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August 20, 2018

Ms. Blaise Scinto
Chief, Broadband Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Request for Waiver of 47 C.F.R. §§ 27.53(h)(1) and 27.53(h)(2)(iv)

Dear Ms. Scinto:

On behalf of NTCH, Inc. (NTCH) I am writing to oppose the May 17, 2019 waiver request submitted by DISH Network in this Docket. NTCH lodged substantive challenges to the Commission's grant of (i) a modification of DISH's satellite licenses to remake them as AWS-4 licenses and (ii) the conduct of the H Block auction, particularly the Commission's deal with DISH to grant certain waivers, including the up-to-down modification of the lower AWS-4 band, in return for DISH's bid of at least \$1.5 billion in the H Block auction.¹ After five years, these challenges were finally acted on last week. Unfortunately, the Commission failed to address the elephant in the room – the corruptive element that has been introduced into the public interest equation by the Commission's acceptance of cash payments in exchange for waivers and deadline extensions. NTCH fully intends to seek timely judicial review of these extraordinary actions.

¹ Petition for Reconsideration of the Commission's December 17, 2012, *Report and Order and Order of Proposed Modification*¹. This petition addresses the unlawfulness of the FCC's conversion of the satellite licenses to terrestrial ones. Filed March 7, 2013.

Petition for Reconsideration of the International and Wireless Telecommunications Bureaus' action modifying the licenses as proposed in the License Modification Order.¹ Filed March 18, 2013.

Application for Review of the Wireless Bureau's November 27, 2013 Memorandum Opinion and Order denying NTCH's challenge to the extraordinary H Block auction procedures.¹ Filed December 27, 2013.

Application for Review of the Wireless Bureau's December 20, 2013 Memorandum Opinion and Order¹ granting the waiver and extension described above. Filed January 22, 2014.

DISH's present waiver request is predicated entirely on the proposition that a rule waiver will harm no one since it is the licensee of both the H Block and the adjacent AWS-4 band. It is highly likely, however, that either one or both of these licenses will have to be rescinded in view of the circumstances cited by NTCH in its pleadings. Action on the DISH waiver request now would effectively entangle the two licenses together permanently, especially if DISH ever begins constructing and operating systems on these frequency bands. The new licensee of either the H Block or the AWS-4 band would be stuck with a highly impaired band that would lack the OOB protection which the Commission originally built into the technical requirements for both bands. There is of course no certainty that the same licensee will end up acquiring both licenses as DISH did. Moreover, the auction price for both bands would necessarily be severely diminished by the loss of interference protection from the adjacent band.

While the DISH waiver could theoretically be conditioned on DISH's continued ownership of both bands, that would be extremely poor policy. Once DISH constructed and operated a nationwide system that is predicated on the removal of the OOB restrictions now found in the rules, it would be extremely difficult for the Commission to put the genie back in the bottle by compelling DISH to restructure its network to restore the OOB limits. The Commission, with good reason, abhors the decommissioning of large network facilities even when the law would otherwise dictate such a measure. There would obviously be a waste of funds and effort associated with such a remedial measure, but no other measure would cure the problem that has been created by the unlawful award of these licenses to DISH in the first place.

Now that the Commission has acted on NTCH's challenges to these licenses and a judicial review is in immediate prospect, the Commission should await the ruling by the Court before it acts on this waiver request. To do otherwise would prejudice or heavily compromise the decision on whether these licenses and earlier waivers were lawfully granted and would likely result in enormous waste if DISH bases its network architecture on the grant of the proposed waiver.

Respectfully submitted,

NTCH, Inc.

By: 

Its Attorneys

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