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June 16, 2011

**VIA ECFS**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

Re: Notice of *Ex Parte* Presentation, DISH Network, LLC  
CG Docket No. 11-50  
Petition for Declaratory Ruling Concerning The Telephone  
Consumers Protection Act (TCPA)

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, the undersigned counsel hereby provides notice that on June 14, 2011, DISH Network LLC's attorneys met with Maureen Flood and Richard Welch, Office of the General Counsel; Kurt Schroeder and Karen Johnson, Consumer and Governmental Affairs Bureau; in the proceeding identified above. In attendance on behalf of DISH Network LLC were Steven A. Augustino and Alysa Z. Hutnik, Kelley Drye & Warren LLP and Alison Minea, Corporate Counsel, DISH Network LLC.

During the meeting, and consistent with their comments and reply filed in this proceeding, the DISH representatives encouraged the FCC to conclude that the TCPA does not provide for holding businesses liable for unlawful telemarketing calls that are initiated or made by independent third parties. The DISH representatives based their arguments on the absence of statutory language providing for such third party liability within the substantive provisions of the TCPA, and the absence of any Congressional history addressing such third party liability. The DISH representatives further addressed that, while law enforcement commenters recommended that the FCC's TCPA enforcement scope be harmonized with the Federal Trade Commission's telemarketing laws and regulations, the two federal agencies are subject to different authorizing statutes with different statutory language relevant to the third party liability issues, different Congressional history regarding third party liability, and that one agency's statutory scope

Ms. Marlene H. Dortch  
June 16, 2011  
Page 2

cannot be wholly read into another agency's statutory scope, based on a desire to make law enforcement more efficient.

The DISH representatives further added that, alternatively, if the FCC were to conclude that the TCPA did provide for some type of third party liability (which the DISH representatives firmly opposed), in such a situation, the federal common law of agency is the governing standard for determining how to apply such third party liability to a given set of facts, and that to provide clear guidance, the FCC should clarify how such a standard would apply within the context of the FCC's TCPA regulations.

Sincerely,



Steven A. Augustino

SAA:pab

cc: Maureen Flood  
Richard Welch  
Kurt Schroeder  
Karen Johnson