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May 9, 2016

EX PARTE PRESENTATION

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

Re: Ex Parte Presentation in GN Docket No. 14-177, *Use of Spectrum Bands Above 24 GHz For Mobile Radio Services*; MB Docket No. 15-216, *Implementation of Section 103 of the STELA Reauthorization Act of 2014*; MB Docket No. 16-42, *Expanding Consumers' Video Navigation Choices*; MB Docket No. 15-149, *Applications of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership for Consent to Transfer Control of Licenses and Authorizations*

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 meetings on May 5, 2016 as follows:

- A meeting with Chairman Tom Wheeler; Jessica Almond, Legal Advisor, Media, Public Safety, and Enforcement; Edward Smith, Legal Advisor, Wireless, Engineering and Technology, Consumer Affairs, and Incentive Auction; and John Wilkins, Chief, Wireless Telecommunications Bureau. Present on behalf of DISH were Charlie Ergen, Chairman; Thomas Cullen, Executive Vice President, Corporate Development; Stanton Dodge, Executive Vice President and General Counsel; Jeffrey Blum, Senior Vice President and Deputy General Counsel; Mariam Sorond, Vice President, Technology Development; and Alison Minea, Director and Senior Counsel.
- A meeting with Commissioner Mignon Clyburn; David Grossman, Chief of Staff and Media Policy Advisor; and Daudeline Meme, Legal Advisor, Wireless, International and Public Safety. Present on behalf of DISH were Charlie Ergen, Chairman; Thomas Cullen, Executive Vice President, Corporate Development; Stanton Dodge, Executive Vice President and General Counsel; Jeffrey Blum, Senior Vice President and Deputy General Counsel; Mariam Sorond, Vice President, Technology Development; and Alison Minea, Director and Senior Counsel.
- A meeting with Commissioner Jessica Rosenworcel; Marc Paul, Legal Advisor, Media; and Johanna Thomas, Legal Advisor, Wireless, International, and Public Safety. Present on behalf of DISH were Charlie Ergen, Chairman; Stanton Dodge, Executive Vice

President and General Counsel; Jeffrey Blum, Senior Vice President and Deputy General Counsel; Mariam Sorond, Vice President, Technology Development; and Alison Minea, Director and Senior Counsel.

- A meeting with Commissioner Ajit Pai; Matthew Berry, Chief of Staff for Commissioner Pai; and Brendan Carr, Legal Advisor, Wireless, Public Safety, and International. Present on behalf of DISH were Charlie Ergen, Chairman; Thomas Cullen, Executive Vice President, Corporate Development; Stanton Dodge, Executive Vice President and General Counsel; Jeffrey Blum, Senior Vice President and Deputy General Counsel; Mariam Sorond, Vice President, Technology Development; and Alison Minea, Director and Senior Counsel.
- A meeting with Commissioner Michael O’Rielly; Robin Colwell, Chief of Staff and Senior Legal Advisor, Media; and Erin McGrath, Legal Advisor, Wireless, Public Safety, and International. Present on behalf of DISH were Charlie Ergen, Chairman; Stanton Dodge, Executive Vice President and General Counsel; Jeffrey Blum, Senior Vice President and Deputy General Counsel; Mariam Sorond, Vice President, Technology Development; and Alison Minea, Director and Senior Counsel.

During the meetings, DISH discussed the following topics:

I. Spectrum Frontiers and 5G

DISH supports the Commission’s goal of identifying additional spectrum to support the development of Fifth Generation (“5G”) mobile broadband technologies.¹ 5G systems are expected to be used in areas of localized demand, where high system capacity in dense deployments will be needed to support very high data rates. As consumers increasingly demand more mobile data at higher speeds, it is critical that spectrum policy focus on identifying new spectrum blocks that can support high speeds (10+ Gbps), ubiquitous connectivity to more and more types of devices, more reliable services with lower latency, and ensure the United States continues its leadership role in wireless.

Spectrum bands above 6 GHz meet these needs because they offer spectrum blocks of sufficient size – several hundred MHz or more – to provide high peak data rates. The Commission is on a promising track, with its initial efforts to identify high frequency spectrum where the most spectrum is potentially available—the 28 GHz band, the 39 GHz band, the 37 GHz band, and the 64-71 GHz band.² As the Commission notes, it may “consider additional bands in the future” and “the fact that a particular band or bands are not considered in [the *Spectrum Frontiers NPRM*] does not foreclose future Commission action on the band or bands.”³

¹ See Use of Spectrum Bands Above 24 GHz For Mobile Radio Services, *Notice of Proposed Rulemaking*, GN Docket No. 14-177, FCC 15-138, Oct. 23, 2015 (“*Spectrum Frontiers NPRM*”).

² See *id.* ¶¶ 20-24.

³ *Id.* ¶ 20.

To that end, DISH is a member of the MVDDS 5G Coalition, which filed a petition to initiate a rulemaking proceeding designed to permit Multichannel Video Distribution and Data Service (“MVDDS”) licensees to use their 12.2-12.7 GHz spectrum to provide two-way mobile broadband service.⁴ This 500 MHz of contiguous spectrum is ideally suited for 5G deployments, assuming relevant technical rules can be updated to enable sharing between incumbent direct-to-home satellite services and mobile broadband services.

II. Retransmission Consent Reform

The retransmission consent regime is broken and consumers are continuing to be hurt by increasing broadcast blackouts and rising programming prices. The Commission has the authority and the opportunity to help consumers by taking strong and meaningful action in the rulemaking to update the “good faith” standard for retransmission consent negotiations.⁵

DISH explained that the most effective way to protect consumers would be to find that a broadcaster is not acting in good faith if it blacks out its channels while negotiations are ongoing, especially when the MVPD offers to “true-up” the rates. Broadcasters should not be able to use consumers as sacrificial pawns in negotiating retransmission consent. Blackouts directly hurt consumers and ultimately result in higher bills for those consumers. DISH also noted that baseball-style arbitration is helpful as a backstop to encourage both sides to negotiate in good faith to reach a deal.

While the Commission has ample legal authority to stop blackouts and mandate arbitration, it should, at least, adopt all of the reforms to the “good faith” standard that the American Television Alliance (“ATVA”) has proposed, such as (i) a prohibition on broadcaster demands that a pay-TV operator pay retransmission fees for all of its subscribers, even those that receive their local broadcast stations via an over-the-air antenna; (ii) a prohibition on broadcasters blacking out their channels prior to marquee television events; and (iii) a prohibition on non-commonly-owned broadcasters colluding to jointly negotiate retransmission consent.⁶

III. Set-Top Box

DISH explained, consistent with its comments in the ongoing rulemaking,⁷ that it has concerns about the complexity of the Commission’s proposed rules to mandate that pay-TV

⁴ MVDDS 5G Coalition Petition for Rulemaking to Permit MVDDS Use of the 12.2-12.7 GHz Band for Two-Way Mobile Broadband Service, File No. RM-____, April 26, 2016.

⁵ Implementation of Section 103 of the STELA Reauthorization Act of 2014, *Notice of Proposed Rulemaking*, MB Docket No. 15-216, FCC 15-109, Sept. 2, 2015.

⁶ See Comments of the American Television Alliance, MB Docket No. 15-216, pp. 44-51 (Dec. 1, 2015).

⁷ See Comments of EchoStar Technologies L.L.C. and DISH Network L.L.C., MB Docket No. 16-42, CS Docket No. 97-80 (April 22, 2016).

operators make their services available to third-party manufactured devices. These rules will not work for satellite as proposed, and will not be positive for consumers.

IV. Charter-Time Warner Cable Merger

DISH reiterated its long-standing concerns that the merger of Charter Communications, Time Warner Cable and Bright House Networks presents significant harms for consumers, competition and innovation,⁸ and urged the Commission to, among other things, impose a standalone broadband condition to protect competition and consumer choice.⁹

Respectfully submitted,

/s/ Jeffrey H. Blum

Jeffrey H. Blum

cc: Jessica Almond
Edward Smith
David Grossman
Daudeline Meme
Marc Paul
Johanna Thomas
Matthew Berry
Brendan Carr
Robin Colwell
Erin McGrath
John Wilkins

⁸ See, e.g., Petition to Deny of DISH Network Corporation, MB Docket No. 15-149 (Oct. 13, 2015).

⁹ See Letter from the Stop Mega Cable Coalition to Marlene H. Dortch, FCC, MB Docket No. 15-149 (May 3, 2016).