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June 11, 2015

EX PARTE PRESENTATION

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

Re: Ex Parte Presentation in MB Docket No. 15-71, *Amendment to the Commission's Rules Concerning Market Modification; Implementation of Section 102 of the STELA Reauthorization Act of 2014*

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, DISH Network L.L.C. ("DISH") submits this letter summarizing a meeting on Tuesday June 9, 2015 with Kalpak Gude, Mary Beth Murphy, Steven Broeckaert, and Evan Baranoff of the Media Bureau; and Chip Fleming of the International Bureau. Present on behalf of DISH were Jeffrey Blum, Senior Vice President and Deputy General Counsel; Alison Minea, Director and Senior Counsel; and Hadass Kogan, Corporate Counsel.

Standing and Previous Cable Market Modifications

During the meeting, DISH discussed proposals to implement Section 102 of the Satellite Television Extension and Localism Act Reauthorization Act of 2014 ("STELAR")¹ consistent with its comments in the above-captioned proceeding.² DISH reiterated its support for the Commission's proposal to allow only a commercial broadcast television station or satellite carrier to submit a market modification request.³ As the Commission recognized, such an approach will provide parity with the standing rules in place for market modifications in the cable context, wherein the Commission concluded that broadcasters and cable operators "are the

¹ See Amendment to the Commission's Rules Concerning Market Modification, Implementation of Section 102 of the STELA Reauthorization Act of 2014, *Notice of Proposed Rulemaking*, FCC 15-34, MB Docket No. 15-71 (rel. Mar. 26, 2015) ("*Notice*" or "*NPRM*").

² See Comments of DISH Network L.L.C., MB Docket No. 15-71 (May 13, 2015) ("*DISH Comments*").

³ *Id.* at 3.

only appropriate parties to file market modification requests.”⁴ DISH also reiterated that cable and satellite market modification requests should be considered separately and that prior market determinations made in the cable context should not automatically apply to satellite carriers.⁵

Increased Programming Costs for Satellite Carriers

DISH also reiterated its concern that a market modification could result in a satellite carrier facing increased programming costs in geographic areas where new stations are authorized for carriage. As DISH explained in its comments, a market modification could result in, among other things, two different stations affiliated with the same broadcast network being authorized for satellite local-into-local carriage in the same geographic area.⁶

If a market modification, for example, adds two new counties to the defined local market for a given NBC affiliate station, it is likely that there would already be an NBC station from the neighboring market being carried in those two counties. Therefore, as the result of a market modification, a satellite carrier could end up paying retransmission fees to *both* NBC-affiliated stations for subscribers in those two counties. Section 338(c)(1), 47 U.S.C. §338(c)(1), limits satellite carriers’ obligations to carry duplicating signals originating from within the same state, but this provision is specific to the must-carry context and does not speak to contractual obligations that may arise as a result of a retransmission consent agreement. Many retransmission consent contracts require DBS providers to carry a station’s signal throughout its local market, even if that local market’s boundary is changed by FCC action—meaning the DBS provider could be obligated to pay retransmission consent fees to two network-affiliated stations in a given area pursuant to a market modification, even if these stations duplicate one another. There is no evidence that Congress intended this “double retransmission fee” outcome. In addition, given the well-documented increases in retransmission consent fees in recent years, such an outcome is not in the public interest.

The best solution is for the Commission to depart from its proposal in the *Notice*⁷ to permit a station whose market has been modified to elect either retransmission consent or mandatory carriage with respect to the relevant satellite carrier. Instead, if the station wishes to be carried in the geographic areas added to its local market, the station should be limited to electing must-carry in those geographic areas for the remainder of the carriage election cycle. In the alternative, the Commission could clarify that notwithstanding any retransmission consent agreements that would automatically entitle the station to carriage in additional geographic areas due to a market modification, the station must negotiate a new retransmission consent agreement for the new areas.

⁴ *Id.* citing *Notice* ¶ 8 at FN 47.

⁵ *Id.* at 5-6.

⁶ *Id.* at 9.

⁷ *Notice* ¶ 18.

Satellite Carrier Showings for Technical or Economic Infeasibility

DISH reaffirmed its proposal that the Commission require no more than a certification from the satellite carrier stating that it has analyzed a proposed market modification and has determined that it is not technically or economically feasible to accommodate the change. A certification should be sufficient, because the types of evidence that the Commission might request could be technically or competitively sensitive, such as spot beam contour maps, cost of equipment upgrades, and subscriber numbers in a given geographic area.

As DIRECTV correctly notes, if the spot beam on which a satellite provider carries a station does not extend to the area in which the station would like to be carried, a satellite carrier has no good options available to it.⁸ DISH therefore suggests that if the spot beam on which a station is carried is not predicted (based on the satellite manufacturer's signal coverage maps) to cover a geographic area that is added to that station's local market due to a market modification, this alone should be sufficient evidence of technical infeasibility.

Spot beam coverage, however, may not address other possible technical or economic feasibility issues that DISH could face. For example, assume that Station A's local market is expanded to include two counties that are assigned to DMA X. Even if the spot beam that retransmits Station A's signal into subscriber homes happens to cover the households located in DMA X, there could still be substantial costs to enable DMA X households to actually begin receiving Station A. This is because DISH serves local broadcast stations into various DMAs from multiple satellites located at several different orbital positions. Each subscriber's satellite dish must be pointed and configured to receive signals from particular orbital positions. It is therefore possible that households in DMA X receive their local broadcast stations from a different orbital position than the one where Station A is carried, meaning that households might need to have a second satellite dish installed, have their existing satellite dish replaced, or have their existing satellite dish repositioned. Any of these scenarios would impose very significant costs on DISH and should be sufficient to demonstrate economic infeasibility. A certification of technical or economic infeasibility with a description of the reasons should be enough. The Commission should not require a satellite carrier to submit confidential business sensitive information, such as the number of subscribers in a given county or zip code, or the internal costs of sending technicians or replacing equipment.

Geographic Area Sizing

DISH agrees with Gray Television, Inc. that market modifications should be based on counties.⁹ DISH's systems recognize DMA boundaries based on counties, and it would be burdensome and costly to change the system to accommodate ZIP code-based modifications.

⁸ See Reply Comments of DIRECTV, LLC, MB Docket No. 15-71, at ii (May 28, 2015).

⁹ See Comments of Gray Television, Inc., MB Docket No. 15-71, at 2 (May 28, 2015).

Respectfully submitted,

/s/ Jeffrey H. Blum

Jeffrey H. Blum

cc: Kalpak Gude
Mary Beth Murphy
Steven Broeckaert
Evan Baranoff
Chip Fleming