



May 23, 2016

BY ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: *Expanding Consumers' Video Navigation Choices, MB Docket No. 16-42; Commercial Availability of Navigation Devices, CS Docket No. 97-80*

Dear Ms. Dortch:

On May 19, 2016, EchoStar Technologies L.L.C. ("EchoStar") and DISH Network L.L.C. ("DISH") met with FCC Chief Technologist Scott Jordan, and Antonio Sweet and Johnathan Mayer (by phone) of the Office of Strategic Planning and Policy; Media Bureau Deputy Chief Mary Beth Murphy; Associate Chief Nancy Murphy; and Chief Economist Susan Singer; Martha Heller, Chief of the Media Bureau's Policy Division; Senior Deputy Division Chief Steven Broeckaert and Assistant Division Chief Brendan Murray; Division attorney advisors Kathy Berthot (by phone) and Lyle Elder; Sherwin Siy of the Wireline Competition Bureau; and John Williams and Susan Aaron (by phone) from the Office of General Counsel.

EchoStar was represented by Jennifer A. Manner, Senior Vice President, Regulatory Affairs; John Card II, Director of Standards and Technology; Deborah Broderon, Director & Communications Regulatory Counsel; and Bill Wiltshire, counsel for EchoStar. DISH was represented by Alison Minea, Director and Senior Counsel, Regulatory Affairs.

In the meeting, EchoStar/DISH discussed the attached talking points and set-top box configuration diagrams. Consistent with their comments in this proceeding,¹ EchoStar/DISH observed that the video marketplace is competitive and highlighted the unique nature of Direct Broadcast Satellite ("DBS") systems, which unlike terrestrial multichannel video programming distributors ("MVPDs") deliver their television service via a one-way transmission path. Meeting participants discussed some of the resulting challenges facing DBS providers and the technical solutions that have allowed EchoStar/DISH to develop and deploy set-top boxes to meet those challenges. EchoStar/DISH explained, for example, that allowing third party access to entitlements raises unique security issues in a DBS system, in which some sort of satellite "gateway" device would be needed in the subscriber home

¹ Comments of EchoStar Technologies L.L.C. and DISH Network L.L.C., MB Docket No. 16-42, CS Docket No. 97-80 (Apr. 22, 2016).

containing the specialized hardware necessary to receive and tune the satellite signal to support a third-party navigation device. Meeting participants also discussed consumer privacy concerns that could arise from the Commission's proposal in this proceeding.

This letter is submitted consistent with the Commission's ex parte rules.² Please direct any questions concerning this filing to the undersigned.

Sincerely,

/s/

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cc: Scott Jordan
Antonio Sweet
Johnathan Mayer
Mary Beth Murphy
Nancy Murphy
Susan Singer
Martha Heller
Steven Broeckaert
Brendan Murray
Kathy Berthot
Lyle Elder
Sherwin Siy
John Williams
Susan Aaron

² 47 C.F.R. § 1.1206(b)(2).

The Record in the Competitive Set Top Box Proceeding Demonstrates that Action is Unwarranted and Significant Open Issues Remain before Any Action Can Be Taken

May 19, 2016

The Video Market is Characterized by Competition

- DISH and EchoStar compete in a video market characterized by innovation and competition. In 1992, when Section 629 was enacted, the only options for viewing video programming were over-the-air broadcasting and analog cable systems. Today, consumers can choose from a wide array of viewing options, including facilities-based competitors such as Direct Broadcast Satellite (“DBS”) systems, telcos, and other overbuilders, as well as dozens if not hundreds of over-the-top video providers from a wide variety of competitors.
- Despite the robust competition and innovation described in the record so far, the FCC proposes a complex and incomplete regulatory plan for which there is no demonstrated need.
- The proposed competitive set top box regime is unworkable for satellite operators, and flawed with respect to all MVPDs. The FCC’s proposal would threaten, as oppose to increase, competition in the video marketplace, harming consumers.

Technological Differences and Lack of Notice Mean the FCC Cannot Adopt Its Proposals for Satellite MVPDs

- Satellite MVPDs deliver their television service via a one-way transmission path. In order to perform many functions provided by two-way system networks, satellite operators must support those functions in the set-top box in each subscriber’s home. This means that some form of satellite gateway device must be available in each subscriber’s home in any regime mandating access for competitive set top boxes.

- Despite this technological requirement for service, the FCC fails to take into account the very real issues associated with this gateway device that arise with respect to (among other things) Video on Demand (VOD), local advertising, and channel tuning, as well as the need for an interface that would allow both the satellite MVPD devices and the competitive devices to operate at once. Instead, the FCC ignores these issues in proposing a regime focused on two-way systems, ensuring that the Commission cannot adopt a workable solution for satellite MVPDs.
- The *Notice* also expects that all MVPDs will pass along identifying codes to enable third-party navigation devices to convey to consumers the programming that is available. The *Notice* contemplates the use of an “Entertainment Identifier Register ID”, which it characterizes as “a universal unique identifier system for movie and television assets.” Yet, only five U.S. MVPDs are members – and DISH is not a member. No such “universal” identifier exists, nor is there a credible regime in place to manage one.
- As such, the Commission has failed to provide the notice and opportunity for meaningful comment by satellite providers on key provisions of any competitive set top box regime as required under the Administrative Procedure Act.

Serious Copyright and Contractual Liability Issues Exist

- Yet even putting aside satellite-specific issues, the regime proposed is flawed in several significant respects:
 - The *Notice* ignores potential contractual violations. A typical MVPD contract with a content owner generally permits the MVPD to deliver the content only to its end-user subscriber and devices under control and security monitoring of the

MVPD, not to a third party. To the extent MVPDs are required to send programming streams to a third party, it could be construed as a violation of its contract.

- MVPDs deliver broadcast programming pursuant to statutory copyright licenses that specifically prohibit willful alteration “through changes, deletions, or additions” to the content of the signal. It is possible that alterations by third-party devices would trigger liability for MVPDs or manufacturers.
- The FCC’s proposals would affect the copyrights of MVPDs. Because most of the video programming that MVPDs provide is available across multiple platforms, MVPDs compete in substantial part on the basis of the “look and feel” of their services. Forcing MVPDs to pass along their service to be sliced and diced by third-party navigation devices would undermine basic copyright protections.
- When Congress authorizes the abrogation of traditional copyright protections, such as through the creation of a statutory license, it does so specifically. Yet Congress did not do so when it promulgated the navigation device provisions of Section 629 nor is such action “ancillary” to the FCC’s jurisdiction over navigation. Similarly, the FCC cannot force MVPDs to violate the contracts they have entered into lawfully.

The Proposed Rules Could Degrade Customer Service and Cause Consumer Confusion

- The proposed rules could dramatically degrade customer service and cause consumer confusion. The significance for a consumer of purchasing a piece of equipment is very different from that of subscribing to a service. The purchase of a set-top box is a one-time transaction. An *MVPD subscriber* has an ongoing relationship with her MVPD that

can last for years, and the profitability of that subscriber to the MVPD depends upon the longevity of that relationship. MVPDs thus have very strong incentives to offer a compelling product and to provide customer support.

- In the context of navigation devices, these differing relationships have real implications. When a subscriber has a problem with her MVPD service, it is often not entirely clear whether the problem originates in the network transmission, the navigation device, the in-home network, the remote control, or somewhere else entirely. However, because of the long-term nature of the relationship, the subscriber will likely call the MVPD.
- At present, the MVPD has comprehensive knowledge of the range of different models it provides and the technologies available in each one, which greatly streamlines the education process for customer service representatives and enhances their ability to resolve issues quickly. The MVPD cannot support a proliferating range of navigation devices from manufacturers that, by definition, have no relationship with the MVPD.
- Further, because third-party manufacturers typically have no ongoing relationship with purchasers of their equipment, they have no incentive to update devices as necessary to keep up with new features and functions introduced by MVPDs.
- Accordingly, adoption of the FCC's proposed regime will likely result in customers being frustrated at the inability of their MVPD to solve even the most basic problem with their navigation devices, no matter whom the manufacturer is.

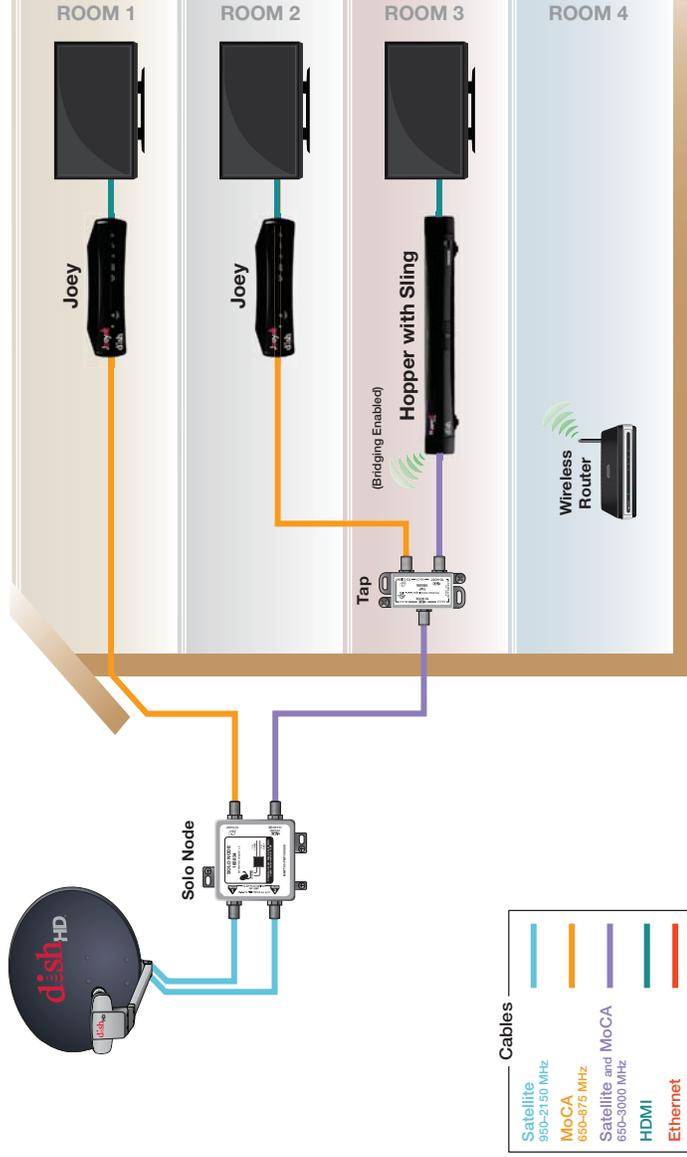
There is No Demonstrated Need for FCC Action

- These problems would be insurmountable even if there were a demonstrated need for Commission action. Given that MVPDs, programmers, and over-the-top ("OTT") video providers (among others) are offering services on more devices than ever before,

consumers, competition, and innovation would be best served if the Commission did *not* intervene, but instead allowed these market-based forces to continue to drive the desired result.

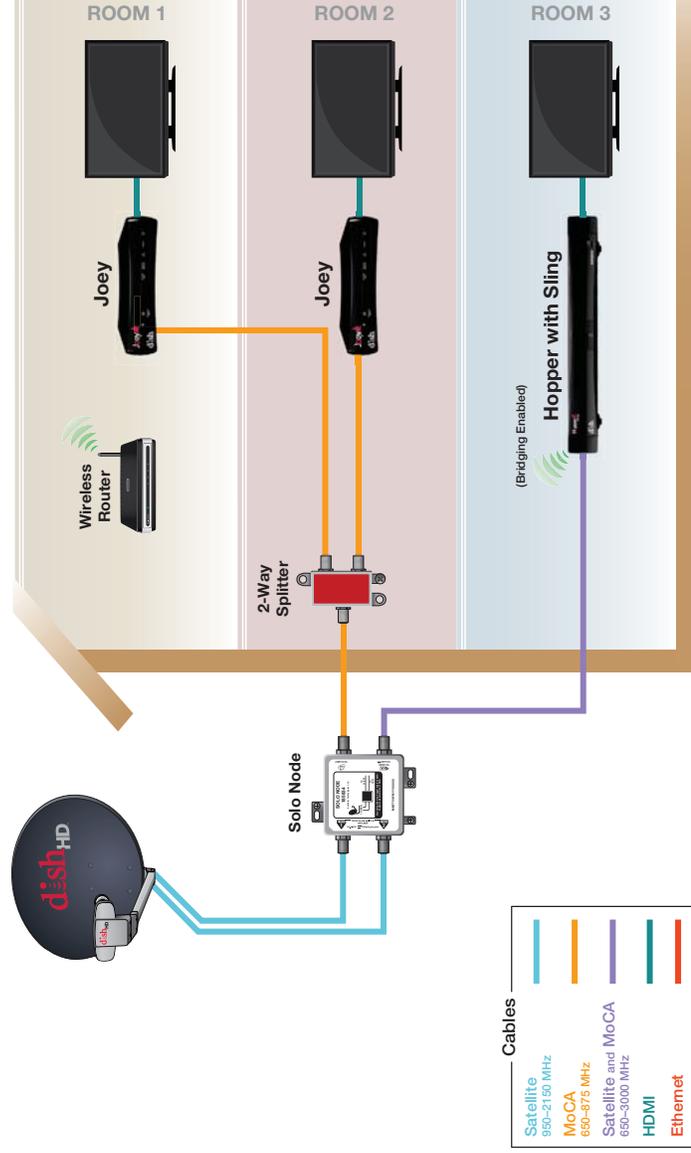
Hopper: 3-TV Installation with Tap

1 Hopper with Sling, 2 Joeys



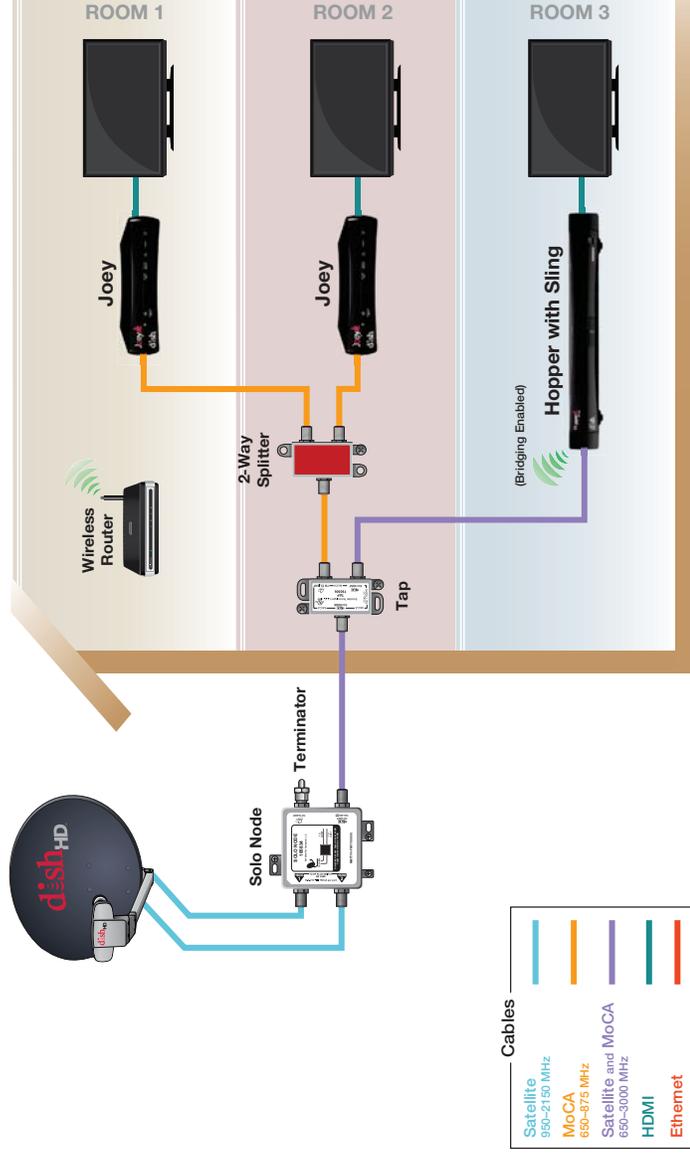
Hopper: 3-TV Installation with Splitter

1 Hopper with Sling, 2 Joeys



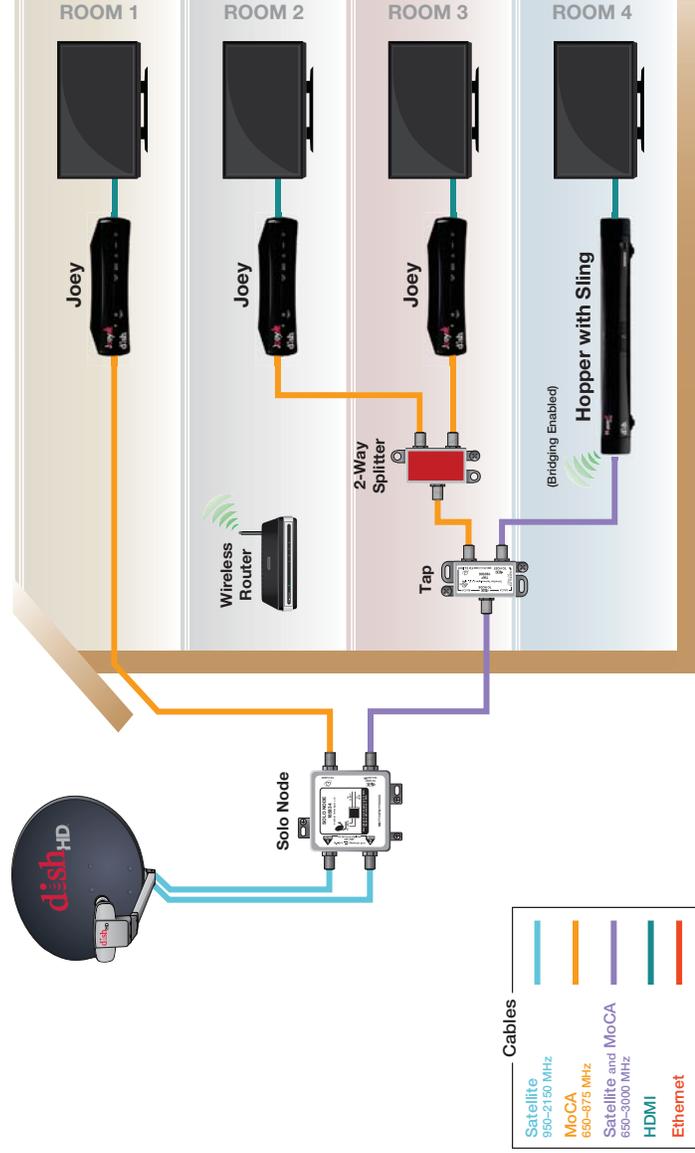
Hopper: 3-TV Installation with Tap and Splitter

1 Hopper with Sling, 2 Joeys



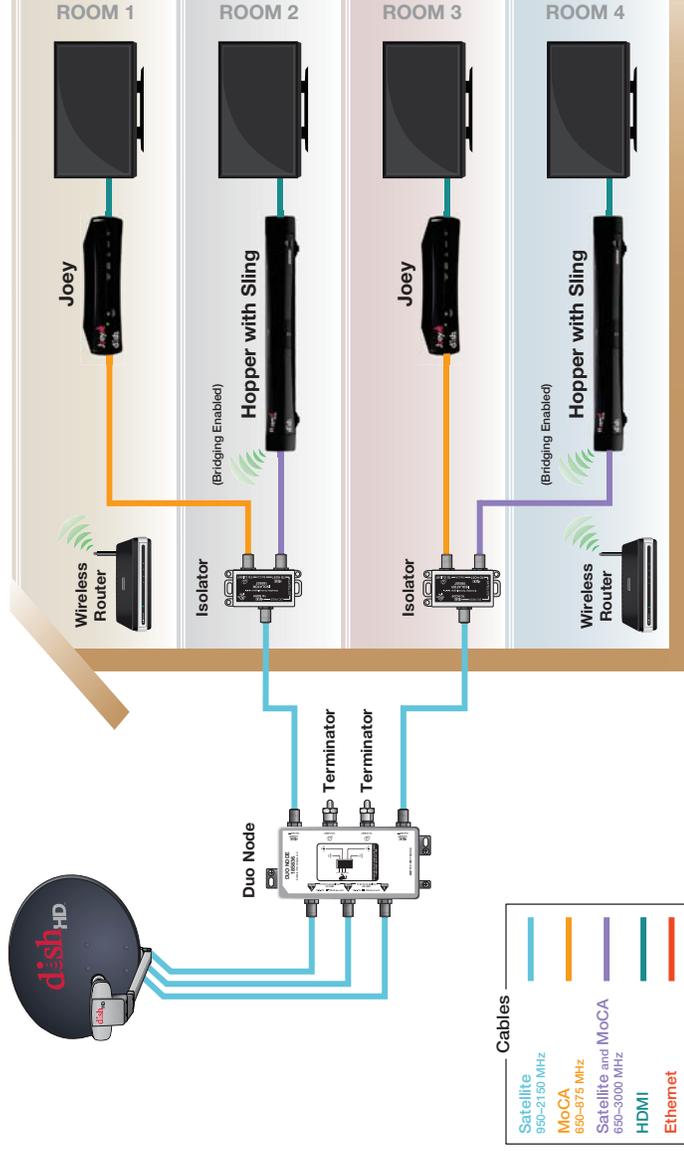
Hopper: 4-TV Installation

1 Hopper with Sling, 3 Joeys



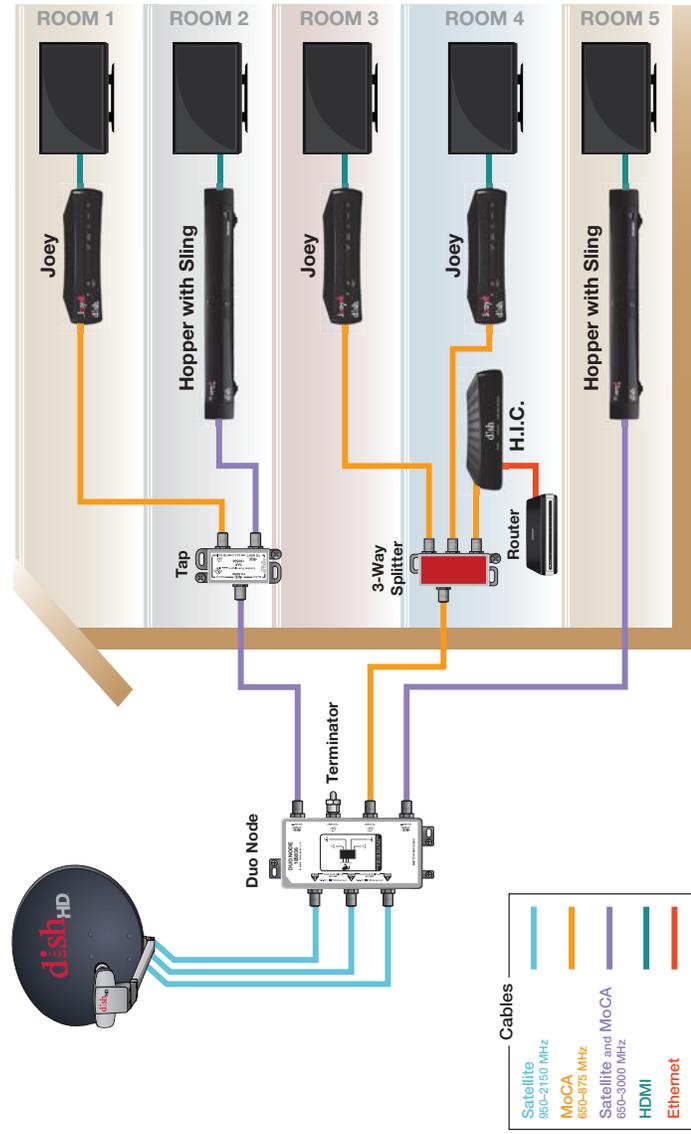
Hoppers: 4-TV, 2-Home Video Network Installation

2 Isolators, 2 Hoppers with Sling, 2 Joeys



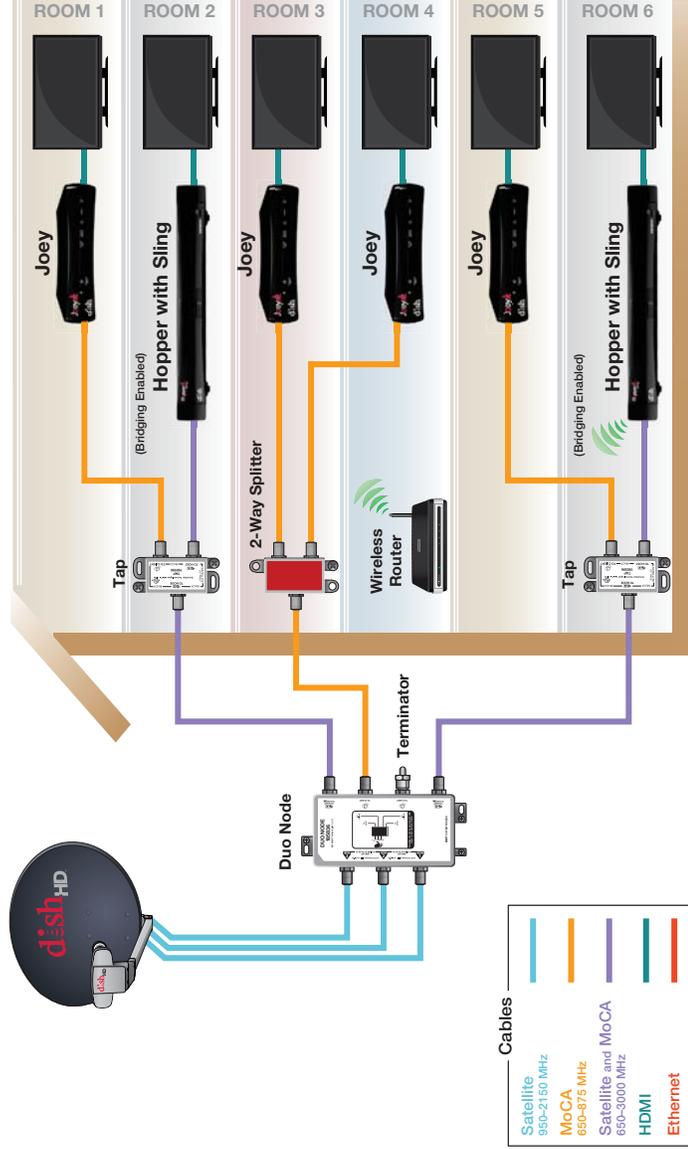
Hoppers: 5-TV Installation

2 Hoppers with Sling, 3 Joeyes



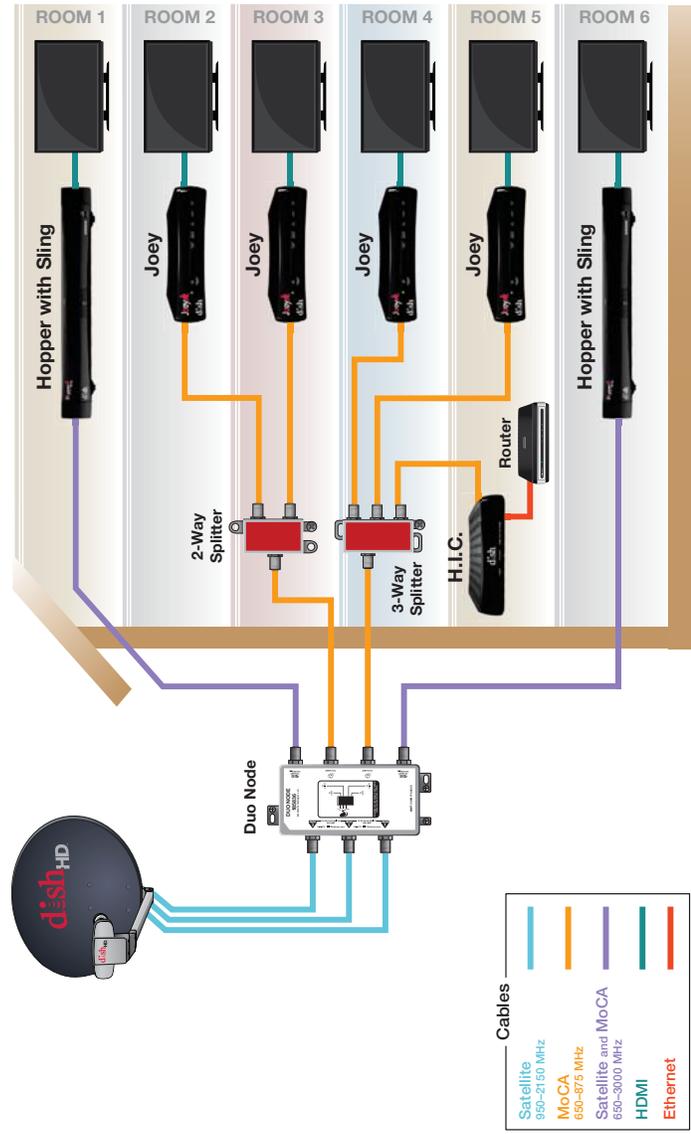
Hoppers: 6-TV Installation with Taps

2 Hoppers with Sling, 4 Joeys



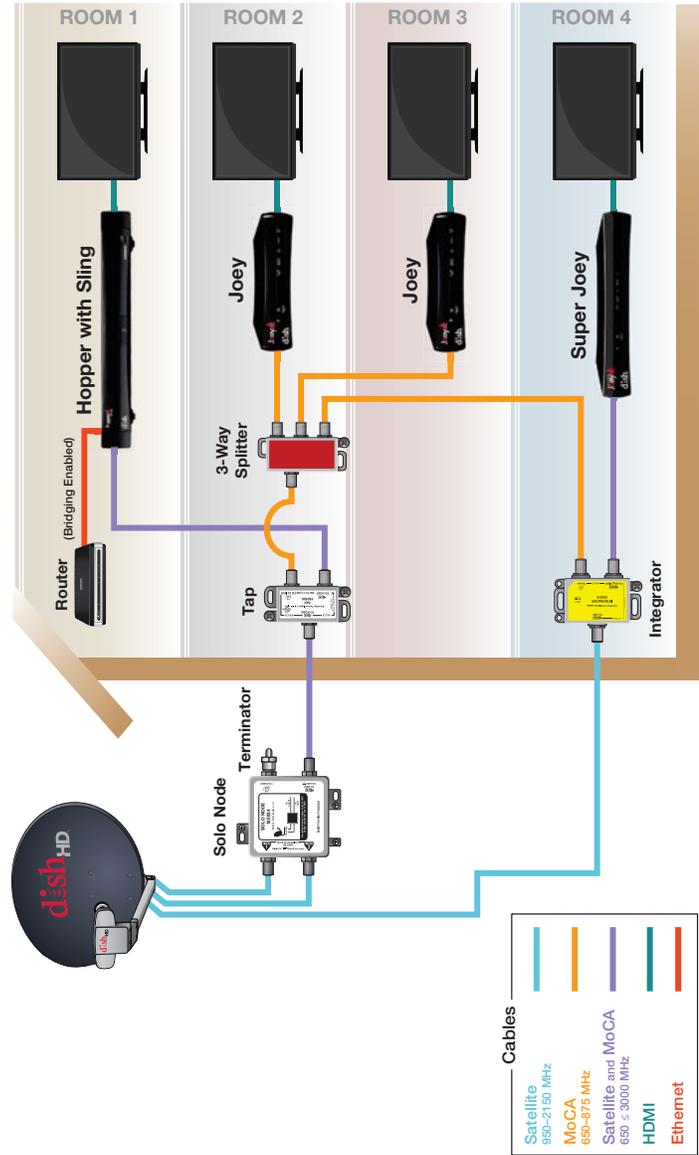
Hoppers: 6-TV Installation with Splitters

2 Hoppers with Sling, 4 Joey's



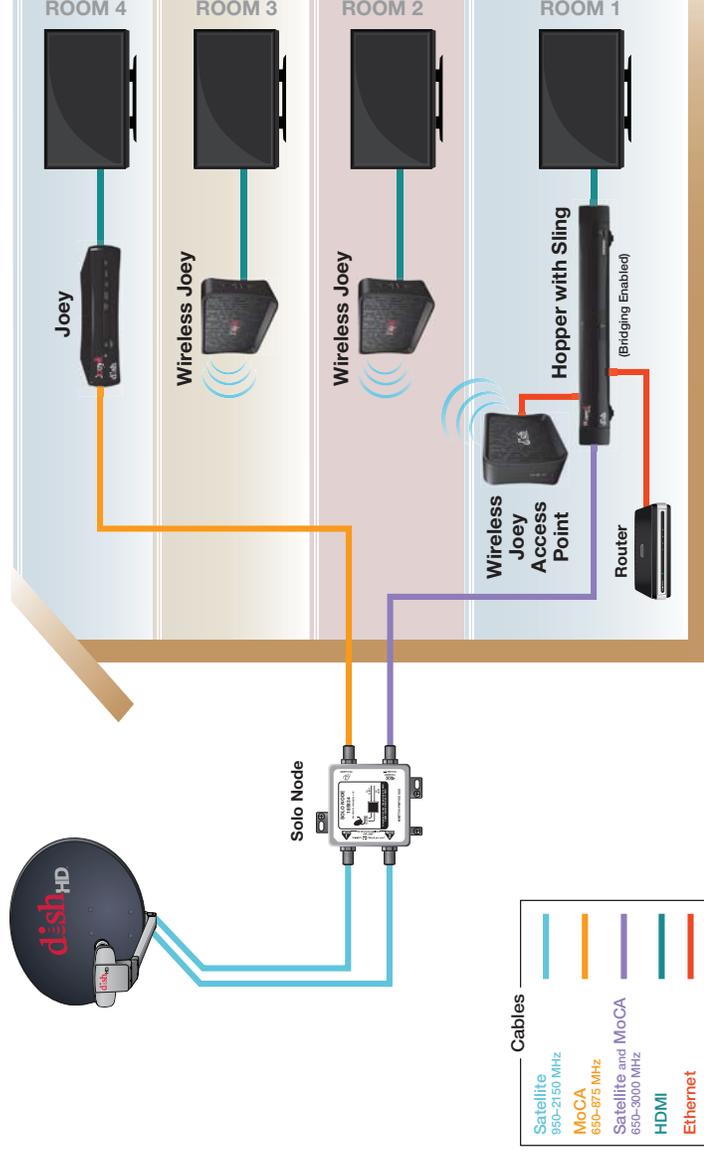
Super Joey: 4-TV Installation with Terminator

1 Super Joey, 1 Hopper with Sling, 2 Joeys



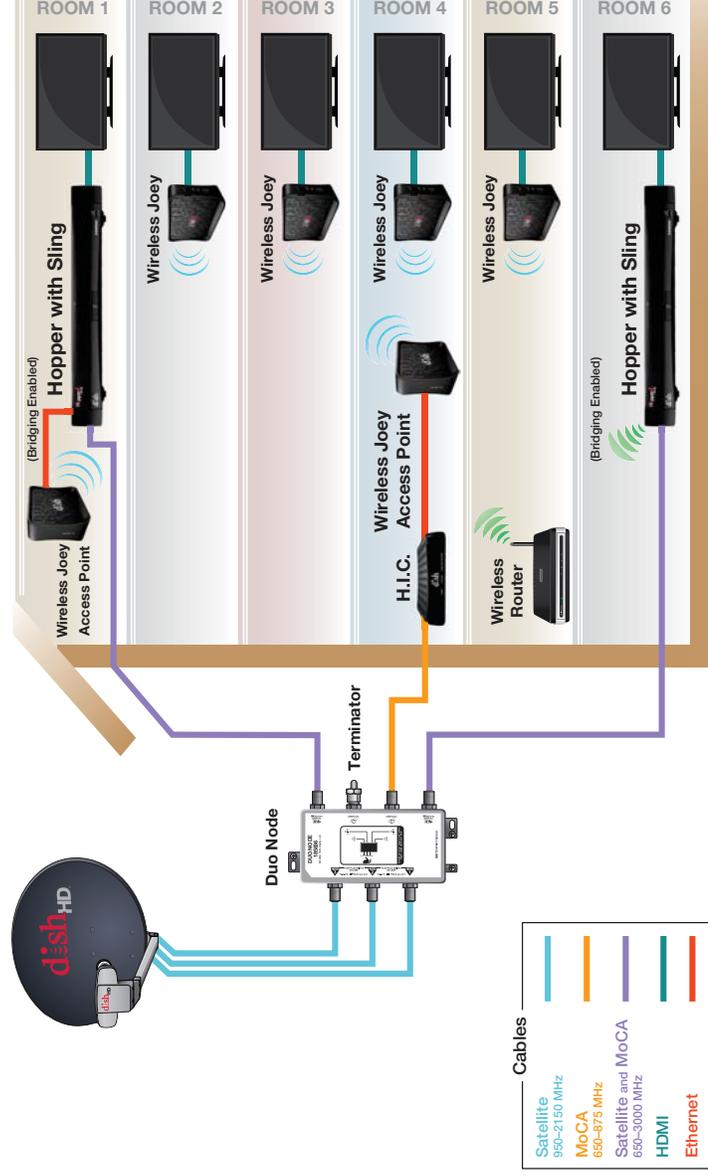
Wireless Joey: 4-TV Installation

2 Wireless Joeyes, 1 Wireless Joey Access Point, 1 Hopper with Sling, 1 Joey



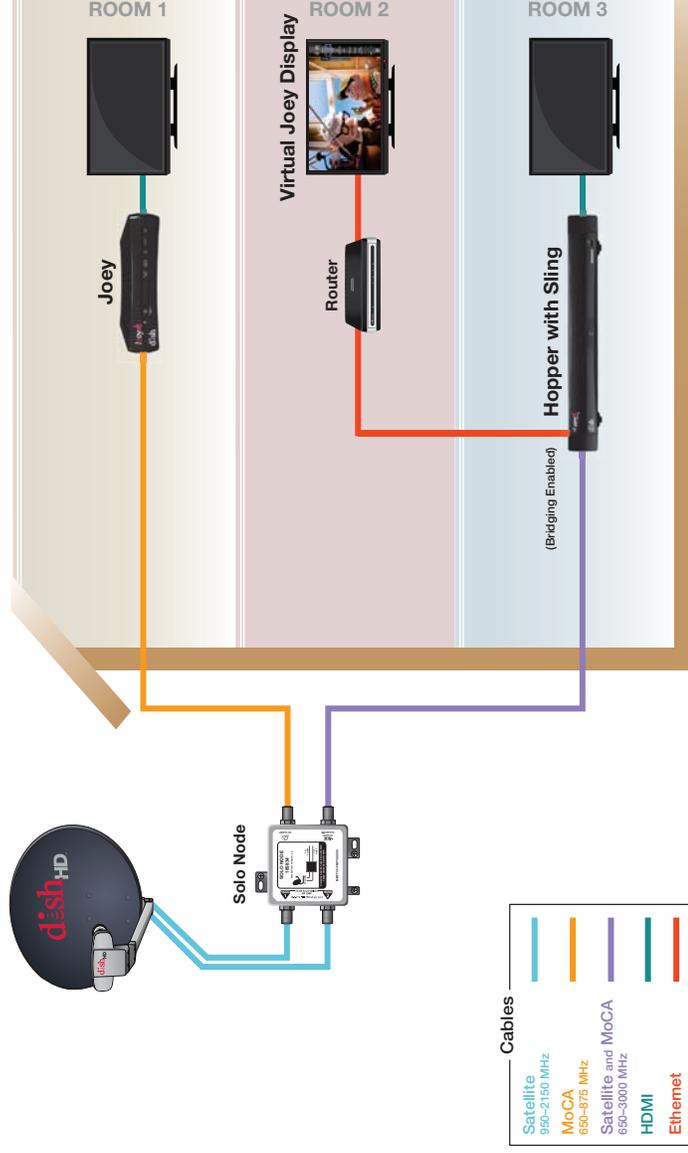
Wireless Joey: 6-TV Installation

4 Wireless Joeyes, 2 Wireless Joey Access Points, 2 Hoppers with Sling



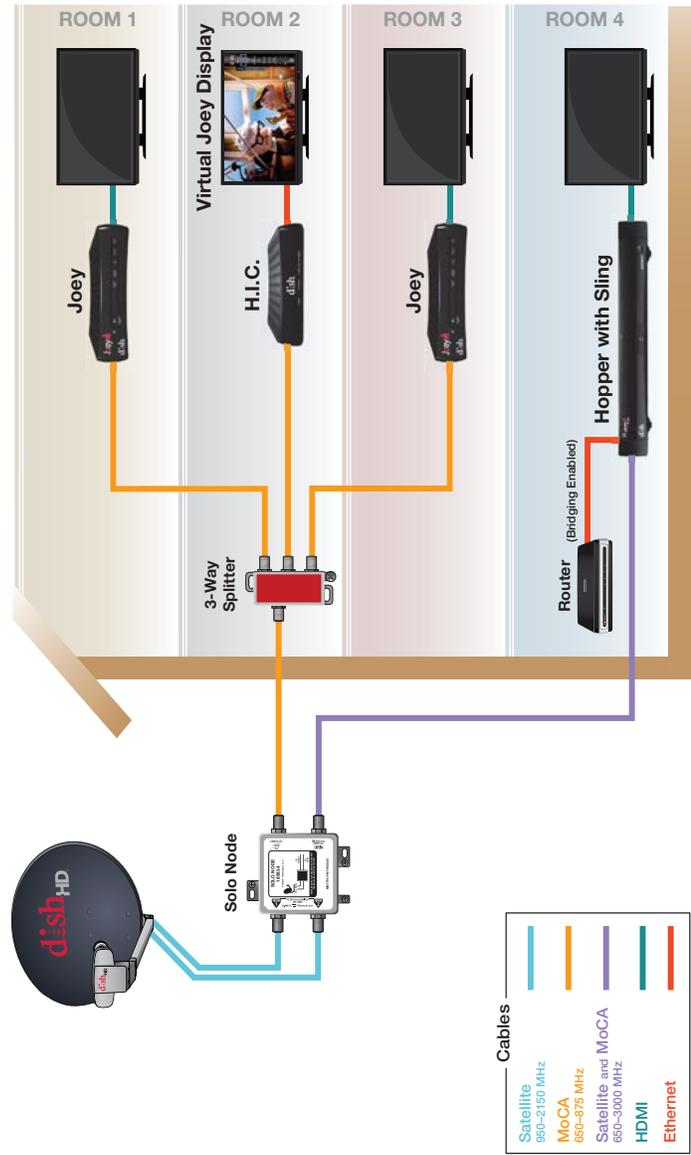
Virtual Joey: 3-TV Installation

1 Virtual Joey, 1 Hopper with Sling, 1 Joey



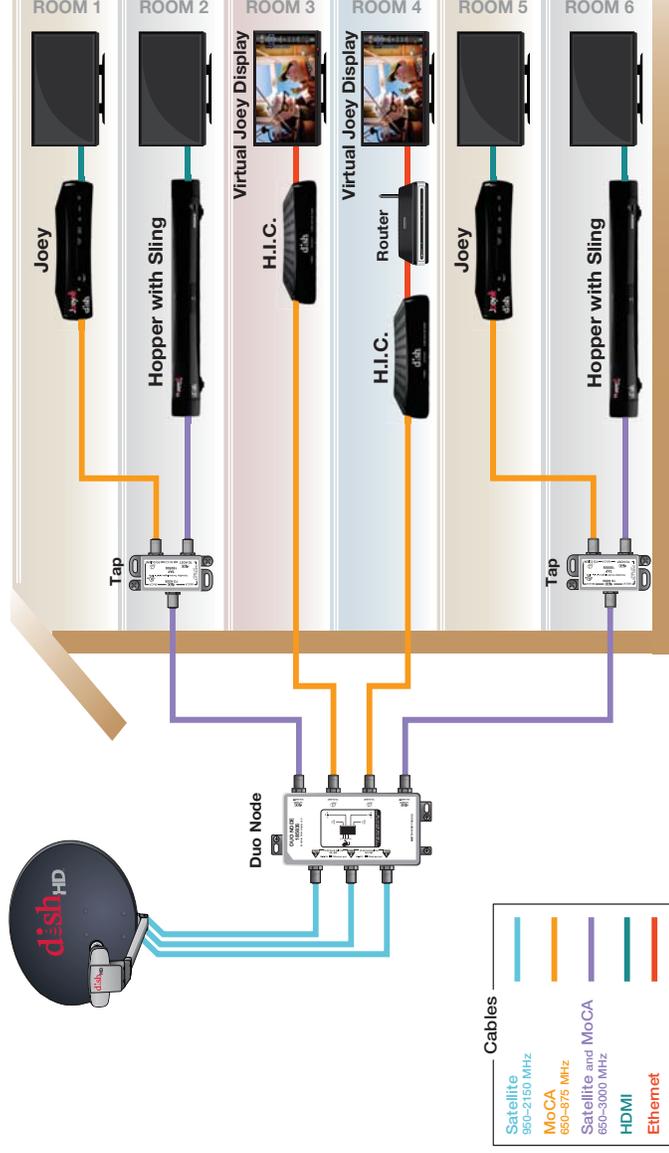
Virtual Joey: 4-TV Installation

1 Virtual Joey, 1 Hopper with Sling, 2 Joeyes



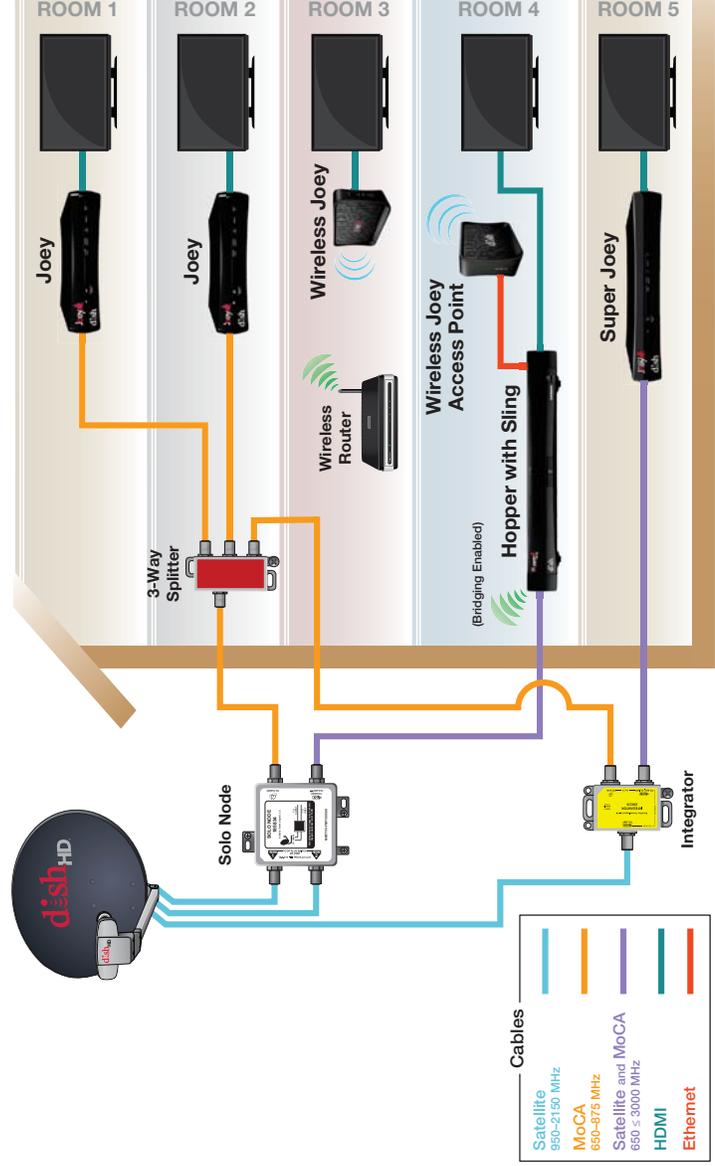
Virtual Joey: 6-TV Installation

2 Virtual Joeyes, 2 Hoppers with Sling, 2 Joeyes



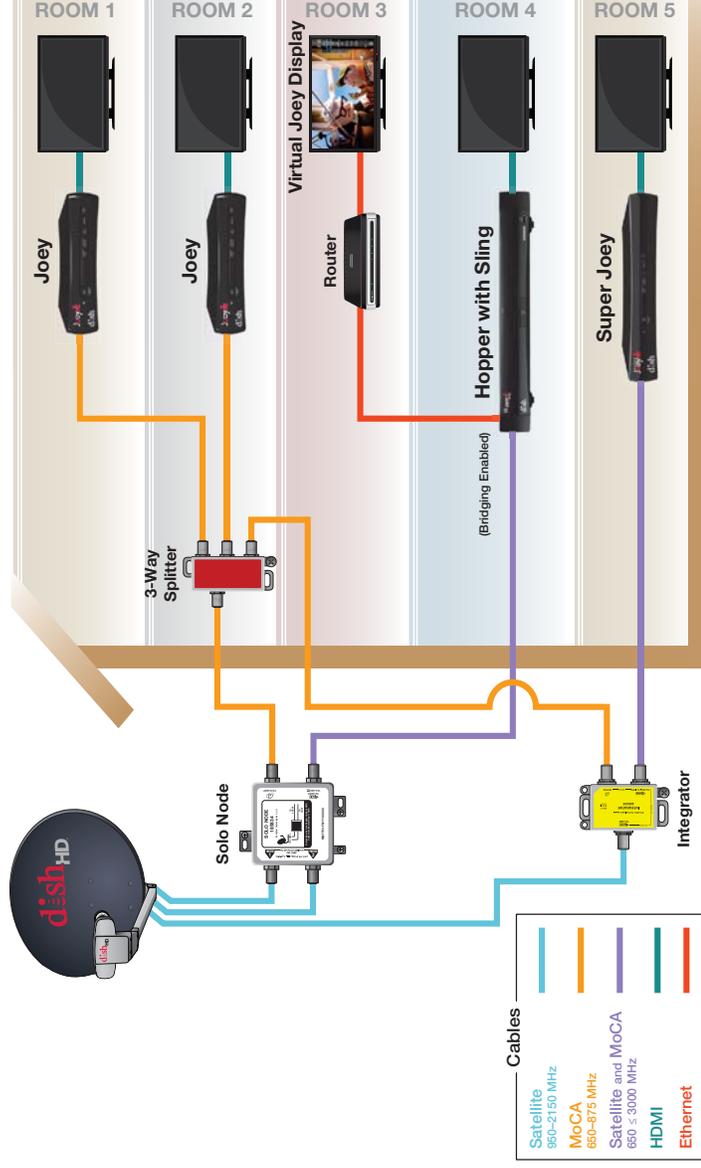
Super Joey and Wireless Joey: 5-TV Installation

1 Super Joey, 1 Wireless Joey, 1 Hopper with Sling, 1 Hopper with Sling, 2 Joeys



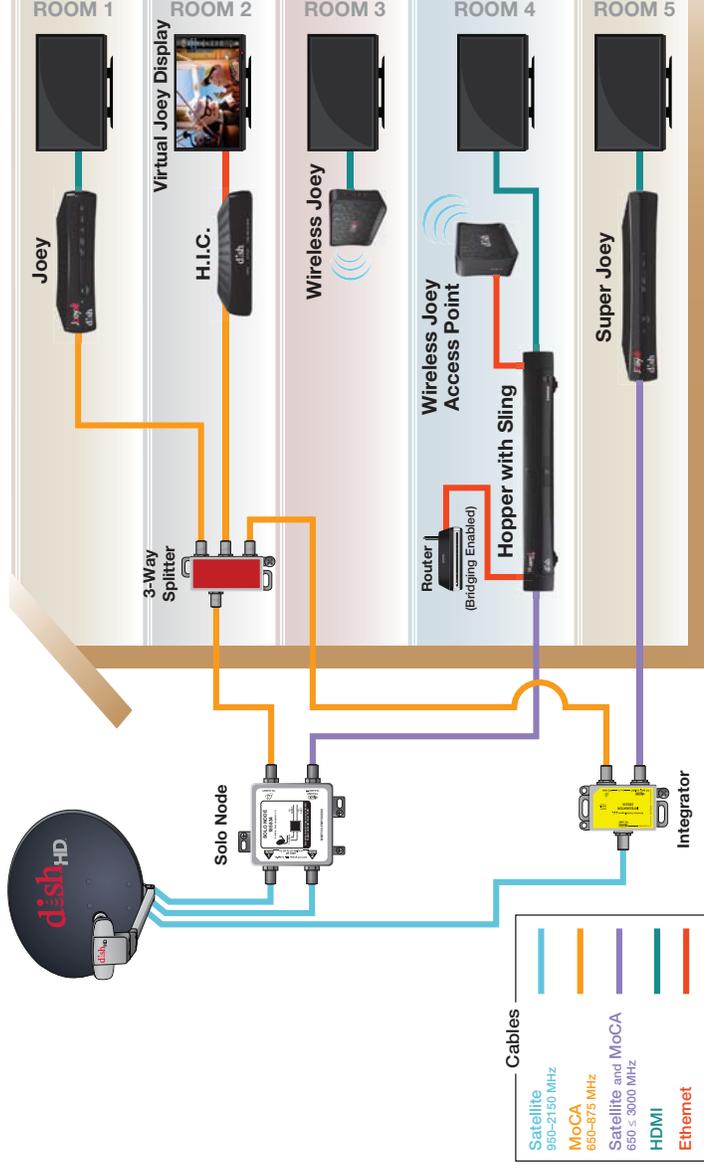
Super Joey and Virtual Joey: 5-TV Installation

1 Super Joey, 1 Virtual Joey, 1 Hopper with Sling, 2 Joeyes



Super Joey, Wireless Joey, and Virtual Joey: 5-TV Installation

1 Super Joey, 1 Wireless Joey/Access Point, 1 Virtual Joey, 1 Hopper with Sling, 1 Joey



Wireless Joey and Virtual Joey: 6-TV Installation

2 Wireless Joys, 1 Wireless Joey Access Point, 1 Virtual Joey, 2 Hoppers with Sling, 1 Joey

