

1 UNITED STATES DISTRICT COURT
 2 NORTHERN DISTRICT OF CALIFORNIA
 3 SAN JOSE DIVISION

4
 5 FEDERAL TRADE COMMISSION,) C-17-00220 LHK
 6)
 7 PLAINTIFF,) SAN JOSE, CALIFORNIA
 8)
 9 VS.) JANUARY 4, 2019
 10)
 11 QUALCOMM INCORPORATED, A) VOLUME 1
 12 DELAWARE CORPORATION,)
 13) PAGES 1-159
 14 DEFENDANT.)
 15 _____)

16 TRANSCRIPT OF PROCEEDINGS
 17 BEFORE THE HONORABLE LUCY H. KOH
 18 UNITED STATES DISTRICT JUDGE

19 A P P E A R A N C E S:

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 21 BY: JENNIFER MILICI
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PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
 TRANSCRIPT PRODUCED WITH COMPUTER

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22

(MS. MILICI GAVE HER OPENING STATEMENT ON BEHALF OF THE

23

FEDERAL TRADE COMMISSION.)

24

MS. MILICI: GOOD MORNING, YOUR HONOR.

25

JENNIFER MILICI REPRESENTING THE FEDERAL TRADE COMMISSION.

1 THIS CASE CONCERNS QUALCOMM'S LONG-STANDING CORPORATE
2 POLICIES TO HARM COMPETITION AND CONSUMERS. UNDER THOSE
3 POLICIES, QUALCOMM WILL NOT SELL MODEM CHIPS TO A CUSTOMER
4 UNLESS THE CUSTOMER TAKES A SEPARATE LICENSE TO QUALCOMM'S
5 STANDARD ESSENTIAL PATHS.

6 THE EVIDENCE WILL SHOW THAT DEVICE MANUFACTURERS AGREED TO
7 THE LICENSE TERMS NOT BECAUSE THE ROYALTY RATES REPRESENT THE
8 FAIR VALUE OF QUALCOMM'S PATENTS, BUT BECAUSE THEY NEED ACCESS
9 TO QUALCOMM'S MODEM CHIPS.

10 TO BUY QUALCOMM'S MODEM CHIPS, DEVICE MANUFACTURERS HAVE
11 TO AGREE TO PAY QUALCOMM'S ELEVATED ROYALTIES, WHICH ARE
12 EFFECTIVELY A SURCHARGE FOR ACCESS TO QUALCOMM'S CHIPS, EVEN
13 WHEN THEY USE CHIPS MADE BY QUALCOMM'S COMPETITORS.

14 AS A MATTER OF TEXTBOOK ECONOMICS, IF A MONOPOLIST DEMANDS
15 A SUBSTANTIAL PAYMENT EVERY TIME A CUSTOMER BUYS FROM SOMEONE
16 ELSE, THAT PAYMENT HARMS COMPETITION AND CONTRIBUTES TO THE
17 MAINTENANCE OF THE MONOPOLIST'S MARKET POWER.

18 UNDER THE FTC ACT, THAT CONDUCT IS UNLAWFUL AND WARRANTS
19 INJUNCTIVE RELIEF.

20 THE FACT THAT QUALCOMM'S SURCHARGE HAPPENS TO BE
21 CAMOUFLAGED IN A SEPARATE LICENSE AGREEMENT DOES NOT CHANGE THE
22 HARM TO COMPETITION OR GIVE QUALCOMM A FREE PASS FROM THE LAWS
23 THAT APPLY TO EVERYONE ELSE.

24 WE ARE ASKING THE COURT TO ENFORCE THOSE LAWS.

25 THE COURT: I'M SORRY TO INTERRUPT YOU. IT'S 9:08.

1 CAN EVERYONE SQUEEZE IN. I THINK WE'RE GOING TO HAVE SOME
2 PEOPLE ARRIVING LATE, AND I WOULD LIKE EVERYONE TO BE ABLE TO
3 HAVE A SEAT. I APOLOGIZE FOR INTERRUPTING YOU.

4 CAN EVERYONE ON EVERY SIDE SQUEEZE IN? ALL RIGHT. THANK
5 YOU.

6 IF SOMEONE ELSE COMES IN, IF YOU WOULD ALL PLEASE --
7 UNFORTUNATELY, WE DON'T HAVE ANY EXTRA COURTROOMS BECAUSE OF
8 ALL OF THE RENOVATION GOING ON IN THE BUILDING FOR THE HVAC.

9 ALL RIGHT. THANK YOU. I APOLOGIZE. GO AHEAD.

10 MS. MILICI: SURE.

11 OKAY. THERE ARE FOUR INTERRELATED PRACTICES THAT
12 REENFORCE EACH OTHER AND COLLECTIVELY ALLOW QUALCOMM TO IMPOSE
13 A SURCHARGE, EXTEND ITS MONOPOLY POWER, AND HARM COMPETITION.

14 FIRST IS NO LICENSE, NO CHIPS. AS THE COURT IS AWARE,
15 QUALCOMM AS HAS ADMITTED ITS LONGSTANDING CORPORATE POLICY OF
16 REFUSING TO SELL MODEM CHIPS TO MANUFACTURERS UNLESS THE
17 MANUFACTURER TAKES A SEPARATE LICENSE.

18 SECOND IS INCENTIVE PAYMENTS. THE EVIDENCE WILL SHOW THAT
19 QUALCOMM HAS A PRACTICE OF OFFERING TO PAY INCENTIVES TO
20 MANUFACTURES TO INDUCE THEM TO ACCEPT HIGH ROYALTIES.

21 THIRD IS QUALCOMM'S REFUSAL TO LICENSE RIVALS. QUALCOMM
22 HAS AN ADMITTED CORPORATE POLICY OF REFUSING TO OFFER
23 EXHAUSTIVE LICENSES TO ITS COMPETITORS TO MAKE AND SELL MODEM
24 CHIPS.

25 FINALLY, THE EVIDENCE WILL SHOW THAT QUALCOMM ENTERED DE

1 FACTO EXCLUSIVE DEALS WITH APPLE THAT FORECLOSED AN IMPORTANT
2 POINT OF ENTRY FOR RIVALS.

3 THESE FOUR PRACTICES WORK TOGETHER, AND HERE'S HOW.

4 NO LICENSE, NO CHIPS WOULDN'T BE AS EFFECTIVE IF QUALCOMM
5 LICENSED RIVAL CHIP MAKERS.

6 BECAUSE NO LICENSE, NO CHIPS IS SO EFFECTIVE, QUALCOMM IS
7 ABLE TO OBTAIN ELEVATED ROYALTIES WHICH THEN WEAKENS RIVALS.

8 THE ELEVATED ROYALTIES ALLOW QUALCOMM TO OFFER INCENTIVE
9 PAYMENTS AND EXCLUSIVE DEALS AS FORMS OF ROYALTY RELIEF THAT
10 DISCRIMINATE AGAINST RIVALS AND INCREASE QUALCOMM'S MARKET
11 POWER.

12 THAT MARKET POWER ALLOWS QUALCOMM TO CONTINUE TO USE NO
13 LICENSE, NO CHIPS.

14 QUALCOMM'S HIGH ROYALTIES WEAKEN ITS RIVALS AND WEAKENED
15 RIVALS ALLOW IT TO CONTINUE EXERCISING MARKET POWER TO OBTAIN
16 HIGH ROYALTIES.

17 HERE ON THIS SLIDE YOU SEE THAT QUALCOMM ADMITS ITS NO
18 LICENSE, NO CHIPS POLICY. THERE IS NO DISPUTE IN THIS CASE
19 ABOUT THE EXISTENCE OF THE POLICY. UNDER THAT POLICY, QUALCOMM
20 REQUIRED LICENSES FOR THE PURCHASE OF CDMA CHIPS, A MARKET THAT
21 THE EVIDENCE WILL SHOW THAT IT HAS DOMINATED SINCE THE 1990S,
22 AND UNDER THAT POLICY, QUALCOMM REQUIRES LICENSES FOR PREMIUM
23 LTE CHIPS WHEN THEY WERE INTRODUCED IN 2011 AND WHICH QUALCOMM
24 HAD MONOPOLY POWER.

25 ALL OF THE WITNESSES WHO WILL TESTIFY, QUALCOMM WITNESSES

1 AND THIRD PARTIES, WILL TESTIFY THAT QUALCOMM'S POLICY IS
2 UNIQUE AMONGST COMPONENT MANUFACTURERS, AND ALSO THAT THE
3 POLICY IS UNIQUE WITHIN QUALCOMM.

4 QUALCOMM SELLS OTHER COMPONENTS EXHAUSTIVELY, INCLUDING
5 WI-FI CHIPS. THE DIFFERENCE IS THAT IN WI-FI CHIPS, QUALCOMM
6 DOES NOT HAVE MARKET POWER.

7 THE LICENSES THAT QUALCOMM REQUIRES AS A CONDITION OF
8 PURCHASING MODEM CHIPS IS CALLED A SUBSCRIBER UNIT LICENSE
9 AGREEMENT, OR SULA.

10 THESE ARE THE LICENSES THAT WE WILL SHOW ARE ILLEGAL UNDER
11 THE ANTITRUST LAWS.

12 NOW, QUALCOMM WITNESSES WILL CLAIM THAT NO LICENSE, NO
13 CHIPS IS JUSTIFIED BY ITS NEED TO AVOID CLAIMS OF PATENT
14 EXHAUSTION FOR THE MODEM CHIPS IT SELLS. IT IS NOT
15 PROCOMPETITIVE TO AVOID THE DOCTRINE OF PATENT EXHAUSTION, THAT
16 QUALCOMM HAS SUCCESSFULLY MANAGED TO EMPLOY A BUSINESS MODEL
17 DESIGNED TO AVOID THE RULES THAT APPLY TO EVERYONE ELSE IS
18 EVIDENCE OF. ITS MARKET POWER, NOT A JUSTIFICATION FOR ITS
19 CONDUCT.

20 AS SLIDE 5 SHOWS, THE NO LICENSE, NO CHIPS POLICY IS
21 ACTUALLY WRITTEN INTO QUALCOMM'S SUPPLY AGREEMENTS. AS
22 QUALCOMM SAID IN RESPONSE TO INTERROGATORIES, IT HAS THE RIGHT
23 TO TERMINATE ITS COMPONENT SUPPLY AGREEMENT, WHICH IT CALLS, IS
24 SOMETIMES CALLED CSA'S, IF THE BUYER STOPS COMPLYING WITH ITS
25 LICENSE.

1 UNDER THOSE CONTRACTS, QUALCOMM ALSO HAS THE RIGHT TO
2 TERMINATE SUPPLY IF THE BUYER BECOMES UNLICENSED.

3 QUALCOMM STATES IN ITS TRIAL BRIEF THAT IT HAS, AND I WILL
4 QUOTE HERE BECAUSE QUALCOMM WAS OBVIOUSLY VERY CAREFUL ABOUT
5 THE PHRASING -- BUT IT SAYS THAT IT HAS NEVER CUT OFF
6 COMMERCIAL SUPPLY OF CHIPS TO AN EXISTING CUSTOMER AND NEVER
7 THREATENED TO INTERRUPT CHIP SUPPLY TO A LICENSEE IN GOOD
8 STANDING JUST BECAUSE THE LICENSEE SOUGHT TO RENEGOTIATE OR
9 CHALLENGE AN EXISTING OR EXPIRING AGREEMENT.

10 AND I EXPECT DURING THIS TRIAL WE WILL HEAR QUALCOMM'S
11 EXECUTIVES OFFER SIMILARLY CAREFULLY CRAFTED TESTIMONY ABOUT NO
12 LICENSE, NO CHIPS AND HOW IT WORKS.

13 BUT NO AMOUNT OF WORDSMITHING CAN CHANGE THE BOTTOM LINE:
14 THAT QUALCOMM DOES NOT SELL CHIPS TO UNLICENSED CUSTOMERS, THAT
15 IT HAS WRITTEN THAT POLICY INTO ITS CONTRACTS AND THREATENS
16 BUYERS DURING LICENSE NEGOTIATIONS THAT IT WILL CUT OFF MODEM
17 CHIP SUPPLY IF THEY DO NOT REACH AN AGREEMENT ON LICENSE TERMS.

18 AND EVEN IF IT WERE TRUE THAT QUALCOMM HAD NEVER CUT OFF
19 CHIP SUPPLY, THAT WOULD BE A TESTAMENT TO THE EFFECTIVENESS OF
20 ITS THREATS TO DO SO, NOT EVIDENCE THAT ITS LICENSES WERE
21 FAIRLY NEGOTIATED.

22 SLIDE 6 IS AN ACTUAL PRESENTATION TO THE QUALCOMM BOARD
23 MADE IN 2012. QUALCOMM ACKNOWLEDGED THAT IF IT CEASES SUPPLY
24 OF CHIPS TO CURRENT CUSTOMERS, THEY MAY ASSERT ANTITRUST CLAIMS
25 SEEKING DAMAGES, FINES, AND CONTINUED SUPPLY.

1 BUT THE STRATEGY RECOMMENDED BY QUALCOMM EXECUTIVES TO THE
2 BOARD WAS NOT TO CEASE THE UNLAWFUL CONDUCT, BUT TO DEVELOP A
3 PLAN OF COMMUNICATION/ACTION THAT MAXIMIZES OUR ABILITY TO
4 DEFEND AGAINST AN ANTITRUST CLAIM WHILE CEASING SUPPLY WHEN
5 NECESSARY.

6 AND WITNESSES FROM MULTIPLE MAJOR MANUFACTURERS WILL
7 TESTIFY DURING THE TRIAL ABOUT SPECIFIC THREATS THAT QUALCOMM
8 MADE DURING LICENSE NEGOTIATIONS. AND THOSE THREATS WORKED.
9 CUSTOMERS ENTERED NEW LICENSES WITH ROYALTY RATES THAT THEY
10 CONSIDERED UNFAIR AFTER BEING THREATENED.

11 FOR EXAMPLE, NANFEN YU OF HUAWEI WILL TESTIFY THAT
12 QUALCOMM EXPRESSED, BOTH ORALLY AND IN WRITING, THAT IT WOULD
13 STOP CHIP SUPPLY IF HUAWEI FAILED TO EXTEND ITS LICENSE.

14 HUAWEI THEN EXTENDED ITS LICENSE ON TERMS THAT IT BELIEVED
15 WERE UNREASONABLE BECAUSE, AS MS. YU WILL TESTIFY, IT NEEDED
16 QUALCOMM'S CHIPS.

17 MR. IRA BLUMBERG FROM LENOVO WILL LIKEWISE TESTIFY THAT
18 QUALCOMM TOLD HIM THAT IF LENOVO EXERCISED ITS RIGHT TO
19 TERMINATE A LICENSE WITH TERMS THAT IT CONSIDERED UNFAIR,
20 QUALCOMM WOULDN'T SELL LENOVO ANY MORE MODEM CHIPS.

21 AS A RESULT OF THE THREATS, LENOVO DID NOT EXERCISE ITS
22 RIGHT TO TERMINATE, BUT CONTINUED OPERATING THE LICENSE THAT --
23 OPERATING UNDER THE LICENSE THAT REQUIRED IT TO PAY EXCESSIVE
24 ROYALTIES TO QUALCOMM, EVEN WHEN IT USED COMPETITOR'S CHIPS.

25 COMPANY AFTER COMPANY WILL TESTIFY IN THIS CASE AND WHAT

1 WILL BE SO STRIKING IS THAT THEY WILL ALL SAY THE SAME THING
2 ABOUT QUALCOMM'S BUSINESS PRACTICES AND THE EFFECT THAT THEY
3 HAD.

4 IN RESPONSE, QUALCOMM WITNESSES WILL TESTIFY THAT QUALCOMM
5 HAS VALUABLE PATENTS AND HAS INVENTED TECHNOLOGY THAT IS
6 FUNDAMENTAL TO CELLULAR COMMUNICATIONS.

7 IF THAT IS TRUE, THEN QUALCOMM SHOULD NOT BE AFRAID TO
8 PROVE THE VALUE OF ITS STANDARD ESSENTIAL PATENTS IN PATENT
9 LITIGATION. THE FTC DOES NOT DISPUTE THAT QUALCOMM HAS PATENTS
10 OF VALUE OR THAT IT IS FREE TO SEEK REASONABLE ROYALTIES FROM
11 INFRINGING MANUFACTURERS.

12 BUT THIS IS AN ANTITRUST CASE ABOUT WHETHER QUALCOMM CAN
13 USE A POLICY OF PRODUCT HOLDUP TO INFLATE ROYALTIES AND TO
14 AVOID PATENT LITIGATION IN WHICH A DEVICE MANUFACTURER COULD
15 CHALLENGE THE VALIDITY OR INFRINGEMENT OF QUALCOMM'S PATENTS
16 AND THE REASONABLENESS OF ITS ROYALTY DEMANDS.

17 MAKING VALUABLE TECHNOLOGY DOES NOT -- DOES NOT EXEMPT A
18 COMPANY FROM THE ANTITRUST LAWS. NO ONE EVER ACCUSED MICROSOFT
19 OF FAILING TO MAKE VALUABLE TECHNOLOGY.

20 IN FACT, DURING THE PERIOD OF MICROSOFT'S MONOPOLIZATION
21 OF THE MARKETS FOR DESKTOP OPERATING SYSTEMS, PRICES DECLINED
22 AND FEATURES EXPANDED.

23 THE LAW STILL APPLIED TO MICROSOFT, JUST LIKE IT STILL
24 APPLIES TO QUALCOMM.

25 AND SLIDE 9 IS ONE OF QUALCOMM'S INTERNAL DOCUMENTS. THIS

1 DOCUMENT CONFIRMS THAT QUALCOMM HAS A CORPORATE STRATEGY OF
2 USING POTENTIAL PRODUCT HOLDS ON CHIP SHIPMENTS, ON CHIP
3 SHIPMENTS AS STICKS AND LICENSE NEGOTIATIONS. QUALCOMM ALSO
4 USES AS CARROTS PAYMENTS IN THE FORM OF STRATEGIC FUND, MDF, OR
5 MARKET DEVELOPMENT FUNDS, AND CHIP REBATES TO INDUCE
6 MANUFACTURERS TO SIGN LICENSES WITH HIGH ROYALTY RATES.

7 THOSE FUNDS ARE OFFERED IN EXCHANGE FOR AGREEMENTS ON
8 LICENSE TERMS, BUT THE PAYMENTS ACCRUE ON PURCHASES OF CHIPS
9 FROM QUALCOMM.

10 THE EVIDENCE WILL SHOW THAT QUALCOMM USED THE RATES THAT
11 IT OBTAINED THROUGH AN APPLICATION OF BOTH CARROTS AND STICKS
12 AS BENCHMARKS IN NEGOTIATIONS WITH OTHER CUSTOMERS, CLAIMING
13 THESE LICENSES PROVE THE REASONABLENESS OF ITS RUNNING ROYALTY
14 RATES.

15 QUALCOMM HAS LONG RECOGNIZED THAT THE LEVERAGE IT HAS OVER
16 DEVICE MANUFACTURERS AS A RESULT OF SELLING MUST-HAVE CHIPS
17 ALLOW IT IS TO OBTAIN HIGHER ROYALTIES FOR ITS LICENSING
18 BUSINESS THAN IT WOULD IF IT WAS FORCED TO NEGOTIATE ON THE
19 STRENGTH OF ITS PATENTS ALONE AS EVERY OTHER LICENSOR DOES.

20 AT VARIOUS POINTS IN ITS HISTORY, QUALCOMM HAS CONSIDERED
21 SPLITTING ITS CHIP BUSINESS, OFTEN REFERRED TO AS QCT, FROM ITS
22 LICENSING BUSINESS, REFERRED TO AS QTL. IN 2007, THE POTENTIAL
23 SPINOFF OF THE CHIP BUSINESS WAS GIVEN THE CODE NAME BERLIN.

24 SLIDE 10 IS AN INTERNAL DOCUMENT IN WHICH QUALCOMM
25 CONSIDERED THE ARGUMENTS FOR AND AGAINST SPIN, AND ONE OF THE

1 RECOGNIZED ARGUMENTS AGAINST SPIN WAS THAT IT COULD HURT QTL'S
2 LEVERAGE TO NEGOTIATE 3G RENEWALS AND 4G LICENSING DEALS.

3 IN FACT, QUALCOMM DECIDED NOT TO GO FORWARD WITH BERLIN
4 BECAUSE AS STEVE ALTMAN, THEN THE PRESIDENT OF QUALCOMM,
5 EXPLAINED IN THIS E-MAIL, THE COMBINATION OF QTC GREATLY
6 ENHANCES QTL'S SUCCESS. QUALCOMM ANTICIPATED THAT OEM'S WOULD
7 REMAIN RELIANT ON IT FOR CONTINUED SUPPLY OF CDMA CHIPS AND, AS
8 A RESULT, WOULD NEED TO MAINTAIN POSITIVE RELATIONSHIPS WITH
9 QUALCOMM. BECAUSE THEY NEEDED QUALCOMM CHIPS, THEY WOULD NOT
10 CHALLENGE QTL'S LICENSE DEMANDS.

11 IN 2015, QUALCOMM AGAIN CONSIDERED SPLITTING QTL AND QTC
12 INTO SEPARATE BUSINESSES AND NAMED IT PROJECT PHOENIX. AND,
13 AGAIN, QUALCOMM DETERMINED THAT A SEPARATION FROM THE CHIP
14 BUSINESS WOULD DEPRIVE QUALCOMM OF WHAT IT REFERRED TO AS ITS
15 PRODUCT STICK, LEAVING IT WITH FEWER NEGOTIATING LEVERS AND
16 EXPOSING QTL TO INCREASED NEGOTIATION AND PATENT LITIGATION
17 FROM OEM'S.

18 AND IN PROJECT PHOENIX, QUALCOMM SPECIFICALLY RECOGNIZED
19 THAT SPLITTING QTL FROM QCT WOULD REDUCE QUALCOMM'S ABILITY TO
20 OBTAIN THE SAME HIGH ROYALTIES IN 5G AS IT DID IN 3G AND 4G.

21 QUALCOMM'S PRODUCT STICK HAS BEEN EFFECTIVE BECAUSE OF ITS
22 MARKET POWER. AS QUALCOMM'S OWN DOCUMENTS SHOW, QUALCOMM HAD A
23 VERY HIGH SHARE OF CDMA CAPABLE MODEM CHIPS THROUGHOUT MUCH OF
24 THE RELEVANT TIME PERIOD.

25 AND MARKET PARTICIPANTS WILL TESTIFY THAT THERE WERE NO

1 VIABLE COMMERCIAL ALTERNATIVES TO QUALCOMM'S CDMA CAPABLE
2 CHIPS.

3 QUALCOMM ALSO DOMINATED THE MARKET FOR PREMIUM LTE CHIPS
4 AND DEVICE MANUFACTURERS WILL TESTIFY THAT THEY HAD NO VIABLE
5 COMMERCIAL ALTERNATIVE TO QUALCOMM'S PREMIUM LTE MODEM CHIPS
6 AND QUALCOMM'S DOCUMENTS AND THE RELEVANT DATA ESTABLISH
7 QUALCOMM'S HIGH MARKET SHARE.

8 DEVICE MANUFACTURERS WILL TESTIFY THAT THEIR DEPENDENCE
9 UPON QUALCOMM FOR MODEM CHIPS GAVE QUALCOMM MUCH STRONGER
10 LEVERAGE AND SKEWED PATENT LICENSE NEGOTIATION OUTCOMES.

11 THE HIGHER ROYALTIES RAISED THE COST OF USING COMPETITOR
12 CHIPS, DETERRING ENTRY AND INVESTMENT OF COMPETITORS.

13 QUALCOMM IS COMMITTED TO LICENSE ITS STANDARD ESSENTIAL
14 PATENTS ON FAIR, REASONABLE, AND NON-DISCRIMINATORY TERMS. BUT
15 EVEN BEFORE DOING MARKET COMPARISON, WE KNOW THAT THE LICENSE
16 RATES CHARGED BY QUALCOMM ARE TOO HIGH AND ABOVE FRAND BECAUSE
17 QUALCOMM USES ITS CHIP POWER TO REQUIRE A LICENSE.

18 QUALCOMM SAYS, YOU WILL PAY OUR RATES IF YOU WANT TO BUY
19 OUR CHIPS.

20 THE ONLY WAY TO ACHIEVE A MARKET RATE IS TO NEGOTIATE
21 WITHOUT THAT THREAT. YOU CANNOT TIE A MONOPOLY IN CHIPS TO A
22 ROYALTY RATE AND GET AN ACTUAL MARKET RATE.

23 THE PROCESS OF TIEING THE SALE OF CHIPS TO LICENSING
24 POISONS THE NEGOTIATION OF A FRAND RATE.

25 NOW, WITHOUT A THREAT TO CHIP SUPPLY, A PARTY FACED WITH A

1 DEMAND FOR UNREASONABLE ROYALTIES FOR STANDARD ESSENTIAL
2 PATENTS CAN CHALLENGE THAT DEMAND IN COURT, EITHER AS A
3 DEFENDANT IN PATENT LITIGATION, OR A PLAINTIFF IN A FRAND
4 DETERMINATION ACTION.

5 QUALCOMM'S POLICIES PREVENT OEM'S FROM NEGOTIATING IN THE
6 SHADOW OF THE LAW. INSTEAD, THEY NEGOTIATE IN THE SHADOW OF A
7 POTENTIALLY DEVASTATING DISRUPTION IN CHIP SUPPLY.

8 QUALCOMM IS ABLE TO USE ITS PRODUCT MARKET POWER TO DEMAND
9 HIGH ROYALTIES BECAUSE IT REFUSES TO EXHAUSTIVELY LICENSE CHIP
10 MAKERS WHO REQUEST A LICENSE, WHICH IS A VIOLATION OF ITS FRAND
11 COMMITMENTS. AS MR. ABERLE TESTIFIED IN HIS DEPOSITION, SHOWN
12 ON THIS SLIDE, MANY CHIP MAKERS HAVE REQUESTED EXHAUSTIVE
13 LICENSES FROM QUALCOMM.

14 NOW, QUALCOMM WILL PRESENT EVIDENCE PURPORTING TO
15 ESTABLISH THAT REFUSING TO LICENSE CHIP MAKERS IS STANDARD
16 PRACTICE IN THE INDUSTRY.

17 BUT QUALCOMM HAS INSISTED ON OBTAINING EXHAUSTIVE LICENSES
18 FOR ITS OWN CHIP BUSINESS FROM OTHER PATENT HOLDERS, INCLUDING
19 COMPANIES WITH SIGNIFICANT SET PORTFOLIOS.

20 AND QUALCOMM HAS BEEN THE DOMINANT SUPPLIER OF CHIPS FOR
21 OVER A DECADE. SO, IN FACT, A SIGNIFICANT PORTION OF THE
22 WORLDWIDE SALES OF MODEM CHIPS HAVE BEEN EXHAUSTIVE AS TO THE
23 SEP -- AS TO THE PATENTS OF OTHER SEP HOLDERS. BUT NONE CONVEY
24 QUALCOMM'S PATENT RIGHTS, AND THAT'S WHAT ALLOWS QUALCOMM TO
25 CONTINUE TO USE THREATS OF PRODUCT HOLDUP TO COLLECT HIGH

1 ROYALTIES.

2 QUALCOMM ALSO DETERRED ENTRY AND INVESTMENT BY MODEM CHIP
3 MAKERS BY ENTERING INTO EXCLUSIVE DEALS WITH APPLE. QUALCOMM
4 RECOGNIZED THAT IT FACED POTENTIAL COMPETITION FROM THE PREMIUM
5 MODEMS UNDER DEVELOPMENT BY OTHER MANUFACTURERS AND DETERMINED
6 THAT AN EXCLUSIVE DEAL WITH APPLE WOULD HAVE SIGNIFICANT
7 STRATEGIC BENEFITS, BECAUSE WITHOUT APPLE'S BUSINESS, THERE
8 WOULD NOT BE ENOUGH VOLUME FOR A COMPETITOR TO ENTER THE
9 MARKET.

10 QUALCOMM ENTERED AGREEMENTS WITH APPLE IN 2011 AND 2013
11 THAT PROVIDED PARTIAL ROYALTY RELIEF TO APPLE ON THE CONDITION
12 THAT IT AGREE TO FINANCIAL PENALTIES IF IT USED ANY
13 NON-QUALCOMM CHIPS.

14 THE PENALTIES WERE SUBSTANTIAL. BILLIONS OF DOLLARS WERE
15 AT RISK IF APPLE USED A COMPETITOR CHIP IN A NEW PRODUCT.

16 THE PURPOSE AND EFFECT OF THE CONTRACTS WAS TO EXCLUDE
17 COMPETITORS FROM A SIGNIFICANT PORTION OF THE MARKET AND TO
18 FORECLOSE AN IMPORTANT AVENUE OF ENTRY AND EXPANSION.

19 NOW, QUALCOMM WITNESSES WILL TESTIFY THAT THE EXCLUSIVE
20 AGREEMENTS HAD NO COMPETITIVE EFFECT BECAUSE NO OTHER
21 MANUFACTURER WAS CAPABLE OF MEETING APPLE'S NEEDS DURING THE
22 TIME OF THE EXCLUSIVITY.

23 BUT QUALCOMM RELIES ON EVIDENCE FROM THE WORLD IN WHICH
24 QUALCOMM HAS BEEN ENGAGING IN ANTICOMPETITIVE PRACTICES FOR
25 YEARS AND YEARS. IT IGNORES THE OPPORTUNITIES THAT WOULD HAVE

1 BEEN AVAILABLE TO COMPETITORS YEARS EARLIER IF QUALCOMM HAD
2 COMPETED ON THE MERITS.

3 AND AS THE EVIDENCE WILL DEMONSTRATE, EVEN IN THE WORLD
4 REFLECTING QUALCOMM'S EXCLUSIONARY CONDUCT, APPLE CONSIDERED
5 OTHER CHIPS, INCLUDING INTEL'S CHIPS, AND EVEN WITH NO LICENSE,
6 NO CHIPS, AND WITHOUT A QUALCOMM LICENSE, INTEL WAS A CAPABLE
7 POTENTIAL SUPPLIER.

8 BUT QUALCOMM'S EXCLUSIVE AGREEMENTS CLOSED THE DOOR ON
9 APPLE'S ENGAGEMENT WITH INTEL -- WITH -- INTEL'S ENGAGEMENT
10 WITH APPLE AT A KEY POINT IN TIME.

11 AND IT IS TRUE THAT INTEL SUPPLIES MODEM CHIPS TO APPLE
12 TODAY, BUT THE EXCLUSIVE DEALS DELAYED INTEL'S DEVELOPMENT AS A
13 COMPETITOR AND THIS DELAY HAD REAL CONSEQUENCES FOR INTEL.

14 QUALCOMM'S OWN DOCUMENTS ALSO ADMIT THAT IT ENTERED THE
15 AGREEMENTS WITH APPLE NOT BECAUSE IT HAD NO COMPETITORS, OR
16 BECAUSE IT HAD THE BEST TECHNOLOGY, BUT BECAUSE IT NEEDED TO
17 STOP FUTURE COMPETITION.

18 QUALCOMM WILL SHOW YOU DOCUMENTS THAT IN SOME YEARS
19 COMPETITORS WERE NOT READY. THOSE DOCUMENTS ARE PART OF THE
20 EVIDENCE OF QUALCOMM'S CHIPSET MARKET POWER IN THOSE YEARS.

21 QUALCOMM USED THAT MARKET POWER NOT TO WIN ONE YEAR OR ONE
22 PRODUCT CYCLE WITH A SOLE SOURCE CONTRACT, BUT TO COMPEL
23 EXCLUSIVITY FOR MANY YEARS AND TO STOP FUTURE COMPETITION.

24 NOW, WITH THIS BACKDROP IN MIND, I WOULD LIKE TO PREVIEW
25 THE EVIDENCE THAT THE COURT WILL HEAR OVER THE NEXT FEW DAYS OF

1 TRIAL.

2 AS THE COURT IS AWARE FROM OUR BRIEFING ON THIS ISSUE, THE
3 FTC WILL UNFORTUNATELY HAVE TO PRESENT SOME TESTIMONY FROM
4 FORMER QUALCOMM EXECUTIVES BY VIDEO TODAY THAT IT HAD HOPED TO
5 PRESENT LIVE.

6 THE COURT WILL HEAR THE VIDEOTAPED TESTIMONY OF
7 ERIC REIFSCHNEIDER. MR. REIFSCHNEIDER WAS OUTSIDE COUNSEL FOR
8 QUALCOMM FOR SEVERAL YEARS BEFORE SERVING AS THE GENERAL
9 MANAGER OF QTL FROM 2012 TO 2016.

10 THE FTC IS PLAYING MR. REIFSCHNEIDER'S VIDEO TO INTRODUCE
11 IMPORTANT NEGOTIATION DOCUMENTS. THESE DOCUMENTS SHOW
12 QUALCOMM'S SUPPLY THREATS AND EFFORT -- AND OFFERS OF FINANCIAL
13 INDUCEMENTS.

14 MR. REIFSCHNEIDER WILL TRY TO EXPLAIN AWAY THE DOCUMENTS.
15 THE DOCUMENTS SPEAK FOR THEMSELVES.

16 THE FTC WILL ALSO CALL BY VIDEO DR. PAUL JACOBS.
17 DR. JACOBS IS QUALCOMM'S FORMER CEO AND BOARD CHAIRMAN.

18 THE FTC IS PLAYING DR. JACOBS'S VIDEO IN ORDER TO
19 INTRODUCE KEY DOCUMENTS REGARDING PROJECT BERLIN AND OTHER
20 TOPICS.

21 DR. JACOBS WILL TRY TO PUT A POSITIVE SPIN ON THE
22 CONTEMPORANEOUS DOCUMENTS THAT SHOW THAT QUALCOMM KEPT THE
23 COMPANY TOGETHER IN ORDER TO CONTINUE TO EXPLOIT OEMS' NEED FOR
24 QUALCOMM CDMA MODEM CHIPS TO OBTAIN HIGHER ROYALTIES.

25 DR. JACOBS'S SPIN IS DIFFERENT THAN WHAT THE DOCUMENTS

1 SAID AT THE TIME AND CONTRARY TO THE OTHER EVIDENCE THE COURT
2 WILL HEAR.

3 THE COURT WILL ALSO HEAR THE VIDEOTAPED TESTIMONY OF
4 HUAWAI AND LENOVO EXECUTIVES. BOTH WITNESSES WILL TESTIFY
5 ABOUT SPECIFIC THREATS MADE BY ERIC REIFSCHEIDER AND OTHER
6 QUALCOMM EXECUTIVES DURING LICENSE NEGOTIATIONS AND THE EFFECT
7 OF THOSE THREATS ON NEGOTIATION OUTCOMES.

8 THE FTC WILL ALSO CALL MR. DAVID WISE LIVE TODAY.
9 MR. WISE IS THE SENIOR VICE PRESIDENT OF FINANCE FOR QUALCOMM.
10 MR. WISE WAS INTIMATELY INVOLVED IN PROJECT PHOENIX, DURING
11 WHICH QUALCOMM AGAIN CHOSE TO KEEP THE COMPANY TOGETHER TO
12 ALLOW IT TO CONTINUE TO USE CHIP LEVERAGE TO OBTAIN SURCHARGES
13 IN THE FORM OF UNREASONABLE ROYALTIES FROM DEVICE
14 MANUFACTURERS.

15 ON MONDAY, THE FTC WILL CALL THE TWO FORMER EXECUTIVES
16 THAT WERE SERVED TRIAL SUBPOENAS BY MAIL PURSUANT TO THE
17 COURT'S ORDER, NEITHER OF WHOM ARE AVAILABLE TODAY DUE TO
18 PREEXISTING VACATION PLANS.

19 THOSE EXECUTIVES ARE MR. STEVE ALTMAN, THE FORMER
20 PRESIDENT AND VICE CHAIRMAN OF QUALCOMM AND THE ARCHITECTURE OF
21 ITS LICENSING PROGRAM; AND MR. DEREK ABERLE, THE FORMER
22 PRESIDENT OF QTL AND FORMER PRESIDENT OF QUALCOMM.

23 THE FTC WILL ALSO CALL LIVE MR. FINBARR MOYNIHAN FROM
24 MEDIATEK, A RIVAL CHIP MAKER. MR. MOYNIHAN WILL TESTIFY THAT
25 MEDIATEK'S ABILITY TO COMPETE WAS INHIBITED BY QUALCOMM'S

1 ANTICOMPETITIVE CONDUCT. QUALCOMM INITIALLY DELAYED AND
2 RESISTED MEDIATEK'S REQUEST FOR LICENSE, REFUSED TO GRANT AN
3 EXHAUSTIVE LICENSE, PLACED ARTIFICIAL LIMITATIONS ON THE
4 CUSTOMERS MEDIATEK COULD SERVE, AND FORECLOSED MEDIATEK FROM
5 CERTAIN KEY OEM'S SELLING HANDSETS IN THE UNITED STATES.

6 DESPITE HAVING SOME SUCCESS IN LOW MARGIN, LOW TIER
7 PRODUCTS, MEDIATEK HAS NOT BEEN ABLE TO COMPETE IN A PREMIUM
8 TIER.

9 OVER THE NEXT DAYS OF TRIAL, THE FTC WILL CALL A NUMBER OF
10 OTHER OEM'S AND CHIP MANUFACTURERS LIVE AND BY VIDEO. EVERY
11 OEM WILL TESTIFY THAT QUALCOMM'S ROYALTY RATES ARE NOT FRAND
12 AND THAT THE NEGOTIATIONS WERE SKEWED BY IMPLICIT AND EXPLICIT
13 THREATS TO SUPPLY.

14 EVERY RIVAL AND POTENTIAL RIVAL WILL TESTIFY THAT QUALCOMM
15 REFUSED TO PROVIDE A REQUESTED EXHAUSTIVE LICENSE, AND THAT
16 QUALCOMM'S CONDUCT IMPAIRED THEIR ABILITY TO COMPETE
17 EFFECTIVELY.

18 AFTER PRESENTING THE TESTIMONY OF FACT WITNESSES, THE FTC
19 WILL CALL THREE EXPERTS IN ITS CASE-IN-CHIEF.

20 MR. DONALDSON WILL TESTIFY THAT PATENT LICENSE
21 NEGOTIATIONS TYPICALLY TAKE PLACE WITH AN EYE TOWARD THE
22 CONTROLLING LAW ON THE REMEDIES AVAILABLE FOR PATENT
23 INFRINGEMENT. WHERE STANDARD ESSENTIAL PATENTS ARE INVOLVED,
24 THE ROYALTIES NEGOTIATED BY THE PARTIES SHOULD APPROXIMATE THE
25 ROYALTIES THAT WOULD BE AWARDED BY A COURT SHOULD NEGOTIATIONS

1 FAIL, INCLUDING IN LIGHT OF FRAND COMMITMENTS.

2 AS MR. DONALDSON WILL EXPLAIN QUALCOMM'S PRACTICES,
3 INCLUDING NO LICENSE, NO CHIPS, SKEWED NEGOTIATIONS TOWARDS THE
4 OUTCOMES THAT FAVOR QUALCOMM AND LEAD TO HIGHER ROYALTIES.

5 MR. MICHAEL LASINSKI COMPARED THE ROYALTY RATES RECEIVED
6 BY QUALCOMM TO THE FRAND RATES THAT ORDER -- THAT -- TO THE
7 RANGE OF FRAND RATES THAT ORDINARILY WOULD FORM THE BOUNDARIES
8 OF A NEGOTIATION. THESE ARE THE RATES THAT COULD BE CALCULATED
9 USING ANY COMBINATION OF A NUMBER OF WIDELY ACCEPTED
10 METHODOLOGIES AND WIDELY ACCEPTED INDICATORS OF PORTFOLIO
11 STRENGTH.

12 MR. LASINSKI'S EXPERT OPINION, BASED ON THESE RELIABILITY
13 METHODOLOGIES, IS THAT QUALCOMM'S ROYALTY RATES ARE FAR ABOVE
14 ANY INDICATORS OF FAIR AND REASONABLE RATES.

15 NOW, QUALCOMM WILL ATTACK THE METHODOLOGIES USED BY
16 MR. LASINSKI. BUT AS MR. LASINSKI WILL EXPLAIN, HE CALCULATED
17 A RANGE OF RATES USING METHODS THAT HAVE BEEN USED BY COURTS
18 WHEN DETERMINING FRAND RATES, AND BY PARTIES TO FRAND
19 NEGOTIATIONS. UNDER NO COMBINATION OF ACCEPTED METHODS OR
20 MEASURES ARE QUALCOMM'S ROYALTIES WITHIN THE RANGE OF RATES
21 THAT A COURT WOULD CONSIDER FRAND OR THAT THE PARTIES WOULD
22 ANTICIPATE IF THEY WERE NEGOTIATING IN THE SHADOW OF A JUDICIAL
23 DETERMINATION.

24 QUALCOMM WILL NOT PROVIDE THE COURT WITH ANY ALTERNATIVE
25 ESTIMATE OF WHAT A COURT WOULD AWARD IN FRAND LITIGATION.

1 INSTEAD, QUALCOMM WILL POINT TO LICENSE AGREEMENTS THAT
2 ARE NEARLY 30 YEARS OLD AS EVIDENCE OF THE REASONABLENESS OF
3 ITS ROYALTY RATES. EVEN THOUGH MANY OF THE PATENTS THAT IT
4 LICENSED IN THE EARLY 1990S EXPIRED A LONG TIME AGO, AND EVEN
5 THOUGH QUALCOMM WITNESSES WILL TESTIFY THAT THE CELLULAR
6 INDUSTRY HAS BEEN CHARACTERIZED BY RAPID CHANGE.

7 IN QUALCOMM'S VIEW, THE ONLY THING THAT HASN'T CHANGED IN
8 THE CELLULAR INDUSTRY IN THE LAST 30 YEARS IS THE ROYALTY RATE
9 THAT IT IS ENTITLED TO CHARGE.

10 BUT THE COURT WILL HEAR FROM ALL OF QUALCOMM'S LARGEST
11 CUSTOMERS, INCLUDING SAMSUNG, HUAWEI, LG, LENOVO, PEGATRON,
12 WISTRON AND APPLE, THAT THE ROYALTY RATES ARE NOT FRAND AND
13 THAT QUALCOMM WAS ONLY ABLE TO OBTAIN THOSE RATES BY EXERCISING
14 ITS CHIP LEVERAGE.

15 FINALLY, THE COURT WILL HEAR TESTIMONY FROM PROFESSOR
16 CARL SHAPIRO. PROFESSOR SHAPIRO HAS STUDIED ANTITRUST,
17 INNOVATION, AND COMPETITIVE STRATEGY FOR OVER 30 YEARS. HE HAS
18 TWICE SERVICED AS THE DEPUTY ASSISTANT ATTORNEY GENERAL FOR
19 ECONOMICS IN THE ANTITRUST DIVISION. HE HAS WRITTEN NUMEROUS
20 PAPERS RELATING TO THE ANTITRUST ANALYSIS OF PATENTS AND PATENT
21 LICENSING, STANDARD ESSENTIAL PATENTS, AND FRAND COMMITMENTS.

22 PROFESSOR SHAPIRO WILL TESTIFY THAT QUALCOMM HAS MONOPOLY
23 POWER IN MARKETS FOR CDMA COMPATIBLE AND PREMIUM LTE MODEM
24 CHIPS AND THAT BOTH MARKETS SATISFY THE HYPOTHETICAL MONOPOLIST
25 TEST, WHICH THE PARTIES AGREE IS THE PROPER TEST TO DEFINE THE

1 ANTITRUST PRODUCT MARKET.

2 PROFESSOR SHAPIRO WILL ALSO EXPLAIN HOW QUALCOMM'S CONDUCT
3 HARMS COMPETITION IN MODEM CHIP MARKETS. AS PROFESSOR SHAPIRO
4 WILL TESTIFY, WHEN QUALCOMM IS ABLE TO ARTIFICIALLY RAISE
5 ROYALTIES ON HANDSETS USING RIVAL CHIPS, ITS CONDUCT WEAKENS
6 THE COMPETITIVE STRENGTH IMPOSED BY RIVALS AND EXTENDS ITS OWN
7 MONOPOLY POWER.

8 AND AS PROFESSOR SHAPIRO WILL TESTIFY, WHAT QUALCOMM CALLS
9 PROCOMPETITIVE JUSTIFICATIONS FOR ITS CONDUCT ARE REALLY JUST
10 DIFFERENT WAYS QUALCOMM IS SAYING THAT IT IS ENTITLED TO AVOID
11 THE PATENT LITIGATION SYSTEM THAT APPLIES TO EVERY OTHER
12 LICENSOR.

13 FOR EXAMPLE, QUALCOMM JUSTIFIES ITS CONDUCT AS NECESSARY
14 TO AVOID LEGAL RISKS OF PATENT EXHAUSTION AND IMPLIED LICENSE
15 CLAIMS, MEANING THAT IT RECOGNIZES THAT WITHOUT NO LICENSE, NO
16 CHIPS, OEM'S WOULD BE LIKELY TO BRING LEGAL CLAIMS THAT MIGHT
17 REDUCE ITS LICENSING REVENUE.

18 QUALCOMM ALSO ASSERTS THAT NO LICENSE, NO CHIPS IS
19 JUSTIFIED BECAUSE SOME COMPANIES DO NOT RESPECT INTELLECTUAL
20 PROPERTY.

21 BUT EVERY OTHER PATENT HOLDER HAS TO ADDRESS THOSE ISSUES
22 IN PATENT LITIGATION.

23 QUALCOMM'S SELF-HELP IS NOT PROCOMPETITIVE.
24 DISSATISFACTION WITH THE LEGAL REMEDIES AVAILABLE TO PATENT
25 HOLDERS DOES NOT GIVE QUALCOMM THE RIGHT TO VIOLATE THE

1 ANTTITRUST LAWS.

2 SO THE EVIDENCE THAT THE COURT WILL SEE OVER THE NEXT TEN
3 DAYS WILL SHOW THAT QUALCOMM HAS ENGAGED IN A COURSE OF CONDUCT
4 LASTING AT LEAST A DECADE THAT EXTENDED ITS MONOPOLY POWER IN
5 MODEM CHIP MARKETS, HARMED COMPETITION AND CONSUMERS, AND
6 VIOLATES THE FTC ACT.

7 THE CONDUCT ALLEGED IN THIS CASE IS ONGOING. IT WAS NOT
8 SHORT TERM OR SPORADIC. IT WAS AND IS ENTRENCHED CORPORATE
9 POLICY THAT HAS NEVER BEEN DISAVOWED BY QUALCOMM.

10 QUALCOMM'S INTERNAL DOCUMENTS SUGGEST ITS INTENT TO USE
11 THE SAME CONDUCT TO OBTAIN THE SAME RESULTS IN 5G.

12 AT THE END OF THE TRIAL, THE FTC WILL ASK THE COURT TO
13 ORDER EQUITABLE RELIEF TO PREVENT QUALCOMM FROM CONTINUING TO
14 ENGAGE IN ITS ANTICOMPETITIVE CONDUCT, INCLUDING BY ENJOINING
15 QUALCOMM FROM NO LICENSE, NO CHIPS AND RELATED CONDUCT. THE
16 ANTTITRUST LAWS APPLY TO ALL COMPANIES, INCLUDING QUALCOMM.

17 THANK YOU, YOUR HONOR.