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December 6, 2013

## **EX PARTE PRESENTATION**

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

Re: Ex Parte Presentation in WT Docket No. 13-225, *DISH Network Corporation Petition for Waiver and Request for Extension of Time*; GN Docket No. 12-268, *Expanding the Economic and Innovation Opportunities of Spectrum through Incentive Auctions*; GN Docket No. 13-185, *Amendment of the Commission's Rules with Regard to Commercial Operations in the 1695-1710 MHz, 1755-1780 MHz, and 2155-2180 MHz Bands*; MB Docket No. 10-71, *Rulemaking to Amend the Commission's Rules Governing Retransmission Consent*; MB Docket No. 09-182, *2010 Quadrennial Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*

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 the following meetings on Wednesday, December 4, 2013:

- A meeting with Chairman Tom Wheeler; Roger Sherman, Acting Chief, Wireless Telecommunications Bureau; Renee Gregory, Legal Advisor, Engineering and Technology, Wireless, and Incentive Auctions for Chairman Wheeler; and Maria Kirby, Legal Advisor, Media, Consumer and Governmental Affairs, and Enforcement for Chairman Wheeler. Present on behalf of DISH were Charlie Ergen, Chairman; Thomas Cullen, Executive Vice President; Stanton Dodge, Executive Vice President and General Counsel; Jeffrey Blum, Senior Vice President and Deputy General Counsel; and Alison Minea, Director and Senior Counsel.
- A meeting with Commissioner Michael O'Rielly and Erin McGrath, Legal Advisor, Wireless for Commissioner O'Rielly. Present on behalf of DISH were Charlie Ergen, Chairman; Thomas Cullen, Executive Vice President; Stanton Dodge, Executive Vice President and General Counsel; Jeffrey Blum, Senior Vice President and Deputy General Counsel; Alison Minea, Director and Senior Counsel; and Thomas J. Bliley, Steptoe & Johnson LLP, outside counsel.

- A meeting with Roger Sherman, Acting Chief, Wireless Telecommunications Bureau; James Schlichting, Senior Deputy Bureau Chief, Wireless Telecommunications Bureau; and John Leibovitz, Special Advisor to the Chairman for Spectrum Policy and Deputy Chief, Wireless Telecommunications Bureau. Present on behalf of DISH were Charlie Ergen, Chairman; Thomas Cullen, Executive Vice President; Stanton Dodge, Executive Vice President and General Counsel; Jeffrey Blum, Senior Vice President and Deputy General Counsel; Hadass Kogan, Associate Corporate Counsel; and David Goodfriend, outside consultant.

During the meetings, DISH reiterated its ongoing desire to enter the wireless market, including potential plans to efficiently deploy its AWS-4 spectrum. DISH urged the Commission to expeditiously grant its recently filed Petition for Waiver and Request for Extension of Time (“DISH Petition”).<sup>1</sup> If the Commission grants the DISH Petition and DISH elects to utilize the 2000-2020 MHz band for downlink use, DISH will seek alternative uplink spectrum to pair with the AWS-4 band. DISH explained that finding additional alternative uplink spectrum could be accomplished through, among other things, partnership arrangements, or potentially participating in the Commission’s upcoming auctions of the AWS-3 and 600 MHz bands.

**600 MHz Auction:** DISH stated that it supports policies that encourage competition, especially with regard to the upcoming auction of the 600 MHz spectrum. Consumers benefit from a competitive wireless landscape, and in order to preserve these benefits, the Commission must ensure that the two dominant wireless incumbents are not permitted to lock competitive carriers out of acquiring low-band spectrum. Such a result would disserve the public interest by undermining competition in the wireless industry.

**AWS-3:** DISH explained that it supports the Commission’s goal of freeing up additional spectrum for mobile broadband services through the upcoming AWS-3 auction. DISH recognizes the complexities associated with auctioning the 1755-1780 MHz band, given the incumbent Federal users of the band. DISH also reiterated its support for the Commission’s proposal to give the winner of 1755-1780 MHz band the right to negotiate coordination agreements with affected Federal incumbent users of the band.<sup>2</sup>

**Retransmission Consent Reform:** DISH also urged the Commission to take a fresh look at the retransmission consent system. The marketplace has changed significantly since the retransmission consent regime was created in 1992, but the Commission’s rules do not reflect these changes. As a result, broadcasters are exploiting this outdated system, leading to ever increasing consumer bills and a historic level of blackouts. DISH urged the Commission to modernize the rules governing the retransmission consent system and explained that the Commission has broad statutory authority to implement such reforms to protect consumers and better reflect market conditions.

Specifically, 47 U.S.C. § 325(b)(3)(A) directs the Commission “to govern the exercise by television stations of the right to grant retransmission consent.” In addition, Section

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<sup>1</sup> See DISH Network Corporation, Petition for Waiver of Sections 27.5(j) and 27.53(h)(2)(ii) and Request for Extension of Time (filed Sept. 9, 2013).

<sup>2</sup> See DISH Network Corporation, Comments, GN Docket No. 13-185, p. 7-8 (Oct. 17, 2013).

325(b)(3)(C)(ii) authorizes the Commission to ensure that broadcasters negotiate in good faith; as the Commission has explained, this provision was designed to address instances when a party's demands "include[] terms and conditions not based on competitive marketplace considerations."<sup>3</sup> Section 309(a) also empowers the Commission to ensure that broadcast station licensees act in accordance with "the public interest, convenience, and necessity." Read together with the Commission's ancillary authority under Sections 303(r) and 4(i), these grants of authority, among others, empower the Commission to adopt specific measures necessary to ensure that the retransmission consent regime serves the public interest. To that end, DISH urged the Commission to, at a minimum, prohibit coordinated negotiations among non-commonly owned stations (or determine that such arrangements create attributable interests); adopt arbitration or some other dispute resolution mechanism; and permit interim carriage to avoid blackouts during impasses.

Respectfully submitted,

/s/ Jeffrey H. Blum

Jeffrey H. Blum

cc: Tom Wheeler  
Michael O'Rielly  
Roger Sherman  
Renee Gregory  
Maria Kirby  
Erin McGrath  
James Schlichting  
John Leibovitz

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<sup>3</sup> Amendment of the Commission's Rules Related to Retransmission Consent, *Notice of Proposed Rulemaking*, MB Docket No. 10-71, 26 FCC Rcd. 2718, 2735-36 ¶ 32 (2011).