State of New Jersey

DIVISION OF RATE COUNSEL
31 CLINTON STREET, 11TH FL
P. O. BOX 46005
NEWARK, NEW JERSEY 07101

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

STEFANIE A. BRAND
Director

August 13, 2012

Electronically Filed
Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

Re: I/M/O Comcast Cable Communications, LLC
For a Determination of Effective
Competition in 7 Hampton, New Jersey- Area Franchise Areas
Docket Nos. CSR-8653-E; MB 12-162

Dear Secretary Dortch:

Enclosed for filing are Comments in Opposition to Petition on behalf of the New Jersey Division of Rate Counsel in connection to the above reference matter.

These Comments are electronically filed through the Commission's Electronic Filing system.

Very truly yours,

Stefanie A. Brand
Director, Division of Rate Counsel

By: _____
Jose Rivera-Benitez, Esq.
Assistant Deputy Rate Counsel

CC: Service List

Tel: (973) 648-2690 • Fax: (973) 624-1047 • Fax: (973) 648-2193
http://www.state.nj.us/publicadvocate/utility E-Mail: njratepayer@rpa.state.nj.us

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I/M/O Comcast Cable Communications, LLC for a Determination of Effective Competition in 7 Hampton, New Jersey- Area Franchise Areas

Docket No. CSR-8653-E; MB 12-162

Cathy Drummond
Borough Clerk
Hampton Borough
P.O. Box 418
Hampton, NJ 08827

Eric Edgington
Verizon
4458 Madison Industrial Lane
MC: FLTP0007
Tampa, FL 33619

Lawanda R. Gilbert
Acting Director
Office of Cable Television
Board of Public Utilities
44 South Clinton Ave. 9th Floor
P.O. Box 350
Trenton, NJ 08625-0350

Stefanie A. Brand, Esq.
Director
Division of Rate Counsel
31 Clinton Street, 11th Floor
P.O. Box 46005
Newark, NJ 07101

Christopher J. White, Esq.
Division of Rate Counsel
31 Clinton Street, 11th Floor
P.O. Box 46005
Newark, NJ 07101

Jose Rivera-Benitez, Esq.
Division of Rate Counsel
31 Clinton Street, 11th Floor
P.O. Box 46005
Newark, NJ 07101

Maria Novas-Ruiz, Esq.
Division of Rate Counsel
31 Clinton Street, 11th Floor
P.O. Box 46005
Newark, NJ 07101

Karen J. Sandorse
Township Clerk
Lebanon Township
530 West Hill Road
Glen Gardner, NJ 08826

Kristine Blanchard
Borough Clerk
Washington Borough
100 Belvidere Avenue
Washington, NJ 07882

Deborah Burd
Township Clerk & Administrator
Washington Township
43 Schooley's Mountain Road
Long Valley, NJ 07853

Deborah M. Hrebenak
Township Administrator & Clerk
Independence Township
286B Route 46
P.O. Box 164
Great Meadows, NJ 07838

Dena Hrebenak
Township Clerk
Mansfield Township
100 Port Murray Road
Port Murray, NJ 07865

Anna C. Godfrey
Township Clerk
Washington Township
211 Route 31 North
Washington, NJ 07882

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

Frederick W. Giroux
Davis Wright Tremaine LLP
1919 Pennsylvania Avenue, N.W.
Suite 800
Washington, DC 20006

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of:	)	
	)	
Comcast Cable Communications, LLC	)	
On behalf of its subsidiaries and affiliates	)	
	)	**MB 12-162**
For a Determination of Effective Competition in	)	
	)	**CSR 8653-E**
7 Hampton, New Jersey –Area Franchise Areas	)	

To: Secretary, Federal Communications Commission
Chief, Media Bureau

COMMENTS IN OPPOSITION TO PETITION ON BEHALF OF THE NEW JERSEY DIVISION OF RATE COUNSEL

The New Jersey Division of Rate Counsel ("Rate Counsel")[1] submits the within comments in opposition to the above-captioned Petition filed on behalf of Comcast Cable Communications, LLC ("Comcast") with the Federal Communication Commission ("FCC") Media Bureau ("Bureau") for a declaration of effective competition in the Mullica and Weymouth franchise areas in New Jersey.[2] Rate Counsel opposes the Petition because it is based on unreliable and incomplete data and hence, fails to rebut the presumption that effective competition does not exist in the franchise areas considered

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[1]/ Rate Counsel is authorized to represent the public interest of New Jersey public utility and cable television service consumers before State and Federal regulatory bodies. See N.J.S.A. 52: 27 EE - 48, 55.

[2]/ See Public Notice Report No. 376, Special Relief and Show Cause Petitions dated June 22, 2012. Rate Counsel obtained the consent of Comcast extending the time to file comments until August 12, 2012.

here. As a result, the Petition should be denied allowing the Local Franchise Authority ("LFA")[3] to retain the authorization to regulate the cable carrier's basic service tier rates to protect ratepayers from unfettered rate increases.

LEGAL ARGUMENT

COMCAST FAILS TO SATISFY THE COMPETING PROVIDER TEST

Comcast has failed to sustain its burden of proof to rebut the presumption against the existence of effective competition in the subject franchises claimed under the competing provider test. The household data and satellite penetration data it submits are neither contemporaneous to one another nor current as of the filing date. Additionally, the underlying data supporting the results of its zip code/satellite penetration analysis is not provided for examination, thus thwarting the ability to probe Comcast's conclusions. Furthermore, the limited data relied upon is misleading and flawed. As a result of these deficiencies, Rate Counsel submits that Comcast has failed to sustain its burden of proof for the respective franchises to satisfy the statutory criteria for a declaration of effective competition. Therefore, the Petition should be denied.

Section 543 of the Communications Act of 1934, as amended by Section 623 of the Telecommunications Act of 1996,[4] provides that subscriber rates of cable television systems are subject to either local or federal regulation where effective competition is absent.[5] The Comcast franchises at issue here are currently subject to the regulatory jurisdiction of the Local Franchise Authority ("LFA") for the State of New Jersey, the

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[3]/ In New Jersey, the LFA is the New Jersey Board of Public Utilities, Office of Cable Television, see N.J.S.A. 48:5A-2, *et. seq.*

[4]/ Pub. L. No. 104, 100 Stat. 56, approved February 8, 1996, codified at 47 *U.S.C.* § 151 *et seq.*

[5]/ 47 *U.S.C.* § 543(a)(2).

New Jersey Board of Public Utilities ("Board"), based on the FCC's certification that effective competition is not present there. Under FCC rules, a cable operator who claims that effective competition exists in a particular franchise, and seeks to rebut the statutory presumption against the existence of effective competition, must satisfy one of four tests set forth in Section 76.905(b) of the Commission's rules.[6] The statutory burden of proof rests exclusively with the cable operator to rebut the presumption by competent evidence.[7]

Comcast invokes the competing provider test for the claim that the seven subject franchises are subject to effective competition as of the date of filing. Under this test, a cable operator must provide competent evidence demonstrating that a franchise is subject to effective competition because the franchise is: (1) served by at least two unaffiliated multichannel video programming distributors ("MVPDs"), each of which offers comparable programming to at least 50 percent of the households in the franchise area; and (2) the number of households subscribing to multichannel video programming other than the largest multichannel video programming distributor exceeds 15 percent of the households in the franchise area.[8] A finding of effective competition exempts a cable operator from rate regulation.[9] Here, Comcast has the burden of proof and must

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6/ 47 *C.F.R.* § 76.905(b).

7/ Regardless of whether an effective competition is contested or not, the cable operator's failure to sustain the burden of proof must result in denial and dismissal of the Petition. *See Cox Southwest Holdings, LP, ten Unopposed Petitions for Determination of Effective Competitions in 17 Local Franchise Areas*, CSR 6877-E, etc., DZ 07-933 (Released March 2, 2007); *I/M/O Time Warner Entertainment Co. LP*, CSR 5136-E, DA 99-234 (Released January 26, 1999).

8/ 47 *U.S.C.* § 623(l)(1)(B); See also, 47 *C.F.R.* §76.905(b)(2).

9/ 47 *C.F.R.* § 76.905.

affirmatively demonstrate that at the time of filing each claimed franchise was subject to effective competition by satisfaction of the competing provider test.[10]

Comcast asserts that it meets the competing provider test because direct broadcast satellite ("DBS") service (from providers DirecTV and DISH Network) is readily available in the seven franchises and that satellite subscribership in each franchise exceeds fifteen percent of the households in the franchise.[11] Comcast relies on the 2010 Census for the number of households for its calculation to show that satellite penetration in the seven franchises exceeds the statutory 15% threshold.

Comcast relies on a satellite subscriber count as of February 29, 2012, although the Petition was filed on June 12, 2012. On its face, neither the household data nor the satellite subscriber data can accurately reflect the number of households and satellite subscribers in each franchise in June 2012 when the Petition was filed, as the household data and satellite data are not contemporaneous to one another as of the time of filing. The need for contemporaneous data is apparent because if the Petition is granted, the revocation of regulatory authority is effective retroactive to the date the Petition was filed. Evidence in support of the Petition, therefore, should consist of franchise household data and satellite penetration data that show the alleged competitive conditions as of the filing date. The data submitted by Comcast fails to provide the support necessary to conclude that in June 2012 satellite subscribership in the subject franchises exceeded 15% of the households in each franchise.

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[10]/ *See In re C-Tec Cable Systems of Michigan, Inc.,* 10 F.C.C.R. 1735, 1736 (1995); *See also, Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992,* 8 FCC Rcd. 5631, 5669-70 (1993) ("*Report and Order*").

[11]/ Petition at 2-7.

Comcast's reliance upon satellite penetration data and household data that are not reasonably contemporaneous in time to the filing date is insufficient to show that effective competition was present at the time of filing.[12] See, *I/M/O Cable Operator's Petitions for Reconsideration and Revocation of Franchising Authorities' Certifications to Regulate Basic Cable Service Rates,* 9 FCC Rcd 3656 (1994) ¶ 3. In opposing an LFA's certification to regulate, cable operators must rely on competitive subscriber data as of the time of the certification, but no earlier than two months before the request for certification was filed. Similarly, the data submitted in support of a petition for a determination of effective competition should be supported by data that is contemporaneous to the date the petition is filed. A "complete when filed" requirement is necessary in order to weigh supporting data of even date. Fundamental due process compels application of a requirement that reasonably contemporaneous data be supplied at the time of filing.[13] If a "complete when filed" rule is not applied, the resulting decision is arbitrary and capricious, as the decision would rely on data of disparate timeframes. In this connection, Rate Counsel incorporates by reference arguments submitted in its Applications for Review currently pending before the Commission, in support of Rate Counsel's position on the need to apply a reasonably contemporaneous data standard.[14]

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[12]/ See, *I/M/O Cable Operator's Petitions for Reconsideration and Revocation of Franchising Authorities' Certifications to Regulate Basic Cable Service Rates,* 9 FCC Rcd 3656 (1994) ¶ 3.

[13]/ *Id.* See also, Opposition of Rate Counsel, dated December 2, 2004, *I/M/O Petition Service Electric of New Jersey for a Determination of Effective Competition in Morris County, Sussex County, and Warren County,* CSR-6404-E.

[14]/ See *Application for Review in I/M/O Petition of Cablevision of Rockland/Ramapo, Inc. for a Determination of Effective Competition in Montvale, NJ,* CSR-6537-E; *Petition of CSC TKR, Inc. d/b/a Cablevision of Elizabeth for a Determination of Effective Competition in Elizabeth, NJ,* CSR-6670-E; *Petition of Cablevision of Warwick LLC for a Determination of Effective Competition in West Milford, NJ,*

In addition, the satellite subscriber data submitted by Comcast does not account for any cancellations in the months that elapsed between the survey and the filing of the Petition. This time lag undermines the reliability of the satellite penetration data. Publicly available declarations by DirectTV and Dish to the Securities and Exchange Commission, Quarterly Reports for 2012, show adverse fluctuations in subscribership as of March 2012.[15] The impact of such fluctuations on the subject franchises is not evident in this matter. The data submitted by Comcast fails to recognize the impact of this critical fact. More recent data for the 2d Quarter, confirms continued declines in Dish and DirectTV subscribership.[16]

Also, the Petition fails to demonstrate that either satellite carrier provides a basic service tier that includes public, educational and government ("PEG") channels as is required of Comcast. This disparity alone should suffice to distinguish the video service of the satellite providers from that provided by Comcast. Incomparable service does not equate with head-to-head competition. The comparability component of the Competing Provider Test cannot be satisfied without the provision of PEG channels by the satellite carriers as part of a basic service tier channel alignment.

Additionally, information obtained from the LFA indicates that Comcast's plant does not extend to the entire geography of any franchise at issue here. Hence, effective

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CSR-6671-E, filed July 25, 2007; and *Application for Review in I/M/O Cablevision of Raritan Valley, Inc.*, CSR 6108-E; *Cablevision of New Jersey*, CSR 6169-E; *Cablevision of Monmouth*, CSR 6176-E, filed May 14, 2004.

[15]/ See attached Exhibit A.

[16]/ *Id.*

competition cannot be granted since such a declaration would apply to areas within the franchises that admittedly are not served by Comcast.[17]

Furthermore, the Petition is also deficient due to Comcast's failure to submit the analysis, maps and work papers that underlie and support the calculation of satellite penetration submitted by Comcast. Comcast only submits the results generated by Satellite Broadcasting and Communications Association ("SBCA"). The failure to disclose the underlying data deprives Rate Counsel, the Media Bureau, and interested parties of the ability to examine, challenge, and verify that the reported numbers submitted by Comcast are complete and accurate. Any mapping considered by SBCA would demonstrate the extent of Comcast's plant in each franchise per zip code referenced. Since the FCC will rely upon the data submitted by Comcast to decide compliance with the competing provider test, it is incumbent upon Comcast to supply all underlying data and analyses used to derive the numerical results it relies upon. See, *American Radio Relay League, Incorporated v. Federal Communications Commission, et al.*, No. 06-1343, (D.C. Cir. April 25, 2008) wherein the Court of Appeals remanded an FCC decision that violated the APA due to the FCC's failure to make available for public comment certain records it relied upon in its decision. See also, *Owner-Operator Independent Drivers Association, Inc., v. Federal Motor Carrier Safety Administration, et. als.*, 494 F.3d 188, 199 (D.C. Cir. 2007). (The APA requires that critical factual material used to support the agency decision must have been made public in the proceeding and exposed for refutation. The Petitioner must submit the factual underpinnings for the percentages claimed.) See also, *Solite Corp. v. US EPA*, 952 F. 2d 473, 485 (D.C. Cir. 1991) (Courts have ruled that under the APA an agency may not rely

[17]/ See attached Exhibit B.

on any information on which interested parties are not given access or the opportunity to comment.) The underlying data from which the exhibits in the Petition were prepared have not been submitted for examination, verification or challenge. Instead, Comcast has submitted only the results without the underlying data. A determination that effective competition exists without opportunity for public scrutiny of the underlying data would be an arbitrary and capricious finding.

CONCLUSION

For the foregoing reasons, the instant Petition fails to sustain the burden of proof to satisfy the competing provider test and hence, the Petition should be denied.

Respectfully submitted,

Stefanie A. Brand
Director,
New Jersey Division of Rate Counsel

By: _____
Jose Rivera-Benitez
Assistant Deputy Rate Counsel
New Jersey Division of Rate Counsel

Dated: August 13, 2012

EXHIBIT A

WALL STREET JOURNAL

CORPORATE NEWS

Evidence Grows on TV Cord Cutting

By Shalini Ramachandran

The most intense debate in television today—whether the lure of Netflix and YouTube is causing viewers to disconnect their cable-TV service—is likely to intensify after new figures showed a slight decline in overall pay-TV subscribers in the second quarter.

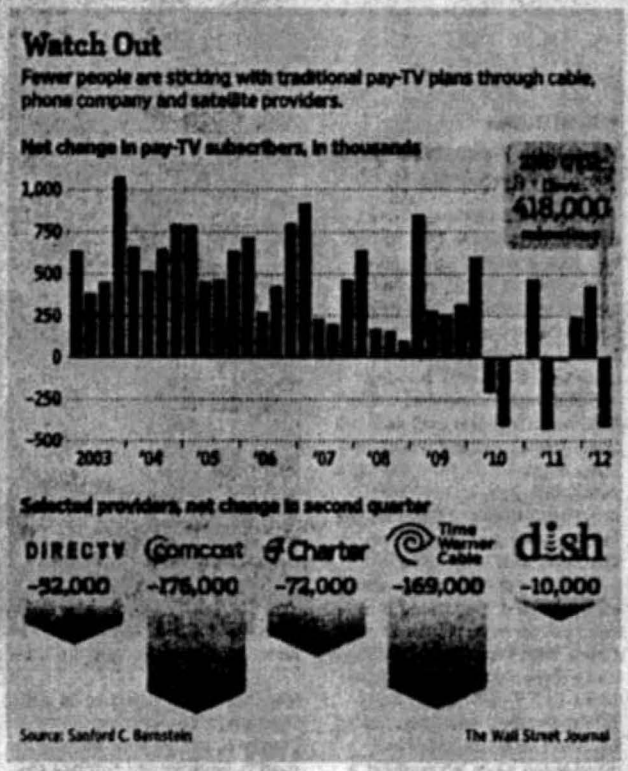
Publicly traded cable, satellite and phone companies had a combined net loss of about 200,000 subscribers in the quarter, earnings reports showed, about 0.2% of the roughly 100 million pay-TV subscribers. Sanford C. Bernstein estimates the overall industry shed more than 400,000 subscribers during the period when results for closely held operators are included.

A sustained decline in the number of people subscribing to pay TV has ramifications for pay-TV operators and for TV channels, most of which share in the fees paid by subscribers. Big entertainment companies generate much of their profits from subscription fees paid to TV channels.

TV executives so far are divided on cord-cutting. Some, such as **Dish Network** Corp. Chairman Charlie Ergen, acknowledge that people are switching to cheaper alternatives. He even cites his own children's behavior as proof. Others, particularly on the entertainment side, dismiss the idea. The debate has influenced negotiations between pay-TV operators and channel owners over fees, such as the recent blowup between **DirecTV** and **Viacom** Inc., as operators warn that demands for higher fees could fuel cord-cutting.

The second-quarter numbers won't conclusively settle the argument. The April-through-June quarter is traditionally a weak period for pay-TV operators, as college students disconnect their service, typically returning in the fall, companies say. Last year, and in 2010, the pay-TV industry made up for declines in the second and third quarters with gains in the first and fourth quarters. Both years posted net growth of about 200,000 subscribers.

Even so, Craig Moffett, an analyst at Sanford C. Bernstein, points out that the year-on-year growth rate is below the level at which new households are being formed, suggesting "there are homes that are cutting the cord."



In the past few years, the number of free or inexpensive online video options have grown rapidly. **Amazon.com** Inc.'s Prime service and **Netflix** Inc. offer old episodes of some popular TV shows. **Google** Inc.'s YouTube has made a big push to invest in creating channels of original content. And several TV channel owners put full episodes of certain shows on websites.

Prior to 2010, the pay-TV industry never saw a quarterly subscriber decline. Since then, declines have surfaced in five different quarters, according to Bernstein research, startling an industry that for decades had added customers at a brisk clip.

The proportion of households subscribing to pay television increased to about 86% currently, from 61% in 1992, according to the National Cable & Telecommunications Association.

Satellite-TV and phone companies have been encroaching on cable operators' turf for several years, but they too are being affected by the overall market slowdown. In the latest quarter, DirecTV lost subscribers in the U.S. for the first time in its history.

Verizon Communications Inc.'s **FiOS** and **AT&T** Inc.'s U-Verse, both of which are newer in providing pay-TV services than cable or satellite, continued to add subscribers—but the rate of growth fell 30% from a year earlier.

Comcast Corp., **Time Warner Cable** Inc., **Cablevision Systems** Corp. and **Charter Communications** Inc. have lost a combined total of more than 400,000 subscribers in each second quarter since 2010, more than double the less-than-200,000 losses between 2002 and 2008, Bernstein's data shows.

In addition, video revenues declined for several cable operators in the latest quarter.

Cable operators are still enjoying growth in their Internet-access broadband business. Time Warner Cable said last week that the number of Internet-only subscribers increased 28% from a year earlier.

Charter Chief Executive Tom Rutledge said on Tuesday that the company has about a million customers—out of about five million total—who subscribe to broadband only. He said he sees the potential to sell that group more products as a "big opportunity." In contrast, "there's a lot of inertia in the video business," he said.

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

(Mark One)

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended March 31, 2012

OR

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from to

Commission file number 1-34554

DIRECTV
(Exact name of registrant as specified in its charter)

DELAWARE (State or other jurisdiction of incorporation or organization)	**26-4772533** (I.R.S. Employer Identification No.)
2230 East Imperial Highway **El Segundo, California** (Address of principal executive offices)	**90245** (Zip Code)

(310) 964-5000
(Registrant's telephone number, including area code)

N/A
(Former name, former address and former fiscal year, if changed since last report)

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any,

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DIRECTV

RESULTS OF OPERATIONS

Three Months Ended March 31, 2012 Compared to Three Months Ended March 31, 2011

DIRECTV U.S. Results of Operations

The following table provides operating results and a summary of key subscriber data for the DIRECTV U.S. segment:

	Three Months Ended and As of March 31,		Change	
	2012	2011	$	%
	(Dollars in Millions, Except Per Subscriber Amounts)			
Revenues	$ 5,499	$ 5,145	$ 354	6.9%
Operating costs and expenses				
Costs of revenues, exclusive of depreciation and amortization expense				
Broadcast programming and other	2,441	2,200	241	11.0%
Subscriber service expenses	349	351	(2)	(0.6)%
Broadcast operations expenses	78	74	4	5.4%
Selling, general and administrative expenses, exclusive of depreciation and amortization expense				
Subscriber acquisition costs	646	682	(36)	(5.3)%
Upgrade and retention costs	305	259	46	17.8%
General and administrative expenses	270	216	54	25.0%
Depreciation and amortization expense	372	442	(70)	(15.8)%
Total operating costs and expenses	4,461	4,224	237	5.6%
Operating profit	$ 1,038	$ 921	$ 117	12.7%
Operating profit margin	18.9%	17.9%	—	—
Other data:				
Operating profit before depreciation and amortization	$ 1,410	$ 1,363	$ 47	3.4%
Operating profit before depreciation and amortization margin	25.6%	26.5%	—	—
Total number of subscribers (in thousands)	19,966	19,407	559	2.9%
ARPU	$ 91.99	$ 88.79	$ 3.20	3.6%
Average monthly subscriber churn %	1.44%	1.50%	—	(4.0)%
Gross subscriber additions (in thousands)	941	1,052	(111)	(10.6)%
Subscriber disconnections (in thousands)	860	868	(8)	(0.9)%
Net subscriber additions (in thousands)	81	184	(103)	(56.0)%
Average subscriber acquisition costs—per subscriber (SAC)	$ 857	$ 814	$ 43	5.3%
Capital expenditures:				
Property and equipment	109	102	7	6.9%
Subscriber leased equipment—subscriber acquisitions	160	174	(14)	(8.0)%
Subscriber leased equipment—upgrade and retention	85	69	16	23.2%
Satellites	34	31	3	9.7%
Total capital expenditures	$ 388	$ 376	$ 12	3.2%

Subscribers. In the first quarter of 2012, net subscriber additions decreased due to lower gross additions primarily resulting from stricter credit policies, partially offset by a lower churn rate resulting from a higher number of subscribers on

Use these links to rapidly review the document
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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

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FORM 10-Q

(Mark One)

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(310) 964-5000
(Registrant's telephone number, including area code)

N/A
(Former name, former address and former fiscal year, if changed since last report)

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such

files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☒	Accelerated filer ☐	Non-accelerated filer ☐ (Do not check if a smaller reporting company)	Smaller reporting company ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

As of July 30, 2012, the registrant had outstanding 627,853,489 shares of common stock.

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DIRECTV

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DIRECTV

RESULTS OF OPERATIONS

Three Months Ended June 30, 2012 Compared to Three Months Ended June 30, 2011

DIRECTV U.S. Results of Operations

The following table provides operating results and a summary of key subscriber data for the DIRECTV U.S. segment:

	Three Months Ended and As of June 30, 2012	2011	Change $	%
	(Dollars in Millions, Except Per Subscriber Amounts)			
Revenues	$ 5,647	$ 5,277	$ 370	7.0%
Operating costs and expenses				
Costs of revenues, exclusive of depreciation and amortization expense				
Broadcast programming and other	2,423	2,207	216	9.8%
Subscriber service expenses	357	355	2	0.6%
Broadcast operations expenses	77	75	2	2.7%
Selling, general and administrative expenses, exclusive of depreciation and amortization expense				
Subscriber acquisition costs	614	626	(12)	(1.9)%
Upgrade and retention costs	285	298	(13)	(4.4)%
General and administrative expenses	306	270	36	13.3%
Depreciation and amortization expense	369	430	(61)	(14.2)%
Total operating costs and expenses	4,431	4,261	170	4.0%
Operating profit	$ 1,216	$ 1,016	$ 200	19.7%
Operating profit margin	21.5%	19.3%	—	—
Other data:				
Operating profit before depreciation and amortization	$ 1,585	$ 1,446	$ 139	9.6%
Operating profit before depreciation and amortization margin	28.1%	27.4%	—	—
Total number of subscribers (in thousands)	19,914	19,433	481	2.5%
ARPU	$ 94.40	$ 90.58	$ 3.82	4.2%
Average monthly subscriber churn %	1.53%	1.59%	—	(3.8)%
Gross subscriber additions (in thousands)	863	954	(91)	(9.5)%
Subscriber disconnections (in thousands)	915	928	(13)	(1.4)%
Net subscriber additions (losses) (in thousands)	(52)	26	(78)	(300.0)%
Average subscriber acquisition costs—per subscriber (SAC)	$ 848	$ 813	$ 35	4.3%
Capital expenditures:				
Property and equipment	131	143	(12)	(8.4)%
Subscriber leased equipment—subscriber acquisitions	118	150	(32)	(21.3)%
Subscriber leased equipment—upgrade and retention	45	76	(31)	(40.8)%
Satellites	82	17	65	382.4%
Total capital expenditures	$ 376	$ 386	$ (10)	(2.6)%

Subscribers. In the second quarter of 2012, we had net subscriber losses as compared to net subscriber additions in the

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form 10-Q

(Mark One)

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 FOR THE QUARTERLY PERIOD ENDED MARCH 31, 2012.**

OR

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 FOR THE TRANSITION PERIOD FROM TO .**

Commission File Number: 0-26176

DISH Network Corporation

(Exact name of registrant as specified in its charter)

Nevada (State or other jurisdiction of incorporation or organization)	**88-0336997** (I.R.S. Employer Identification No.)
9601 South Meridian Boulevard **Englewood, Colorado** (Address of principal executive offices)	**80112** (Zip code)

(303) 723-1000
(Registrant's telephone number, including area code)

Not Applicable
(Former name, former address and former fiscal year, if changed since last report)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☒ Accelerated filer ☐

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Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS — Continued

RESULTS OF OPERATIONS

Three Months Ended March 31, 2012 Compared to the Three Months Ended March 31, 2011.

Statements of Operations Data	For the Three Months Ended March 31, 2012	2011	Variance Amount	%
	(In thousands)			
Revenue:				
Subscriber-related revenue	$ 3,224,465	$ 3,199,099	$ 25,366	0.8
Equipment and merchandise sales, rental and other revenue	350,737	16,001	334,736	NM
Equipment sales, services and other revenue - EchoStar	6,667	9,031	(2,364)	(26.2)
Total revenue	3,581,869	3,224,131	357,738	11.1
Costs and Expenses:				
Subscriber-related expenses	1,762,753	1,693,695	69,058	4.1
% of Subscriber-related revenue	**54.7%**	**52.9%**		
Satellite and transmission expenses - EchoStar	109,854	108,913	941	0.9
% of Subscriber-related revenue	**3.4%**	**3.4%**		
Satellite and transmission expenses - Other	11,679	10,200	1,479	14.5
% of Subscriber-related revenue	**0.4%**	**0.3%**		
Cost of sales - equipment, merchandise, services, rental and other	142,262	22,267	119,995	NM
Subscriber acquisition costs	398,037	354,899	43,138	12.2
General and administrative expenses	376,175	161,784	214,391	NM
% of Total revenue	**10.5%**	**5.0%**		
Litigation expense	—	(340,677)	340,677	100.0
Depreciation and amortization	208,698	229,697	(20,999)	(9.1)
Total costs and expenses	3,009,458	2,240,778	768,680	34.3
Operating income (loss)	572,411	983,353	(410,942)	(41.8)
Other Income (Expense):				
Interest income	7,089	6,286	803	12.8
Interest expense, net of amounts capitalized	(138,013)	(120,179)	(17,834)	(14.8)
Other, net	110,282	11,633	98,649	NM
Total other income (expense)	(20,642)	(102,260)	81,618	79.8
Income (loss) before income taxes	551,769	881,093	(329,324)	(37.4)
Income tax (provision) benefit, net	(191,643)	(331,767)	140,124	42.2
Effective tax rate	**34.7%**	**37.7%**		
Net income (loss)	360,126	549,326	(189,200)	(34.4)
Less: Net income (loss) attributable to noncontrolling interest	(184)	(68)	(116)	NM
Net income (loss) attributable to DISH Network	$ 360,310	$ 549,394	$ (189,084)	(34.4)
Other Data:				
DISH Network subscribers, as of period end (in millions)	14.071	14.191	(0.120)	(0.8)
DISH Network subscriber additions, gross (in millions)	0.673	0.681	(0.008)	(1.2)
DISH Network subscriber additions, net (in millions)	0.104	0.058	0.046	79.3
Average monthly subscriber churn rate	1.35%	1.47%	(0.12)%	(8.2)
Average monthly revenue per subscriber ("ARPU")	$ 76.71	$ 75.39	$ 1.32	1.8
Average subscriber acquisition cost per subscriber ("SAC")	$ 751	$ 725	$ 26	3.6

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form 10-Q

(Mark One)

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 FOR THE QUARTERLY PERIOD ENDED JUNE 30, 2012.**

OR

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Commission File Number: 0-26176

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Large accelerated filer ☒ Accelerated filer ☐

Non-accelerated filer ☐ Smaller reporting company ☐
(Do not check if a smaller reporting company)

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

As of August 1, 2012, the registrant's outstanding common stock consisted of 268,329,291 shares of Class A common stock and 238,435,208 shares of Class B common stock.

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Item 2.MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS O F OPERATIONS

You should read the following discussion and analysis of our financial condition and results of operations together with the condensed consolidated financial statements and notes to the financial statements included elsewhere in this quarterly report. This management's discussion and analysis is intended to help provide an understanding of our financial condition, changes in financial condition and results of our operations and contains forward-looking statements that involve risks and uncertainties. The forward-looking statements are not historical facts, but rather are based on current expectations, estimates, assumptions and projections about our industry, business and future financial results. Our actual results could differ materially from the results contemplated by these forward-looking statements due to a number of factors, including those discussed in our Annual Report on Form 10-K for the year ended December 31, 2011, our Quarterly Report on Form 10-Q for the three months ended March 31, 2012 and this Quarterly Report on Form 10-Q under the caption "Item 1A. Risk Factors."

EXECUTIVE SUMMARY

Overview

DISH lost approximately 10,000 net subscribers during the three months ended June 30, 2012, compared to a loss of approximately 135,000 net subscribers during the same period in 2011. This decrease in the number of net subscribers lost versus the same period in 2011 resulted from higher gross new subscriber activations and a lower churn rate. Higher gross new subscriber activations were primarily due to increased advertising associated with our Hopper set-top box during the second quarter 2012. During the three months ended June 30, 2012, DISH added approximately 665,000 gross new subscribers compared to approximately 572,000 gross new subscribers during the same period in 2011, an increase of 16.3%.

Our average monthly subscriber churn rate for the three months ended June 30, 2012 was 1.60% compared to 1.67% for the same period in 2011. While churn improved compared to the same period in 2011, increased competitive pressures could increase churn in the future. Our churn rate is also impacted by, among other things, the credit quality of previously acquired subscribers, our ability to consistently provide outstanding customer service, and our ability to control piracy.

Our gross new subscriber activations continue to be negatively impacted by increased competitive pressures, including aggressive marketing and discounted promotional offers. In addition, telecommunications companies continue to grow their customer bases. Our gross new subscriber activations continue to be adversely affected by sustained economic weakness and uncertainty, including, among other things, the weak housing market and lower discretionary spending.

DISH added approximately 94,000 net subscribers during the six months ended June 30, 2012, compared to a loss of approximately 77,000 net subscribers during the same period in 2011. The increase versus the same period in 2011 primarily resulted from a decrease in our average monthly subscriber churn rate and higher gross new subscriber activations due to increased advertising associated with our Hopper set-top box. Our average monthly subscriber churn rate for the six months ended June 30, 2012 was 1.48% compared to 1.57% for the same period in 2011. Our churn rate was positively impacted in part because we did not have a programming package price increase in the first quarter 2012, but did during the same period in 2011. During the six months ended June 30, 2012, DISH added approximately 1.338 million gross new subscribers compared to approximately 1.253 million gross new subscribers during the same period in 2011, an increase of 6.8%.

"Net income (loss) attributable to DISH Network" for the three and six months ended June 30, 2012 was $226 million and $586 million, respectively, compared to $335 million and $884 million, respectively, for the same periods in 2011. During the three months ended June 30, 2012, "Net income (loss) attributable to DISH Network" decreased primarily due to higher subscriber-related expenses from higher programming costs, increased advertising associated with our Hopper set-top box and $68 million of depreciation expense related to the 148 degree orbital location during the second quarter 2012. See Note 7 in the Notes to the Condensed Consolidated Financial Statements for further discussion. During the six months ended June 30, 2012, "Net income (loss) attributable to DISH Network" decreased primarily due to higher subscriber-related expenses from higher programming costs, increased advertising associated with our Hopper set-top box, a reversal of our accrued expenses related to the TiVo Inc. settlement during 2011 and $68 million of depreciation expense related to the 148 degree orbital location during

EXHIBIT B

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of:	)	
	)	
Comcast Cable Communications, LLC	)	
On behalf of its subsidiaries and affiliates	)	
	)	**MB 12-162**
For a Determination of Effective Competition in	)	
	)	**CSR 8653-E**
7 Hampton, New Jersey –Area Franchise Areas	)	

Certification in Support of Opposition on Behalf of
The New Jersey Division of Rate Counsel

I, JOSE RIVERA-BENITEZ, of full age, certify as follows:

1. I am a duly licensed attorney in good standing in the State of New Jersey. I am employed as an Assistant Deputy Rate Counsel in the New Jersey Division of Rate Counsel. This certification is submitted in support of arguments made by Rate Counsel in opposition to this Petition.
2. In preparation for comments in opposition to this Petition, I sought information from the New Jersey Board of Public Utilities' Office of Cable Television ("OCTV"), the Local Franchise Authority, concerning the franchises that are the subject of this matter. Additionally, I sought information directly from the respective communities involved in this Petition that would either confirm or dispute the assertions made by Comcast Cable Communications LLC ("Comcast").

3. Information obtained from OCTV relates that none of the towns involved in this matter are a full build out and have a 35 home per mile stipulation for service extensions beyond the primary service area. Additionally, OCTV reported that the town of Lebanon was the subject of an effective competition petition in CSR-7868-E, approved by the Media Bureau effective February 18, 2009. (See attached e-mail response from OCTV dated July 25, 2012.) Maps depicting the service territory are not publicly available.

4. All communities involved have not yet responded to the request for information. The town of Independence reveals absence of service in certain areas within Independence; specifically, a report of unavailability of Comcast cable service at 59 Ketchum Road, Hackettstown, New Jersey, 07840 nor to neighbors thereto. Comcast has steadfastly refused to extend service to that area without the property owner paying for the extension cost of at least $20,000, confirming that Comcast does not serve the entire franchise area.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Date: 8/13/12

Jose Rivera-Benitez, Esq.
Assistant Deputy Rate Counsel

Jose Rivera-Benitez

From: Furlong, William [William.Furlong@bpu.state.nj.us]
Sent: Wednesday, July 25, 2012 12:14 PM
To: Jose Rivera-Benitez
Cc: Gilbert, Lawanda
Subject: RE: Comcast subscriber numbers and mapping data

Jose:

Took me awhile to confirm some things, but this is what I have:

None of the nine towns are a full build and have a 35 homes per mile stipulation in the franchise for service extensions beyond the primary service area.

Comcast, like Verizon, files its maps and customer numbers on a confidential basis – therefore we can't provide them directly. They are only available through the company or you could file an OPRA request for them.

Finally, our records indicate that Lebanon Twp. was approved by the FCC effective 2/18/09 in Dkt #CSR-7868E

Hope this helps

From: Jose Rivera-Benitez [mailto:jrivera@rpa.state.nj.us]
Sent: Tuesday, July 24, 2012 1:19 PM
To: Furlong, William
Subject: Comcast subscriber numbers and mapping data

Bill:

we are looking at recent petitions for effective competition filed by Comcast and a couple of questions arise:

First, in the following franchises, does Comcast plant extend to the entire franchise? and if not are there maps that provide the perimeter?

Second, for the same franchises, what is the most current known Comcast subscriber numbers?

The franchises are:

Hampton Borough
Independence
Lebanon
Mansfield Township
Washington Borough
Washington Township (Morris County)
Washington Township (Warren County)

Mullica
Weymouth

Any information you can provide would be helpful in assessing our potential arguments.

Jose Rivera-Benitez, ESQ.
Assistant Deputy Rate Counsel
New Jersey Division of Rate Counsel
31 Clinton Street
Newark, New Jersey 07101
jrivera@rpa.state.nj.us
(973) 648-2690 Ext. 7121
(973) 648-4873 (fax)

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