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April 3, 2019

VIA ECFS

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: Notice of Ex Parte Communication, MB Docket Nos. 17-105, 17-317

Dear Ms. Dortch:

On April 1, 2019, representatives of AT&T and DISH Network met with Martha Heller, Lyle Elder and Varsha Mangal, all from the Media Bureau, to discuss the above-captioned Notice of Proposed Rulemaking and Public Notice regarding the Modernization of Media Initiative. AT&T was represented by Stacy Fuller, Jeanine Poltronieri, Cathy Carpino and Glenis McKoy. DISH Network was represented by Hadass Kogan.

During the meeting, we explained, consistent with our comments in this proceeding,<sup>1</sup> that direct broadcast satellite ("DBS") providers do not object to the Commission modifying the current carriage election regime for cable systems. But, we explained that the proposal put forward by NAB and NCTA<sup>2</sup> should not be extended to the nation's two DBS providers. Despite every opportunity, the broadcasters have yet to explain how the current satellite carriage election rules impose *any* burden on those broadcasters benefiting from the government granted right of carriage. A broadcast station has, at most, two satellite carriage election letters to send once every three years and only has that obligation if it is seeking mandatory carriage on a DBS provider's system. Each DBS provider has a single

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<sup>1</sup> See Joint Comments of DIRECTV, LLC and DISH Network L.L.C. in Response to Public Notice, MB Docket No. 17-317 (Mar. 18, 2019); Comments of DISH Network L.L.C., MB Docket Nos. 17-317 and 17-105 (Feb. 15, 2018); Reply Comments of AT&T, MB Docket Nos. 17-317 and 17-105 (Mar. 5, 2018).

<sup>2</sup> See Letter from Rick Chessen, NAB, to Marlene H. Dortch, FCC, MB Docket Nos. 17-317 & 17-105 (Sept. 17, 2018); Media Bureau Seeks Comment on Industry Proposal for Carriage Election Notice Modernization, Public Notice, MB Docket No 17-317 (rel. Dec. 13, 2018).

point of contact to receive these communications. The requirement to send at most two letters every three years in order to ensure three years of governmentally-mandated carriage is not burdensome in light of the benefit received.

We further explained why DBS providers need continued triennial mandatory carriage elections. The two providers use these notices to prepare for the next carriage cycle and to help manage the scarce space on their capacity-constrained spot beams, as stations change content, ownership and sometimes locations during an election cycle, and are not always eligible for continued carriage. Having this contact information and other details also is crucial to ensure that the DBS providers have correct information in case an issue arises with carriage (e.g., should technical issues arise with the broadcaster's signal). The election letter may be the only time DBS carriers are able to get updated contact information from these broadcasters.

The parties also explained that the email proposal put forward by NAB and NCTA would be unworkable for DBS providers. Email delivery does not provide DBS providers with the certainty necessary for carriage elections. Among other things, email delivery introduces several complexities that could impact the receipt of the notices (for example, corporate spam filters or typos in the delivery addresses). The NAB/NCTA proposal's requirement that a fall-back telephone number be established by the DBS carriers to deal with such issues simply places additional burdens on the DBS carriers. And if issues such as elections sent to multiple addresses or incomplete elections cannot be worked out by the broadcasters and DBS providers, those questions will still need to be mediated by the Commission, thus email delivery does not simplify the current process. While NAB cites a member's purported confusion over the "internal mailroom workings" of DBS providers<sup>3</sup> – a concern that is baseless and of no relevance – a letter return receipt requested can be easily delivered to the single point of contact designated by the two DBS carriers, a point of contact that has been consistent over multiple election cycles.<sup>4</sup>

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<sup>3</sup> NAB Comments, MB Docket Nos. 17-317, 17-105, at 6 (filed March 26, 2019) ("NAB Comments").

<sup>4</sup> AT&T does not oppose a Commission rule that would allow broadcasters to use commercial express delivery mail with tracking or United States Postal Service certified mail.

NAB's only other argument for why the Commission must extend its proposal to DBS providers – having two sets of carriage election rules will confuse its members<sup>5</sup> – is similarly meritless as that has been the status quo for years. NAB's members well understand that the Commission's carriage election defaults between cable and DBS providers are different and the consequence of a commercial broadcaster not electing carriage on a DBS system is quite different than not doing so on a cable system.

If you have any questions, please contact me at (202) 457-2042.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jeanine Poltronieri".

Copies:

Martha Heller  
Lyle Elder  
Varsha Mangal

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<sup>5</sup> NAB Comments at 4.