

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the matter of	)	
	)	
QUALCOMM Incorporated	)	
	)	WT Docket 02-234
Petition for Waiver of Auction Discount	)	
Voucher Terms and Conditions	)	
	)	

**ORDER**

**Adopted: April 28, 2003**

**Released: April 28, 2003**

By the Chief, Wireless Telecommunications Bureau:

**I. INTRODUCTION**

1. In this Order, we address a request by QUALCOMM Incorporated (“Qualcomm”) for an extension of time to use the remaining amount of its Auction Discount Voucher (“ADV”) the Commission granted to Qualcomm in June 2000.<sup>1</sup> Qualcomm has transferred \$10,848,800 of the ADV to Summit Wireless, which was used for payment on the Jackson, Mississippi BTA 210 license. Qualcomm presently has a total of \$114,425,078 remaining in its ADV, which expires on June 8, 2003.<sup>2</sup> We grant Qualcomm an additional one year to use the remaining amount of its ADV until June 8, 2004.

**II. BACKGROUND**

2. Pursuant to the mandate of the U.S. Court of Appeals for the District of Columbia Circuit in *Qualcomm v. FCC*,<sup>3</sup> on June 8, 2000, the Commission granted Qualcomm an ADV in the amount of \$125,273,878.<sup>4</sup> Under the *Qualcomm ADV Order*, Qualcomm or any transferee may only use the ADV subject to certain terms and conditions. For example, the ADV should be used for further development and application of Code Division Multiple Access (CDMA) based technology. In addition, the ADV can only be used in any auction in which FCC Forms 175s are accepted within three years from June 8, 2000.<sup>5</sup> Thus, the ADV expires on June 8, 2003.

3. On August 1, 2002, Qualcomm filed a petition seeking a waiver of certain terms and conditions of the ADV. Specifically, Qualcomm requested that the Commission permit the ADV to be used for payment of outstanding obligations arising out of past auctions, including installment payments,

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<sup>1</sup> See Qualcomm letter filed March 11, 2003 (*Qualcomm Extension Request*). See also Qualcomm Incorporated Petition for Declaratory Ruling Giving Effect to the Mandate of the District of Columbia Circuit Court of Appeals, *Order*, 16 FCC Rcd 4042 (2000) (*Qualcomm ADV Order*).

<sup>2</sup> *Qualcomm Extension Request* at 2.

<sup>3</sup> 181 F. 3d 1370 (D.C. Cir. 1999) (*Qualcomm*).

<sup>4</sup> See *Qualcomm ADV Order*, 16 FCC Rcd 4042.

<sup>5</sup> *Id.* at 4051-52.

interest and fees, rather than solely for future auction obligations.<sup>6</sup> On November 22, 2002, the Commission adopted an order granting Qualcomm's request and permitting the ADV to be used to satisfy auction obligations owed by licensees using CDMA technology in connection with licenses initially awarded before June 8, 2000.<sup>7</sup>

4. On March 11, 2003, Qualcomm filed a letter requesting the Commission to extend the time to use the remaining amount of its ADV until June 8, 2004.<sup>8</sup> In its extension request, Qualcomm states that despite its diligent efforts, there has been limited opportunity to use the ADV within the three-year period and it might need an additional year to finalize ongoing negotiations with potential licensees. For example, Qualcomm contends that it has been in contact with several potential licensees interested in acquiring some or all of the ADV under the terms of the *Qualcomm Waiver Order*.<sup>9</sup> In addition, Qualcomm indicates that it is considering use of the ADV in connection with Auction No. 49, which is currently scheduled to begin on May 28, 2003. Qualcomm, however, is concerned that these potential uses for the ADV may be delayed due to unexpected circumstances.<sup>10</sup> Thus, Qualcomm requests that the Commission grant it an additional year to use the ADV.

### III. DISCUSSION

5. We grant Qualcomm an additional year in which to use the remainder of its ADV until June 8, 2004. As discussed below, we find that the extension period requested by Qualcomm is reasonable and that the grant of Qualcomm's request will serve the public interest.

6. Section 402(h) of the Communications Act requires the Commission, upon remand from a court, to "carry out the judgment of the court," and in so doing "to forthwith give effect" to the court's judgment.<sup>11</sup> In the *Qualcomm ADV Order*, the Commission interpreted the judgment of the D.C. Circuit to mean that the Commission must place Qualcomm in a position as equivalent as possible to the position it would have occupied had the Commission, in 1993, awarded it a pioneer's preference under Section 309(j)(13) of the Communications Act.<sup>12</sup> In the *Qualcomm Waiver Order*, the Commission also determined that Qualcomm's proposed change to the use of the ADV – whereby the ADV can be used to pay down the outstanding auction obligations of a licensee that is using CDMA technology – provides a more effective vehicle for ensuring that Qualcomm promptly receives the relief to which it is entitled under the Court's mandate.<sup>13</sup>

7. We find that grant of a one-year extension of the time in which Qualcomm may use the ADV is reasonable to promote the original objective of the ADV. As discussed in the *Qualcomm Waiver Order*, Qualcomm tried to use the ADV, under its original terms, within the three-year period.<sup>14</sup> Further, as indicated in Qualcomm's extension request, since the issuance of the *Qualcomm Waiver Order*,

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<sup>6</sup> In the Matter of Qualcomm Incorporated Petition for Waiver of Auction Discount Voucher Terms and Conditions, *Petition of Qualcomm* (filed August 1, 2002) (*Qualcomm Waiver Petition*).

<sup>7</sup> In the Matter of Qualcomm Incorporated, Petition for Waiver of Certain Terms and Conditions of its Auction Discount Voucher, WT Docket No. 02-234, *Order*, 17 FCC Rcd 24311 (2002) (*Qualcomm Waiver Order*).

<sup>8</sup> See *Qualcomm Extension Request*.

<sup>9</sup> *Id.* at 2.

<sup>10</sup> *Id.*

<sup>11</sup> 47 U.S.C. § 402(h).

<sup>12</sup> See *Qualcomm ADV Order*, 16 FCC Rcd at 4047.

<sup>13</sup> See *Qualcomm Waiver Order*, 17 FCC Rcd at 24314.

<sup>14</sup> See *Id.* at 24313-14.

Qualcomm has also made efforts to use the ADV under the modified terms established in that Order.<sup>15</sup> In addition, Qualcomm is considering use of the ADV in connection with Auction No. 49, which is scheduled to begin on May 28, 2003. However, despite these efforts, given the limited time remaining before June 8, 2003, there may be unexpected delays that would prevent Qualcomm from using the ADV within the three-year period. We have no reason to disagree with Qualcomm's belief that a year's extension should provide Qualcomm with sufficient time to fully use the ADV.

8. Considering the possibility that, despite its efforts, Qualcomm may not be able to fully use the ADV within the three year period and in view of the Commission's objective to make Qualcomm whole pursuant to the mandate of the D.C. Circuit, we find that the public interest warrants granting to Qualcomm an additional year in which to use the ADV. We find that this extension of time is consistent with the equitable remedy mandated by the Court.<sup>16</sup> All of the terms and conditions applicable to the ADV under the *Qualcomm ADV Order* and the *Qualcomm Waiver Order*, as well as the established procedural requirements, remain in effect.<sup>17</sup>

#### IV. CONCLUSION

9. In order to provide for full satisfaction of the D.C. Circuit's mandate, we grant Qualcomm an additional year in which to use the ADV until June 8, 2004.

#### V. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED THAT, these actions ARE TAKEN pursuant to Sections 1, 4(i), 303(r), 309(j), and 402(h) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 303(r), 309(j), and 402(h).

11. IT IS FURTHER ORDERED THAT, pursuant to sections 4(i), 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c), and the authority delegated pursuant to sections 0.131 and 0.331 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331, the Qualcomm request for an extension of time to use the remaining of its ADV IS GRANTED for an additional year until June 8, 2004.

12. IT IS FURTHER ORDERED that all the other terms and conditions of the ADV remain in effect.

13. IT IS FURTHER ORDERED that this Order shall be effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

John B. Muleta  
Chief, Wireless Telecommunications Bureau

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<sup>15</sup> See *Qualcomm Extension Request* at 2.

<sup>16</sup> See *Qualcomm* at 1375.

<sup>17</sup> See *Qualcomm ADV Order*, 16 FCC Rcd at 4051-52; *Qualcomm Waiver Order*, 17 FCC Rcd at 24314.