

May 12, 2014

The Honorable Howard Shelanski, Administrator  
Office of Information and Regulatory Affairs  
U.S. Office of Management and Budget  
725 17<sup>th</sup> Street, NW  
Washington, DC 20503  
Submitted Electronically & by Fax: 202-395-5167

Dear Mr. Shelanski,

**Re: Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities**

Alcatel Lucent USA Inc., Ericsson Inc., Nokia Solutions and Networks, and Qualcomm respectfully submit the following comment regarding the proposed revisions to OMB Circular A-119 published on February 11, 2014.

On page 22, the proposed revision document<sup>1</sup> suggests revised text as follows:

“This evaluation should include consideration of the economic effect of intellectual property rights (IPR) policies of the voluntary consensus standards bodies on standards implementers, such as the extent to which entities practicing the standards may obtain licenses to patented technology incorporated into the standard on a non-discriminatory and reasonable royalty or royalty-free basis. This evaluation should also include consideration of whether such IPR policies bind subsequent transfers of patented technology incorporated into the standard.”

The undersigned companies are concerned that, as drafted, the proposed text is imbalanced and problematic for a number of reasons. First, the text fails to consider the effects on companies who have contributed valuable proprietary technology into standards. Second, to the extent the

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<sup>1</sup> Available at <http://www.whitehouse.gov/sites/default/files/omb/inforeg/revisions-to-a-119-for-public-comments.pdf>.

revised circular may be viewed by non-U.S. jurisdictions as a “best practices” guidance, such jurisdictions may misinterpret the new language as undermining patent protection for technologies that go into standards, or discouraging it altogether, to the detriment of U.S. industry as a whole. Such an approach may have spill-over effects affecting the technology of companies who did not participate in the standard-setting activities. And, finally, the text fails to reflect the current efficient industry practice, that is well-grounded in some patent policies such as ETSI’s, under which licenses are typically granted (and the patents are therefore exhausted) on an end-product basis. Under this reality, some companies in the market chain do not need to obtain licenses because patents are not being asserted against them.

The undersigned respectfully suggest the following edits that resolve the above concerns, while still accommodating OMB’s goals of considering the costs to the agency or users of the standard, and ensuring “enhanced accessibility to standards,”<sup>2</sup> as follows:

*This evaluation should include consideration of ~~the economic effect of the intellectual property rights (IPR) policies of the voluntary consensus standards bodies on standards implementers,~~ such as the extent to which entities practicing the standards may obtain licenses or other rights to practice patented technology incorporated into the standard on a non-discriminatory and reasonable royalty ~~or royalty-free~~ basis. This evaluation should also include consideration of whether such IPR policies bind subsequent transfers of patented technology incorporated into the standard.*

We appreciate the opportunity to weigh into the process and can make ourselves available to discuss these issues further at your or your staff’s convenience.

Sincerely,

*/see signatories below*

<b>Name &amp; Email</b>	<b>Company</b>
Monica Barone <a href="mailto:mbarone@qualcomm.com">mbarone@qualcomm.com</a>	Qualcomm
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<sup>2</sup> As noted on page 10 of the proposed revisions.

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Nokia Solutions and Networks