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August 5, 2011

Donald S. Clark
Federal Trade Commission
Office of Secretary
Room HB 113 (Annex X)
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: **FTC Patent Standards Workshop, Project No. P11-1204**

Dear Mr. Clark:

Qualcomm Incorporated (“Qualcomm”) makes this submission as an initial supplement to its prior submission in this matter dated June 13, 2011.

First, we respectfully submit that record confirms the absence of any systemic distortion or impairment of effective standardization, competition or innovation-enhancing activities resulting from the incorporation of patented technologies in standards. Likewise, the proceedings to date confirm the existence of no consumer harm, or the risk of such harm, arising from standardization based on the inclusion of patented technologies.

Indeed, if anything, the record shows the significant success of the existing standardization approach and the manner by which intellectual property is addressed.¹ In addition, comments to date reflect strong reasons why it would be injudicious for the Commission to impose itself or other branches of government in a regulatory capacity into the standardization process by advancing the types of recommendations reflected in its report, *The Emerging IP Marketplace*. The risk that any such steps would deter innovation-enhancing activities is great, and alone should be a reason for the Commission to defer any such efforts.²

¹ See, e.g., comments of American National Standards Institute, Alliance for Telecommunications Industry Solutions and Telecommunications Industry Association.

² See, e.g., comments of American Intellectual Property Law Association and Keith Mallinson.



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Second, Qualcomm respectfully submits that the rationale for the FTC's view that its involvement in the standards process is necessary to represent consumer interests, even if no identifiable problems exist, is unpersuasive. Consumer interests have long been represented in the standards process as appropriate, and the proliferation of standardized technologies and new products, many of which are based upon essential patented inventions, and the robust competition that exists throughout the standards ecosystem (*e.g.*, at the technology, manufacturer and consumer levels) belies any suggestion that consumers face any threat of harm requiring reform or FTC proactive intervention.

Third, the Workshop and comments suggest significant disagreement with the Commission's position regarding the nature of "hold up," the existence of "hold up" as a problem, and the appropriateness of imposing arbitrary limitations on the value of patents (in the standards context and otherwise) based upon the FTC-defined incremental value test. Significant legal and economic bases contradict the FTC's positions on each of these issues, and practical considerations render such positions even more problematic. In such circumstances, the concern previously identified by Qualcomm and others that the FTC's advocacy in this area may undermine innovation and competitiveness, if anything, is borne out, and the risk that foreign jurisdictions may use the FTC's advocacy to disadvantage U.S. firms from effectively competing globally is heightened.

Qualcomm reserves the ability to further supplement these observations taking into account additional submissions by other parties. Even on the current state of the record, however, we respectfully submit that the appropriate conclusions to be drawn from the Workshop is that the best role for the Commission will be to avoid any regulatory interjection into the standards process, and to limit its focus on its traditional role as an antitrust enforcement agency to address specific, empirically and objectively identifiable anticompetitive conduct, consistent with current U.S. law.

We appreciate the opportunity to continue to participate in this process.

Respectfully,

For Qualcomm Incorporated

Sean P. Murphy
Vice President & Counsel
International Government Affairs