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EX PARTE PRESENTATION

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

Re: GN Docket No. 12-268, *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*; WT Docket No. 14-170, *Updating Part 1 Competitive Bidding Rules*

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, DISH Network Corporation ("DISH") submits this letter summarizing a telephone call on Friday, February 20, 2015 with Roger Sherman, Chief of the Wireless Telecommunications Bureau ("WTB"); Jean Kiddoo, Deputy Chief, WTB; Sue McNeil, Special Counsel, WTB; Margaret Wiener, Division Chief, Auctions & Spectrum Access Division, WTB; Craig Bomberger, Deputy Chief, Analysis and Implementation, Auctions & Spectrum Access Division, WTB; Eliot Maenner, Spectrum & Competition Policy Division, WTB; and Johanna Thomas, Industry Analysis Division, Media Bureau. Present on behalf of DISH were Charlie Ergen, Chairman; Jeffrey Blum, Senior Vice President and Deputy General Counsel; Alison Minea, Director and Senior Counsel; and Hadass Kogan, Associate Corporate Counsel.

During the call, DISH explained that participation by small businesses in spectrum auctions through the Designated Entity ("DE") program helps increase auction revenue and promote mobile broadband competition. Robust competition among strong participants helped make the AWS-3 auction, on a gross and net basis, the most successful spectrum auction in FCC history. The results will enable the full funding of FirstNet and billions of additional dollars for deficit reduction.

DISH's investments in two DEs in the AWS-3 auction ensured that more parties, not fewer, could participate in the long-term spectrum economy. Investments in DEs have been a longstanding practice of incumbent wireless carriers, and DISH's participation followed a path that has been available for 15 years and used in many previous auctions. The DE bidding credits enable more potential wireless competitors to participate meaningfully in spectrum auctions, and to have a greater opportunity to challenge the two dominant wireless players. In an auction with a smaller number of participants, bidders can signal to one another to keep prices low. For example, if only two bidders are competing for like spectrum licenses (*e.g.*, H and I Block in

AWS-3), one bidder can stop bidding on one of the two like licenses to signal that it will let that license go and stop pushing up the price in return for the other bidder stopping on the other license. This enables a small number of bidders to carve up the available spectrum licenses among themselves and pay as little as possible. This result may have occurred in Auction 73, which saw very little DE participation due to rules in place at the time that essentially gutted the DE program. In an anonymous auction with many bidders participating aggressively, by contrast, such signaling is impossible. DE participation did not create “shadow demand” as AT&T suggests.¹ The presence of DEs in the AWS-3 auction kept the bidding truly competitive, and demanded that all participants pay what the spectrum was worth to them. If AT&T didn’t believe the licenses it won were worth \$18 billion, it wouldn’t have bid \$18 billion.

And, contrary to the claims of some who have not analyzed the actual AWS-3 facts, increased auction participation and the availability of bidding credits to the DEs netted *greater* proceeds for the U.S. Treasury compared to an auction with no DEs. Given the vast capital resources of the two largest wireless incumbents, it would have been difficult for any other entity to stay in the auction long enough to raise spectrum prices to their true market values. The greater chance for mischief happens when there are too few bidders, not too many. As a direct result of strong DE participation in AWS-3, American taxpayers *gained* billions of additional dollars.

Not only does the DE program result in greater revenue for the benefit of the U.S. taxpayer, it also helps small businesses enter the wireless business and have a chance to compete. DISH itself started as a small business, and companies that are able to use DE bidding credits to overcome the already high entry barriers into the mobile broadband market have the same opportunity. The DE program enables small businesses to partner with larger entities with greater financial resources. Nevertheless, any discussion of the DE program must recognize that licenses won by DEs have greater limitations compared to licenses won by other bidders. In planning for their bids, DEs must factor in the Commission-imposed significant restrictions on leasing and sale of spectrum. DISH also explained that any criticisms of the DE program based on spectrum speculation are misguided, particularly concerning AWS-3. The AWS-3 spectrum is not “shovel ready” and it will be a multi-year process before the spectrum can be used, including government clearing and coordination of the spectrum.

DISH further explained that it looks forward to meaningfully participating in the upcoming 600 MHz Broadcast Incentive Auction (the “Incentive Auction”). The Incentive Auction offers opportunities for competitive providers and new entrants to bid on and win much-needed low-band spectrum, which will facilitate the deployment of mobile broadband services. The framework established in the *Report and Order*² offers a win-win for broadcasters to generate revenue and continue to broadcast over the air, while ensuring that consumers will benefit from more robust competition among wireless carriers. DISH agrees with T-Mobile that the Commission should increase the size of the “reserve” so that no matter how much spectrum

¹ See Letter from Joan Marsh, AT&T, to Marlene H. Dortch, FCC, WT Docket No. 14-170, at 2, February 20, 2015.

² See Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, *Report and Order*, GN Docket No. 12-268 (rel. June 2, 2014).

is up for sale, at least 50 percent of it will be held in reserve for competitors with little or no low-band spectrum in that market. In addition, without a robust DE program, there is a serious risk that the two largest wireless incumbents will be able to use their vast capital resources to foreclose others from obtaining critical sub-1 GHz licenses. DISH supports the Commission's consideration of possible DE rule changes that would better serve the underlying goals of the program, but believes that meaningful DE participation is necessary for a successful Incentive Auction. DISH also believes that the Incentive Auction should begin as soon as the Commission is ready, and that delaying the auction will not benefit consumers and competition.

Respectfully submitted,

/s/ Jeffrey H. Blum

Jeffrey H. Blum

cc: Roger Sherman
Jean Kiddoo
Sue McNeil
Margaret Wiener
Craig Bomberger
Eliot Maenner
Johanna Thomas