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700 MHz Rules Come Into Focus

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Proving once again that the wheels of justice at the FCC grind slowly, our favorite regulators acted this month on a petition for declaratory ruling filed in January 2005 by Qualcomm. Qualcomm has been taking steps to roll out its MediaFLO offering on the nationwide 700 MHz channel it acquired in the Lower Band auction held several years ago. It plans to use this spectrum to deliver broadband content to subscribers of cellular, PCS and AWS carriers in cooperation with those carriers.

Between now and February 17, 2009 (when all incumbent analog TV broadcasters must have cleared the 700 MHz band), 700 MHz users must demonstrate that their operations will not interfere with the broadcasters. To date, owners of the spectrum have been hampered by the lack of reliable standards to evaluate the potential for interference to existing broadcast users in the band. Qualcomm's petition sought to rectify that problem by (i) confirming the engineering methodology to be used in demonstrating non-interference, (ii) getting the FCC to agree to *de minimis* levels of interference that would be deemed acceptable, and (iii) streamlining the process of approving proposed operations. While Qualcomm was not entirely successful, the FCC did provide some useful relief.

The FCC accepted OET Bulletin 69, a generally more accurate interference prediction methodology, for use in demonstrating the effects of 700 MHz operations on nearby TV stations. The method had heretofore been used for predicting TV-to-TV interference, but the FCC decided that the proposed MediaFLO situation was sufficiently TV-like to warrant use of the method here. The proponent must, however, take into account the fact that 700 MHz operations will typically involve multiple transmitting sites rather than single high power operations like those applicable to TV stations.

Next, the FCC partially granted Qualcomm's request that some levels of interference to TV stations be deemed *de minimis*. Qualcomm wanted interference to 2% of a station's service area to be considered *de minimis* and therefore an acceptable level of interference. Instead, the FCC ruled that the percentage of interference to TV stations would start at .5% and slowly ramp up to 2% by the time the 2009 deadline is reached.

Finally, the FCC declined to permit streamlined action on 700 MHz operations. Every transmitter put into service must be filed with the FCC and put out for public notice, thus being subject to oppositions from broadcasters and taking considerable time. This process has taken over a year in the applications filed to date because each such application is new and customized, each one has been opposed, and the parties and the FCC have not known what the terms of engagement were. Because the framework for

filing these applications and demonstrating non-interference or acceptable interference has now been established, the grounds for opposing such applications should be reduced. But still the process is a cumbersome one fraught with potential for delay. Of course, as more and more TV broadcasters move to their permanent digital channels outside the 700 MHz band, the number of potential protesters will be reduced.