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**VIA ECFS**

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. 12-70, *Service Rules for Advanced Wireless Services in the 2000-2020 MHz and 2180-2200 MHz Bands*; ET Docket No. 10-142, *Fixed and Mobile Services in the Mobile Satellite Service Bands at 1525-1559 MHz and 1626.5-1660.5 MHz, 1610-1626.5 MHz and 2483.5-2500 MHz, and 2000-2020 MHz and 2180-2200 MHz*; and WT Docket No. 04-356, *Service Rules for Advanced Wireless Services in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz and 2175-2180 MHz Bands*

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules,<sup>1</sup> DISH Network Corporation ("DISH") submits this ex parte response to note an error in the Reply filed by NTCH, Inc. ("NTCH") on November 27, 2013 in the above-captioned proceeding.<sup>2</sup> In its Reply, NTCH cites an *outdated* version of 47 C.F.R. § 1.429(b), the rule governing petitions for reconsiderations in rulemaking proceedings. NTCH uses its inaccurate articulation of Section 1.429(b) as the basis for its erroneous argument that DISH "misleadingly and deliberately"<sup>3</sup> mischaracterized the rule in DISH's November 13, 2013 Opposition to NTCH's Petition for Reconsideration in this proceeding.<sup>4</sup>

According to NTCH, the preamble to Section 1.429(b) states "[a] petition for reconsideration which relies on facts which have not previously been presented to the Commission will [*sic*] granted only under the following circumstances:..."<sup>5</sup> NTCH alleges that

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<sup>1</sup> 47 C.F.R. § 1.1206.

<sup>2</sup> See NTCH, Inc., Reply to Opposition, WT Docket Nos. 12-70, 04-356; ET Docket No. 10-142 (filed Nov. 27, 2013) ("NTCH Reply").

<sup>3</sup> *Id.* at 1.

<sup>4</sup> See DISH Network Corporation, Opposition to NTCH's Petition for Reconsideration, WT Docket Nos. 12-70, 04-356; ET Docket No. 10-142 (filed Nov. 13, 2013).

<sup>5</sup> NTCH Reply at 2 (emphasis in the original).

“[t]he rule only limits the introduction of new *facts*; it imposes no prohibition or limitation on new *arguments*”<sup>6</sup> and asserts that DISH “added words to the preamble of 429(b) that do not exist.”<sup>7</sup>

NTCH is incorrect. The Commission amended the rule governing petitions for reconsideration in 2011 to specify that new arguments, too, are subject to the same limitation as new facts.<sup>8</sup> Accordingly, today 47 C.F.R § 1.429(b) states in full:

“(b) A petition for reconsideration which relies on *facts or arguments* which have not previously been presented to the Commission will be granted only under the following circumstances:

- (1) The *facts or arguments* relied on relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters to the Commission;
- (2) The *facts or arguments* relied on were unknown to petitioner until after his last opportunity to present them to the Commission, and he could not through the exercise of ordinary diligence have learned of the facts or arguments in question prior to such opportunity; or
- (3) The Commission determines that consideration of the *facts or arguments* relied on is required in the public interest.”<sup>9</sup>

Because NTCH failed to cite the correct version of Section 1.429(b), it should acknowledge its mistake and fully retract the statement that DISH “clearly and reprehensibly tried to mislead the Commission as to what the rule proscribes.”<sup>10</sup>

Respectfully submitted,

/s/ Jeffrey H Blum

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> See 47 C.F.R § 1.429(b) (2012); Amendment of Certain of the Commission’s Part 1 Rules of Practice and Procedure and Part 0 Rules of Commission Organization, GC Docket No. 10-44, *Report and Order*, 26 FCC Rcd. 1594, 1634-35 (2011). The Commission took this action after issuing a *Notice of Proposed Rulemaking* that suggested these very word changes. See Amendment of Certain of the Commission’s Part 1 Rules of Practice and Procedure and Part 0 Rules of Commission Organization, GC Docket No. 10-44, *Notice of Proposed Rulemaking*, 25 FCC Rcd. 2430, 2446 (2010).

<sup>9</sup> See 47 C.F.R § 1.429(b) (2012) (emphasis added).

<sup>10</sup> NTCH Reply at 2.