bands that are currently important. So the comments to the FCC on the transaction tend to address these notions, but it's pretty clear that most come from factions with a policy axe to grind that has little to do with the actual transaction. You have to pity the poor folks at the FCC who have to wade through them.

One objection comes from a company called [Vulcan Wireless](#) whose main concern is the belief that AT&T has too much influence over the 3GPP standards body that develops the specifications for LTE. 3GPP devises "band plans" for the use of spectrum internationally, and Vulcan believes there are too many of them, especially in the 700 MHz frequencies that have been the object of our recent spectrum auctions in the U. S. Vulcan wants the FCC to order smartphone builders to accommodate the entire 700 MHz band in every new smartphone as a condition of the license transfer. The real world significance of such an order is doubtful, but it would make it easier for Vulcan to build smart grid equipment.

Another interesting objection comes from Cellular South (AKA C Spire). CS [wants the FCC to impose an automatic roaming mandate](#) on the channel so their customers can better utilize AT&T's network and a ban on exclusive handset deals on AT&T's end (and across their entire spectrum inventory). Ironically, C-Spire has announced that the iPhone 4S [will be available for their network](#)

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[shortly](#).

The so-called "public interest" community (Free Press, Public Knowledge, Media Access Project, Consumers Union, and the Open Technology Initiative of the New America Foundation) beats the usual drum for unlicensed spectrum. They advocate for the FCC to open a proceeding to move the spectrum to unlicensed use after denying the transfer, without addressing what happens to the fee that Qualcomm paid for their license in the first place. Beyond that, the advocates offer up a [laundry list of long-standing grievances](#), such as:

- Control over copper backhaul facilities (no longer very important since fiber and microwave backhaul take their place for 4G and LTE) .
- Influence over the design of band classes for devices (which have very little significance for LTE).
- The dwindling number of exclusive agreements for popular handsets.
- Subscriber contracts backed by "punitive early termination fees" that aren't really punitive considering the cost of the heavily subsidized smartphones they cover,

They argue that all of these must be addressed before AT&T can have 6 MHz of additional spectrum in most markets, and 12 MHz in some. By way of remedies, they offer their long-held belief that the FCC should impose the network neutrality obligations on wireless networks that the Commission expressly refused to apply in its controversial Christmas Open Internet order last year and all the conditions demanded by Cellular South/C Spire. Of these conditions, the [ban on handset exclusivity deals](#) is the most dated, as the launch of the iPhone 4S on three networks last week (and [on C Spire shortly](#)) illustrates.

So what we have here is a perfectly straightforward commercial transaction between a willing seller and willing buyer than will enable AT&T's customers to enjoy better network performance without any action by local zoning boards. All of AT&T's smartphone customers will benefit from the deal, even the ones whose devices can't use the 700 MHz bands, because those who can will be serviced by this additional spectrum and thereby reduce demand for the traditional frequencies. The FCC is in the middle of the transaction because their spectrum rules don't reflect the realities of the modern spectrum auction, and a host of interest groups have come out of the woodwork to demand satisfaction for a host of grievances that aren't actually implicated by the transaction at all.

This is no way to manage spectrum. The FCC should have an oversight role for spectrum, but it should be more concerned with big picture issues such as modernization, harmonization, re-packing, and promoting wireless innovation than with micro-managing each 6 MHz according to its original Depression-era mandate. If the conditions that our over-active advocates seek to impose on this transaction, such as the network neutrality rules, had any merit, they would be achievable independent of the transfer. Spectrum transactions should not be an excuse to give those who've failed to make a case for their pet causes a second (or third or fourth) bite at the apple. The FCC should approve this transfer right away as the spectrum is going to waste and consumers are the worse off for it.

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