



LETTER OF COMMENT NO. 160

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Submitted via email to director@fasb.org

Mr. Russell G. Golden
Technical Director
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, CT 06856-5116

Re: File Reference 1600-100

Dear Mr. Golden:

QUALCOMM Incorporated respectfully submits this comment letter on the Proposed Statement of Financial Accounting Standards – *Disclosure of Certain Loss Contingencies, an amendment of FASB Statements No. 5 and 141(R)* (the “proposed Statement”).

While we understand the objectives noted in the proposed Statement, we believe the expansion of the scope of the current disclosure requirements creates significant concerns and challenges that are not justified by the perceived benefits to financial statement users. Specifically:

- We believe that this proposed Statement should not be finalized until international convergence is achieved, especially in light of the major efforts U.S. public companies will need, or have already begun, to undertake in response to the momentum towards mandatory adoption of international financial reporting standards. If this proposed Statement is finalized in its present form prior to convergence, companies reporting in accordance with accounting principles generally accepted in the United States could be put at a disadvantage in litigation involving international companies.
- The proposed Statement significantly expands the disclosures required for loss contingencies. Not only will these additional disclosures result in increased costs and undue burden on financial statement preparers, we believe that the expanded disclosures will be of little incremental value to financial statement users and will provide less clarity and certainty surrounding loss contingencies, particularly with respect to those arising



from litigation matters. Further, in many instances, it will not be possible to provide a reliable estimate of the maximum exposure to loss that would be meaningful to investors.

- *The proposed Statement will drive companies to provide quantitative estimates that, we believe, run a considerable risk of being inaccurate and potentially misleading and, given the vagaries of litigation, differences between such estimates and any actual loss may frequently be material. Since the investor analyst community will need to react to these disclosures in some way (for example, through attempts to incorporate them into their estimates), there is a significant likelihood that this will increase stock volatility, with little meaningful benefit to investors.*
- The proposed expanded qualitative and quantitative disclosure requirements related to certain loss contingencies, especially those arising from litigation, would endanger the protections offered under the attorney-client privilege and work product doctrine.
- Since the Board's plans to improve reporting of loss contingencies includes a *comprehensive reconsideration of the recognition and measurement of certain nonfinancial liabilities, including contingencies*, it would be beneficial to address the disclosure of loss contingencies in conjunction with those efforts resulting in one comprehensive change that can be implemented in its entirety rather than in parts.

For these reasons, and as further explained in our responses to the specific questions that are enumerated in the proposed Statement (Exhibit I), we believe that the current disclosure requirements under FAS 5 should remain in effect.

We appreciate the opportunity to comment on this proposed Statement. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Bud Nelson".

Bud Nelson
Senior Vice President and Corporate Controller
QUALCOMM Incorporated



Exhibit I

Responses to Individual Questions in the Proposed Statement on Financial Accounting Standards – *Disclosure of Certain Loss Contingencies, an amendment of FASB Statements No. 5 and 141(R)*

1. *Will the proposed Statement meet the project's objective of providing enhanced disclosures about loss contingencies so that the benefits of those disclosures justify the incremental costs? Why or why not? What costs do you expect to incur if the Board were to issue this proposed Statement in its current form as a final Statement? How could the Board further reduce the costs of applying these requirements without significantly reducing the benefits?*

We believe that the costs of providing the expanded disclosures are not justified by the desired benefits to users. On a quarterly basis, our in-house legal counsel, our finance department, our executive team and outside legal counsel meet to discuss the various loss contingencies and legal matters that the Company is faced with for purposes of assessing the amount of potential loss for contingencies that are reasonably possible to occur and preparing the disclosures to be made in our financial statements. Hundreds of man-hours are already devoted to this activity each quarter. The level of detail required to comply with the proposed disclosure requirements with respect to contingencies with a likelihood of loss that is remote, especially those related to unasserted claims, would add significant and undue burden to this already demanding effort that would not justify any perceived benefit to financial statement users. Significant additional time and costs would be incurred on a quarterly basis in connection with implementing the proposed changes, including additional time incurred by our in-house legal counsel, our finance department and our executive team. We believe it likely that any attempt to estimate the costs of complying with the proposed Statement will substantially understate the actual costs of compliance. An attempt to evaluate the cost to a litigation matter, as a function of estimates of the probability of a wholly or partially unsuccessful outcome and the magnitude of ultimate liability, will be a significantly time-consuming and complex endeavor that might not otherwise be undertaken by companies in, for example, the early stages of a matter. Because significant secondary liability could result from an estimate that ultimately proves inaccurate, companies will be forced to adopt elaborate new processes on a quarterly basis. These processes could well involve multiple independent law firms and risk management experts so that boards and audit committees can discharge their fiduciary obligations (and reduce their exposure) by relying on the advice of such experts. Given the inherently uncertain nature of litigation, especially in its earliest stages, these processes will add substantial costs to help management and the audit committee gain some level of comfort on the processes employed to generate the disclosures, but, in our view, will provide little benefit to investors in terms of meaningful disclosures. Additionally, significant auditing costs would be incurred as our auditors would be required to evaluate management's judgment, including consideration of the advice of outside experts, regarding which disclosures are required to be made, as well as what will be disclosed.



Furthermore, we believe that more information is not necessarily better information. The current disclosure requirements allow companies to focus on matters that management considers material to financial statement users. The expanded disclosure requirements under the proposed Statement would create a cacophony of information about non-material matters, which would tend to obfuscate, rather than enlighten, resulting in disclosures that would provide financial statement users with less clarity and certainty surrounding loss contingencies, particularly with respect to those arising from litigation matters.

- 2. Do you agree with the Board's decision to include within the scope of this proposed Statement obligations that may result from withdrawal from a multiemployer plan for a portion of its unfunded benefit obligations, which are currently subject to the provisions of Statement 5? Why or why not?*

No comment. This question is not currently applicable to our company.

- 3. Should an entity be required to provide disclosures about loss contingencies, regardless of the likelihood of loss, if the resolution of the contingencies is expected to occur within one year of the date of the financial statements and the loss contingencies could have a severe impact upon the operations of the entity? Why or why not?*

No. The elimination of the threshold that currently exists would result in a substantial increase in the number of contingencies disclosed due to, for example, the high volume of frivolous or meritless lawsuits that are filed or the wider ranges of assumptions that may have to be considered to address contingencies where the likelihood of loss is remote. In addition, expanded disclosure would be required to explain why additional contingencies related to such lawsuits are not likely to result in a loss. Such extraneous disclosures would only obfuscate the more significant and meaningful contingencies and result in less valuable information to the financial statement users. The "reasonably possible" threshold that currently exists in FAS 5 effectively limits the amount of "noise" in the financial statements requiring companies to focus disclosure on those contingencies that have a reasonable possibility of resulting in a loss. Furthermore, under existing rules, companies are required to disclose the major contingencies and uncertainties facing them. For U.S. public companies, the Securities and Exchange Commission's Regulation S-K Item 503(c) provides relevant and sufficient disclosure regarding the significant risks and uncertainties that may result in a loss or otherwise impair business operations, supplementing the information included in financial statements.

- 4. Paragraph 10 of Statement 5 requires entities to "give an estimate of the possible loss or range of loss or state that such an estimate cannot be made." One of financial statement users' most significant concerns about disclosures under Statement 5's requirements is that the disclosures rarely include quantitative information. Rather, entities often state that the possible loss cannot be estimated. The Board decided to require entities to disclose the amount of the claim or assessment against the entity, or, if there is no claim or assessment*



amount, the entity's best estimate of the maximum possible exposure to loss. Additionally, entities would be permitted, but not required, to disclose the possible loss or range of loss if they believe the amount of the claim or assessment is not representative of the entity's actual exposure.

- a. *Do you believe that this change would result in an improvement in the reporting of quantitative information about loss contingencies? Why or why not?*

No. We do not believe that this change would improve the reporting of quantitative information about loss contingencies. The determination of the maximum possible loss or range of loss is dependent upon consideration of many factors and assumptions that are subject to frequent change and are often out of the control of or not known by the company, especially in regard to litigation matters which can be affected by facts uncovered during discovery, testimony or settlement negotiations or in legal rulings issued by the court (or by appellate courts or arbitrators), jury verdicts, etc., all of which are extremely difficult and often impossible to predict. A company's ability to estimate the amount of possible loss is also significantly limited in cases where the claims and underlying facts are technically complex and unique, such as lawsuits alleging patent infringement and personal injury. As a result, in many instances, companies will be unable to provide a reliable estimate of the maximum exposure to loss that is meaningful to financial statement users. Furthermore, the maximum possible loss is rarely indicative of the likely or ultimate resolution of a contingency due to the nature of the litigation process. Therefore, disclosure of such an amount will likely be of little relevance in predicting the amount of an actual loss that may be incurred and will not provide financial statement users with any more accurate or reliable information than that provided under the current disclosure requirements of FAS 5.

- b. *Do you believe that disclosing the possible loss or range of loss should be required, rather than optional, if an entity believes the amount of the claim or assessment or its best estimate of the maximum possible exposure to loss is not representative of the entity's actual exposure? Why or why not?*

We believe that disclosure of the possible loss or range of loss should be optional. As stated in our response to Question 4a, in many instances, companies will be unable to produce reliable, relevant and meaningful estimates, and disclosure of such amounts is not useful. In addition, as further discussed in our response to Question 8, disclosure of the amount or range of possible loss may be prejudicial and therefore detrimental to a company's efforts to resolve disputes.

- c. *If you disagree with the proposed requirements, what quantitative disclosures do you believe would best fulfill users' needs for quantitative information and at the same time not reveal significant information that may be prejudicial to an entity's position in a dispute?*



We believe the current disclosure requirements of FAS 5 best fulfill users' needs without revealing prejudicial information.

5. *If a loss contingency does not have a specific claim amount, will an entity be able to provide a reliable estimate of the maximum exposure to loss (as required by paragraph 7(a)) that is meaningful to users? Why or why not?*

No. As stated and explained in our response to Question 4a, in many instances, it will not be possible to provide a reliable estimate of the maximum exposure to loss that would be meaningful to investors.

6. *Financial statement users suggested that the Board require disclosure of settlement offers made between counterparties in a dispute. The Board decided not to require that disclosure because often those offers expire quickly and may not reflect the status of negotiations only a short time later. Should disclosure of the amount of settlement offers made by either party be required? Why or why not?*

No. We agree with the Board's conclusion as set forth in the question. Furthermore, settlement negotiations are often subject to confidentiality provisions, and disclosure of settlement offers could have a negative effect on the company's position in such negotiations. In addition, requiring disclosure of settlement offers would have a chilling effect on efforts to settle disputes since parties will be reluctant to make offers that they know will be publicly disclosed. Such a result would be antithetical to a public policy favoring negotiated resolution over litigation.

7. *Will the tabular reconciliation of recognized loss contingencies, provided on an aggregated basis, provide useful information about loss contingencies for assessing future cash flows and understanding changes in the amounts recognized in the financial statements? Why or why not?*

No. The tabular presentation at a summarized level will not provide useful information because of the broad range of the types of loss contingencies or contingent matters that may be aggregated, particularly by large, diversified companies. A qualitative description of the changes in recorded loss contingencies during the reporting period would significantly increase the length and complexity of required disclosures unless the descriptions are very generic and not detailed. In either case, the additional disclosures would not be useful to a majority of readers. Furthermore, such information could provide prejudicial information as to the entity's position in litigation and in other types of negotiations.

8. *This proposed Statement includes a limited exemption from disclosing prejudicial information. Do you agree that such an exemption should be provided? Why or why not?*



The proposed expanded qualitative and quantitative disclosure requirements related to certain loss contingencies, especially those arising from litigation, would endanger the protections offered under the attorney-client privilege and work product doctrine. In addition, the entire litigation system is set up to be an adversarial process. Requiring disclosures of prejudicial information would encroach upon that system and cause harm to companies in the litigation process. Therefore, we agree that an exemption from providing prejudicial information should be provided. However, we believe that the exemption should be available in far more situations than the proposed limit to “rare instances.”

9. *If you agree with providing a prejudicial exemption, do you agree with the two-step approach in paragraph 11? Why or why not? If not, what approach would you recommend and why?*

No. We do not believe the aggregation of information to protect against disclosure of prejudicial information will be effective as there are often not enough contingencies of a similar nature to achieve the intended benefit of aggregation. In fact, aggregation of information would likely provide less useful information to the financial statement user than that which is already provided under the current disclosure requirements of FAS 5.

10. *The International Accounting Standards Board (IASB) continues to deliberate changes to IAS 37, Provisions, Contingent Liabilities and Contingent Assets, but has not yet reconsidered the disclosure requirements. The existing disclosure requirements of IAS 37 include a prejudicial exemption with language indicating that the circumstances under which that exemption may be exercised are expected to be extremely rare. This proposed Statement includes language indicating that the circumstances under which the prejudicial exemption may be exercised are expected to be rare (instead of extremely rare). Do you agree with the Board's decision and, if so, why? If not, what do you recommend as an alternative and why?*

As noted in our response to Question 8, we do not believe that exercise of the prejudicial exemption should be limited to rare occurrences. As such, we recommend that, if the FAS 5 disclosure requirements are amended, the prejudicial exemption should be purposely broad to enable companies to effectively litigate disputes.

11. *Do you agree with the description of prejudicial information as information whose “disclosure . . . could affect, to the entity's detriment, the outcome of the contingency itself”? If not, how would you describe or define prejudicial information and why?*

While “prejudicial information” certainly includes information that could affect, to the entity’s detriment, the outcome of the contingency itself, it would be impractical and improper to limit the definition in that manner. Indeed, any information that is prejudicial to a company should be considered prejudicial for purposes of financial reporting. Otherwise, the proposed disclosure requirements may have the effect of harming the very persons that they were intended to protect.



12. Do you believe it is operational for entities to disclose all of the proposed requirements for interim and annual reporting periods? Should the tabular reconciliation be required only annually? Why or why not?

We do not believe it is operational for entities to disclose all of the proposed requirements for any reporting period for the reasons outlined in our responses. In addition, we believe that it is not operational to implement the proposed disclosures for interim reporting periods due to the shorter reporting timeframe and the significant amount of additional work and related costs that will be required as explained in our response to Question 1. Furthermore, we believe requiring such disclosures for interim reporting periods contradicts the basic principles of interim reporting whereby condensed information is presented and only those significant developments since the most recent annual reporting period are subject to disclosure.

13. Do you believe other information about loss contingencies should be disclosed that would not be required by this proposed Statement? If so, what other information would you require?

No.

14. Do you believe it is operational for entities to implement the proposed Statement in fiscal years ending after December 15, 2008? Why or why not?

No. Implementation of the proposed Statement will require significant incremental efforts associated with the gathering of information (including implementation of expanded internal controls), discussion, analysis (including additional audit procedures by the company's independent auditors) and drafting and review of the disclosures. We do not believe there is sufficient time for implementation of the proposed Statement for issuers who report on a calendar year basis.