

No. 19-16122

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IN THE  
**United States Court of Appeals**  
**for the Ninth Circuit**

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FEDERAL TRADE COMMISSION,

*Plaintiff-Appellee,*

v.

QUALCOMM INCORPORATED, A DELAWARE CORPORATION,

*Defendant-Appellants.*

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APPEAL FROM THE UNITED STATES DISTRICT COURT FOR  
NORTHERN DISTRICT OF CALIFORNIA  
HON. LUCY H. KOH, JUDGE, CASE NO. 5:17-CV-00220

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**MOTION FOR LEAVE TO FILE BRIEF OF  
ACT | THE APP ASSOCIATION  
AS AMICUS CURIAE IN OPPOSITION TO QUALCOMM'S MOTION FOR  
PARTIAL STAY OF INJUNCTION PENDING APPEAL**

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## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rules of Appellate Procedure 26.1 and 29(a)(4)(A), *amicus curiae* ACT | THE APP ASSOCIATION certifies that it is not a corporation and has no stock. It therefore has no parent corporations or any publicly-held corporations that own 10% or more of stock.

Pursuant to Rule 29 of the Federal Rules of Appellate Procedure, ACT | The App Association (“The Association”) respectfully moves for leave to file an *amicus curiae* brief in opposition to Defendant-Appellant’s Motion for Partial Stay of Injunction Pending Appeal. Appellee does not oppose, and Appellant takes no position on this motion.

The Association (formerly known as the Association for Competitive Technology) is an international grassroots advocacy and education organization representing more than 5,000 small and mid-size app (*i.e.*, application) developers and information technology firms. It is the only organization focused on the needs of small business innovators from around the world. The Association advocates for an environment that inspires and rewards innovation while providing resources to help its members leverage their intellectual assets to raise capital, create jobs, and continue innovating.

The Association’s interest in this case is as follows: The Association has been monitoring recent developments in this case because of the significant implications of the issues in this case for the interests of their members. In light of the critical role that technological innovation plays in enhancing competition and improving the welfare of consumers, the Association has a special interest in ensuring that federal law is properly applied to dynamic industries and innovative technologies.

The Association has participated as *amicus curiae* in a number of cases involving technological innovation. *See, e.g., TC Heartland LLC v. Kraft Foods Grp. Brands LLC*, 137 S. Ct. 1514 (2017); *Samsung Elecs. Co. v. Apple Inc.*, 137 S. Ct. 429 (2016); *Apple, Inc. v. United States*, 136 S. Ct. 1376 (2016); *Petrella v. Metro-Goldwyn-Mayer, Inc.*, 134 S. Ct. 1962 (2014); *Dastar Corp. v. Twentieth Century Fox Film Corp.*, 539 U.S. 23 (2003). In addition, the Association has previously filed several *amicus* briefs in the district court case giving rise to this appeal. *See Amicus Curiae* Brief in Support of the FTC’s Opposition to Qualcomm’s Motion to Dismiss (filed May 25, 2017) (D.I. 112); *Amicus* Brief in Support of FTC’s Motion for Summary Judgment (filed Sept. 20, 2018) (D.I. 864); Motion for Leave to File an *Amicus Curiae* Brief in Opposition to Qualcomm’s Motion for Stay Pending Appeal (D.I. 1503).

Based on its strong interest in fostering innovation and protecting the interests of developers and technology firms, the Association believes that it can provide a unique perspective which will aid this Court in evaluating the motion filed by Qualcomm. Qualcomm’s motion asks this Court to stay the injunction set forth in the district court’s order pending appeal. If the injunction were stayed, the detrimental effects of these actions will be felt by technology companies who rely on communications standards—particularly small business innovators who rely on standardized technologies during this critical time of development and deployment

for new “Fifth Generation” (5G) and “Internet of things” (IoT) technologies. The Association has substantial knowledge and a unique perspective on these issues and submits that its participation as an amicus is likely to assist the Court in assessing the “potential ramifications beyond the parties directly involved.”

*Sonoma Falls Developers, LLC v. Nevada Gold & Casinos, Inc.*, 272 F. Supp. 2d 919, 925 (N.D. Cal. 2003). In particular, the Association is well positioned to highlight the potentially dramatic impact a stay of the injunction may have for various members of the industry—including countless verticals outside of traditional telecommunication businesses—during this critical transition. If SEP abuses are permitted to distort competition at this crucial juncture, even for a matter of months, associated market distortions could persist for many years to come.

DATED: July 19, 2019

**PERKINS COIE LLP**

By:           s/ Sarah Fowler            
Sarah Fowler

**ATTORNEYS FOR AMICUS CURIAE  
ACT | THE APP ASSOCIATION**

**CERTIFICATE OF COMPLIANCE**

I hereby certify that the foregoing Motion complies with the type-volume limitation of Circuit Rules 27-1(d) and Circuit Rule 32-3, because it contains 585 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f) and Circuit Rule 27-1(1)(d). Furthermore, this Motion complies with the typeface and the type style requirements of Fed. R. App. P. 27 because this brief has been prepared using Word 14-point Times New Roman typeface.

DATED: July 19, 2019

**PERKINS COIE LLP**

By: s/ Sarah Fowler  
Sarah Fowler

**ATTORNEYS FOR AMICUS CURIAE  
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**CERTIFICATE OF SERVICE**

On July 19, 2019, the undersigned caused the foregoing document to be filed electronically by using the Court's CM/ECF system. All parties are represented by registered CM/ECF users and will be served by the appellate CM/ECF system.

DATED: July 19, 2019

**PERKINS COIE LLP**

By:       s/ Sarah Fowler        
Sarah Fowler

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