

September 6, 2013

VIA E-MAIL (reconsider@icann.org)

ICANN BOARD GOVERNANCE COMMITTEE

Re: Comment by The DIRECTV Group Inc. Re Dish DBS Corp.'s
August 23, 2013 Request for Reconsideration

Dear Members of the Board Governance Committee:

On August 23, 2013, Dish DBS Corporation filed with ICANN a Request for Reconsideration (“RFR”) concerning the WIPO panel’s unanimous decision denying Dish’s application for the .DIRECT gTLD. LRO2013-0005 (July 29, 2013). DIRECTV did not learn of Dish’s filing until August 27, when Dish’s counsel sent DIRECTV’s counsel an email with a “courtesy copy” of the filing. Attachment 1. DIRECTV respectfully requests ICANN to deny Dish’s RFR.

As an initial matter, it is inappropriate for Dish to attempt to challenge and re-litigate a Legal Rights Objection (“LRO”) decision via a RFR. Article 1(d) of ICANN’s New gTLD Dispute Resolution Procedure states, “[b]y applying for a new gTLD, an applicant accepts the applicability of this Procedure and the applicable DRSP’s Rules that are identified in Article 4(b)...The parties cannot derogate from this Procedure without the express approval of ICANN and from the applicable DRSP Rules without the express approval of the relevant DRSP.”

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Furthermore, in its LRO response Dish expressly agreed to be bound by the New gTLD Dispute Resolution Procedure and WIPO Rules for New gTLD Dispute Resolution. Dish's Response, page 11 (attached hereto as Attachment 2). Those procedures and rules do not provide for an administrative appeal of a LRO decision, nor do they contemplate or permit a losing party to file a RFR seeking to overturn an expert panel's reasoned decision.

To the contrary, Module 3.4.6 of the Applicant Guidebook states that, "[t]he findings of the panel will be considered an expert determination and advice that ICANN will accept within the dispute resolution process." There is no reference to an appeal of WIPO's decision in the Guidebook. Similarly, Article 21(d) of ICANN's New gTLD Dispute Resolution Procedure states "[t]he Expert Determination shall be in writing, shall identify the prevailing party and shall state the reasons upon which it is based. The remedies available to an Applicant or an Objector pursuant to any proceeding before a Panel *shall be limited to the success or dismissal of an Objection* and to the refund by the DRSP to the prevailing party, as determined by the Panel in its Expert Determination." (emphasis added) Again, there is no provision to appeal a decision.

In an attempt to provide a valid basis for its RFR, Dish argues that ICANN failed to provide "clear and well-defined standards" for LRO panelists. This is simply untrue, and is refuted by Dish's own LRO response, where Dish takes the better part of two pages listing the legal grounds and factors that LRO panels should consider in such cases. Dish's LRO response, pp. 3-4 ("In its guidance, ICANN has proposed that the panel consider certain non-exclusive

factors in assessing whether an Objector's claim of trademark rights should be upheld.""). As the parties and ICANN know, the LRO factors were drafted over several years and are based on multiple revisions to the Applicant Guidebook after considering input during numerous public comment periods. There are, therefore, no grounds on which Dish can validly argue that ICANN did not provide sufficient standards for LRO panelists; nor can Dish request ICANN to unilaterally revise the existing LRO rules and procedures.

ICANN also should deny Dish's RFR as being an improper and veiled attempt to re-litigate the underlying dispute. As a general legal principle, it is inappropriate to support a RFR with new evidence and arguments that were not raised or considered in the underlying dispute. In the present case, Dish supports its RFR with, among other things, Web site screen shots, domain name Whois records, and alleged advertisements for Dish services. Dish did not submit these documents or arguments during the LRO, and it is clear that Dish's true motive for filing the RFR is to have another bite at the apple by making new arguments on what essentially is an improper appeal of the LRO panel's decision.

Notably, ICANN's Board Governance Committee ("BGC") recognized just last month that a RFR is not a proper venue to re-litigate an expert panel determination in the new gTLD Program. There, Booking.com B.V. filed a RFR regarding ICANN's implementation of the expert panel decision placing .hotels and .hoteis into a string similarity contention set. The BGC recommended denying the RFR, stating that "[i]n the context of the New gTLD Program, the

Reconsideration process is not however intended for the Board to perform a substantive review of Panel decisions...Reconsideration is not available as a mechanism to re-try the decisions of the evaluation panels.” See Recommendation of the BGC on Reconsideration Request 13-5 (Aug. 1, 2013, publ. Aug. 21, 2013). This is just what Dish is trying to do in the present matter by submitting new evidence to try to re-try WIPO’s decision. However, the RFR is “not [to be] used as a mechanism simply to challenge an action with which someone disagrees...it is limited to situations where the staff acted in contravention of established policies.” Here the Applicant Guidebook clearly states that “[t]he findings of the panel will be considered an expert determination and advice that ICANN will accept within the dispute resolution process.” Applicant Guidebook Module 3.4.6. ICANN’s staff therefore acted in accordance with established policies by accepting WIPO’s well-reasoned decision. Thus, Dish’s RFR should be denied.

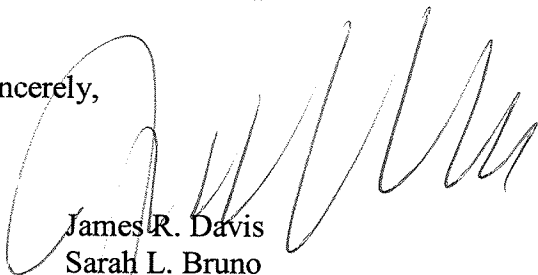
Dish also falsely alleges that the panelists were influenced by media accounts. Dish’s RFR, p. 4. The television advertisements referenced by the panel were related to the evidence (including Dish’s online advertising) and arguments submitted by DIRECTV in its LRO complaint, and merely demonstrate that DIRECTV and Dish are competitors. See DIRECTV’s LRO complaint, Para. 12(1) (“Dish and DIRECTV are direct competitors. Dish acknowledges this in promotional and marketing materials, including at its Web site where it dedicates numerous pages and charts to comparisons between Dish and DIRECTV. Annex J”) (attached hereto as Attachment 3). Dish does not – and cannot - dispute that the two companies are

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competitors, and that was never an area of contention in the LRO. It therefore is misleading and specious for Dish to allege the panel was “improperly influenced by media accounts” or that the advertisements cited by the panel were somehow improperly considered or even relevant to an issue in dispute between the parties.

For the foregoing reasons DIRECTV requests ICANN to deny Dish’s RFR and accept the panel’s well-reasoned and unanimous decision denying Dish’s application for the .DIRECT gTLD. Should the BGC require any additional information or submissions from DIRECTV regarding this matter, please contact the attorneys listed below.

Sincerely,



James R. Davis
Sarah L. Bruno
Amy E. Salomon
Arent Fox LLP
1717 K Street, NW
Washington, DC 20036-5342
(202) 857-6000
Attorneys for DIRECTV

cc: The DIRECTV Group Inc.

Enclosures

ATTACHMENT 1

Davis, Jim

From: Adams, Christopher [CAdams@PattonBoggs.com]
Sent: Tuesday, August 27, 2013 11:00 AM
To: Davis, Jim
Cc: Lodge, Deborah; Oparil, Richard
Subject: .direct TLD application - Request for Reconsideration
Attachments: .direct (Application ID - 1-2007- 43424) Request for Reconsideration.pdf; Attachment 1.pdf; Attachment 2.pdf; Attachment 3.pdf; Attachment 4.pdf; Attachment 5.pdf; Attachment 6.pdf; Attachment 7.pdf; Attachment 8.pdf; Attachment 9.pdf; Attachment 10.pdf; Attachment 11.pdf

Dear Jim,

Annexed for your information is a courtesy copy of a Request for Reconsideration for the .direct TLD filed with ICANN on August 23, 2013.

Sincerely,

Chris

Christopher W. Adams | Associate
Patton Boggs LLP
2550 M Street, NW | Washington, DC 20037
O: 202.457.6326 | F: 202.457.6315

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ATTACHMENT 2

Before the:

**WORLD INTELLECTUAL PROPERTY ORGANIZATION
ARBITRATION AND MEDIATION CENTER**

The DIRECTV Group, Inc.
(Objector)

-v-

DISH DBS CORPORATION

(Applicant/Respondent)

TLD string objected to: <.DIRECT>
Application ID: 1-2007-43424

RESPONSE TO LEGAL RIGHTS OBJECTION
(Applicant Guidebook, Module 3; Procedure, art. 6, 11;
WIPO Rules for New gTLD Dispute Resolution, para. 4)

I. Introduction

Applicant DISH DBS Corporation (“DISH”) hereby submits this Response to a Legal Rights Objection filed by The DirecTV Group. The objection was submitted to the World Intellectual Property Organization Arbitration and Mediation Center (“WIPO Center”) for determination in accordance with the New gTLD Dispute Resolution Procedure (“Procedure”), provided as an Attachment to Module 3 of the gTLD Applicant Guidebook (“Applicant Guidebook”) approved by the Internet Corporation for Assigned Names and Numbers (“ICANN”) on June 20, 2011 and as updated on June 4, 2012, and the World Intellectual Property Organization Rules for New gTLD Dispute Resolution for Existing Legal Rights Objections (“WIPO Rules for New gTLD Dispute Resolution”) in effect on the day when the relevant Application for a new gTLD was submitted.

As set forth in greater detail below, DISH’s application is valid and should be confirmed because: (1) it does not take any advantage, unfair or otherwise, of Objector’s marks as the term “direct” is generic; (2) does not impair Objector’s marks as Objector’s marks do not singularly or solely contain “direct” – some suffix has been repeatedly required by the US Trademark Office and other governmental bodies; and (3) DISH’s

application does not create a likelihood of confusion – as established by survey evidence establishing no association of “direct” with Objector’s marks.

II. Applicant/Respondent Contact Details

The Applicant/Respondent in this proceeding is Dish DBS Corporation, a Colorado corporation with a principle place of business at 9601 S. Meridian Boulevard, Englewood Colorado 80112.

The Applicant’s/Respondent’s contact details are:

Address: *9601 S. Meridian Boulevard, Englewood Colorado 80112*
Phone: *303.723.1000*
E-mail: *cscngtlds26@cscinfo.com*
Fax: *303.723.1699*

The Applicant/Respondent’s authorized representative in this proceeding is:

Name: *Deborah M. Lodge*
Address: *Patton Boggs LLP*
2550 M Street, N.W.
Washington, D.C. 20037
Phone: *202.457.6030*
E-mail: *dlodge@pattonboggs.com*
Fax: *202.457.6315*

The Applicant/Respondent’s preferred contact details for purposes of this proceeding are:

For electronic-only material

Method: *e-mail*
Address: *dlodge@pattonboggs.com*
Contact: *Deborah M. Lodge*

For any hardcopy material

Method: *post/courier*
Address: *Patton Boggs LLP*
2550 M Street, N.W.
Washington, D.C. 20037 U.S.A.
Fax: *202.457.6315*
Contact: *Deborah M. Lodge*

III. TLD string objected to (applied-for TLD string)

(Procedure, art. 7, 11)

This Response concerns the applied-for TLD string: <DIRECT>

IV. Jurisdictional Basis for the Response

(Procedure, art. 1(d), 4(b)(ii))

By applying for a new gTLD, and by filing the present Response to a Legal Rights Objection, the Applicant/Respondent DISH has accepted the applicability of the Procedure and the WIPO Rules for New gTLD Dispute Resolution.

Having filed its Objection, the Objector has accepted the applicability of this Procedure and the WIPO Rules for New gTLD Dispute Resolution.

The parties cannot derogate from the Procedure without the express approval of ICANN and from the WIPO Rules for New gTLD Dispute Resolution without the express approval of the WIPO Center.

V. Factual and Legal Grounds

(Applicant Guidebook Module 3, art. 3.5.2; Procedure, art. 11)

As set forth in Applicant Guidebook, art. 3.5.2, to sustain an Objection based upon purported existing legal rights, Objector must establish that the potential use of the applied-for gTLD by Applicant/Respondent DISH would:

(i) **take unfair advantage** of the distinctive character or the reputation of the Objector's registered or unregistered trademark or service mark ("mark") or IGO name or acronym (as identified in the treaty establishing the organization), and/or

(ii) **unjustifiably impair** the distinctive character or the reputation of the Objector's mark or IGO name or acronym], and/or

(iii) otherwise **create an impermissible likelihood of confusion** between the Applicant's/Respondent's applied-for gTLD and the Objector's mark or IGO name or acronym.

As demonstrated below, the applied-for TLD is NOT based on any existing, recognized trademarks or legal rights of any entity.

More specifically, no unfair advantage, impairment (unjustifiable or otherwise), or likelihood of confusion will arise because DISH does not base its applied-for TLD on any trademark or other legal rights of any entity. The term "DIRECT" is a generic English language term which simply and commonly means "extending or moving from one place to another without changing direction or stopping" (See Oxford Online

Dictionaries.com). "DIRECT" generically describes services provided by any of a number of companies, ranging from delivery mail services, such as those provided by United Parcel Services, to direct to home television services, such as those provided by DISH to its respective customers. While Objector indisputably also provides direct television services to its respective customers, it does so under the DIRECTV brand and not the "direct" brand. Hence, the intellectual leap Objector requests this panel to make is unfounded. As the evidence below shows, the applied-for TLD <.direct> does not reference or refer to Objector's services any more so than it references or refers to any generic provider of direct services. The Objector owns no exclusive or legal rights in the word "direct" as a trademark or otherwise, and no unfair advantage, impairment or confusion or harm will arise from DISH's operation of the <.direct> TLD.

The evidence submitted by DISH irrefutably establishes that the present objection is improper, baseless and should be denied. The points made herein are supported by the Declaration of DISH Vice-President Vivek Khemka (Attachment 1), the Declaration of Dr. Thomas Maronick (Attachment 2), and the Declaration of Karen Agee (Attachment 3). As noted below, Dr. Maronick, a consumer perception expert, conducted an Internet survey, which established that consumers are NOT likely to think that <.direct> is associated with Objector. A copy of Dr. Maronick's survey report is annexed to Dr. Maronick's Declaration.

In its guidance, ICANN has proposed that the panel consider certain non-exclusive factors in assessing whether an Objector's claim of trademark rights should be upheld. None of these factors supports Objector's position. The factors are:

1. Whether the applied-for gTLD is identical or similar, including in appearance, phonetic sound, or meaning, to the objector's existing mark.
2. Whether the objector's acquisition and use of rights in the mark has been bona fide.
3. Whether and to what extent there is recognition in the relevant sector of the public of the sign corresponding to the gTLD, as the mark of the objector, of the applicant or of a third party.
4. Applicant's intent in applying for the gTLD, including whether the applicant, at the time of application for the gTLD, had knowledge of the objector's mark, or could not have reasonably been unaware of that mark, and including whether the applicant has engaged in a pattern of conduct whereby it applied for or operates TLDs or registrations in TLDs which are identical or confusingly similar to the marks of others.
5. Whether and to what extent the applicant has used, or has made demonstrable preparations to use, the sign corresponding to the gTLD in connection with a bona fide offering of goods or services or a bona fide provision of information in a way that does not interfere with the legitimate exercise by the objector of its mark rights.
6. Whether the applicant has marks or other intellectual property rights in the sign corresponding to the gTLD, and, if so, whether any acquisition of such a right in

the sign, and use of the sign, has been bona fide, and whether the purported or likely use of the gTLD by the applicant is consistent with such acquisition or use.

7. Whether and to what extent the applicant has been commonly known by the sign corresponding to the gTLD, and if so, whether any purported or likely use of the gTLD by the applicant is consistent therewith and bona fide.

8. Whether the applicant's intended use of the gTLD would create a likelihood of confusion with the objector's mark as to the source, sponsorship, affiliation, or endorsement of the gTLD.

Consideration of these factors shows why Objector's complaint is meritless. Addressing each of these factors in turn:

1. Whether the applied-for gTLD is identical or similar, including in appearance, phonetic sound, or meaning, to the objector's existing mark.

The applied-for gTLD <.direct> is not identical or substantially similar to any of Objector's marks. While Objector submitted a roster of many trademark registrations in the U.S. and internationally using the term "DIRECTV" "direct+{suffix}", none of these registrations is for "direct" by itself. That is, Objector has not established that it owns any trademark rights, anywhere in the world, in "DIRECT" in and by itself. Instead, each of Objector's trademark registrations is for "direct" in combination with another term, such as "tv", "hindi", "mandarin", "pinoy", "world", "view", etc., as is shown by the registrations set forth in Objector's Attachments B and C. In view of the inherent generic and descriptive nature of the word "direct," it is highly unlikely that Objector – or anyone else – could own exclusive trademark rights in "direct" – especially when used for television or other services offered directly to consumers.

Further, while "DIRECT" and "DIRECTV" have some similarities in appearance, a critical aspect of DIRECTV is "TV," and as the survey evidence discussed below confirms, that the term "direct" is not uniquely associated with Objector. Similarly, while "DIRECT" and "DIRECTV" have some phonetic similarities, they are significantly different, as the latter requires addition of third and fourth syllables for the "TV" portion (DIR-ECT-TEE-VEE). That "TV" portion is critical to Objector's marks and provides meaning, context and association of goods/services with a unique provider thereof. Without the "TV" segment, the "DIRECT" portion provides no such association—with Objector or anyone else. By itself, "DIRECT" is simply a generic term. It is possible that, as stated in paragraph 12.e of Objector's complaint, that its "DIRECTV" brand was valued at \$8.2 Billion. That is for the full mark, with the critical "TV" component. It is telling that Objector does not claim that any value was established for "DIRECT" alone. Objector's failure to establish any use of "DIRECT" by itself in its advertising and as a free-standing brand compels the conclusion that Objector too has used "DIRECT" only generically and not as a brand.¹ That is not surprising, as Objector cannot claim any exclusive rights to that generic term.

¹ See Objector's Exhibits E and F, wherein the word "direct" appears only in conjunction with descriptive uses, such as on page 6 of Exhibit F where "DIRECTV International World Direct Satellite DISH DTV36EDS" is identified. Such usage of "direct" is simply insufficient to establish trademark rights

2. Whether the objector's acquisition and use of rights in the mark has been bona fide.

DISH does not contest that Objector has bona fide rights in its registered and other trademarks. However, those rights are limited to its specific marks, to DIRECTV and its logos/iterations. Objector has NOT shown, and cannot show, any exclusive rights in the word "direct." That is not Objector's mark.

Indeed, Objector has only narrow rights in its marks. This is due to the descriptive and generic nature of the word "direct" which is a key component of Objector's marks. Objector does not have trademark rights in the word "direct." "Direct" is used in many ways, in advertising, promotions, trademarks, and in daily life. The word "direct" has many meanings and applications, including but not limited to direct marketing, direct-to-consumer, direct signals, direct service, and other commonly-used phrases.

"Direct" is a common, generic word that is not within the legal rights of Objector. It is well-known that generic terms are not entitled to trademark protection. See, e.g., *Nartron Corp. v. STMicroelectronics, Inc.*, 305 F.3d 397, 404 (6th Cir. 2002) ("A generic term can never function as a trademark."); Restatement (Third) of Unfair Competition § 15(1) ("A user cannot acquire rights in a generic designation as a trademark, trade name, collective mark, or certification mark."). 1-2 Anne Gilson, *Gilson on Trademarks* § 2.02.

The weakness of a trademark using the term "direct" is evidenced by the Declaration of Karen Agee (Attachment 3). Ms. Agee's search of the U.S. Patent and Trademark (PTO) records showed over 3000 live trademark registrations and applications that include the term "DIRECT." According to the PTO's records, 68 of these marks appear to be owned by The DIRECTV Group, Inc. or an affiliate using "DirecTV" in its name. Agee Decl., para. 4. That means that over 2,800 live trademark applications and registrations in the U.S. using the term "direct" apparently are owned by entities other than Objector. Similarly, Ms. Agee's search found 147 live trademark applications and registrations in Trademark Class 38, which covers telecommunications and related services, using the term "direct." Of those 147 entries, 27 appear to be owned by The DIRECTV Group, Inc. or an affiliate using "DirecTV" in its name, according to the PTO records. Agee Decl., para. 5. These findings show that Objector does not have, and cannot claim, exclusive rights in the term "direct," as part of a trademark, domain name, or otherwise.

in "direct," just as it would be insufficient to establish trademark rights in the terms "international", "world", "satellite" or even "dish" (when "dish" is used to specifically refer to parabolic shaped antennas as per the Amazon posted advertisement submitted by Objector).

3. Whether and to what extent there is recognition in the relevant sector of the public of the sign corresponding to the gTLD, as the mark of the objector, of the applicant or of a third party.

Objector failed to show that the public recognizes “DIRECT” as its mark. Indeed, the facts show that “Direct” is not associated with Objector. Dr. Maronick’s survey shows that less than 6% of persons responding to his survey made any connection between .direct and Objector. Maronick Decl., para. 7 (Attachment 2 hereto). As Dr. Maronick states: “In this survey, respondents were asked “If you were to see a domain name ending with ‘.direct’ would you associate it with any particular company or organization?” Those who said yes were asked “what company or organization?” Less than 6% of respondents (11 persons out of 216 responding) mentioned DirecTV as that company. Most respondents (159 out of 216) did not name any company at all.” *Id.* That result is far less than the 15-20% minimum that would be needed to show any association or confusion. See Thomas McCarthy, 6 McCarthy on Trademarks and Unfair Competition § 32:188 (4th ed.).

That result is not surprising. Thousands of trademark registrations use the word “direct.” Most of those use other words or symbols with “direct” – again because no one entity can have exclusive rights to such a generic word. Thus, a search of live trademark applications and registrations at the U.S. Patent and Trademark Office alone revealed over 3,000 results incorporating “direct” in a mark. See Declaration of Paralegal Karen Agee, annexing results of trademark searches (Attachment 3 hereto).

4. Applicant’s intent in applying for the gTLD, including whether the applicant, at the time of application for the gTLD, had knowledge of the objector’s mark, or could not have reasonably been unaware of that mark, and including whether the applicant has engaged in a pattern of conduct whereby it applied for or operates TLDs or registrations in TLDs which are identical or confusingly similar to the marks of others.

Objector also failed to prove any bad faith on Applicant DISH’s part. To the contrary, as explained in the Declaration of Applicant’s Vice President Vivek Khemka (Attachment 1 hereto), DISH’s gTLD application was filed in good faith, as part of DISH’s business plan to increase its connectivity and offerings to consumers. The link to “direct” offerings and connectivity is understandable. As Mr. Khemka notes in his Declaration, DISH intends to continue to provide programming and content “direct” to consumers, using the <.direct> gTLD as a closed, secure network for its eco-system. While DISH no doubt was aware of Objector, it acted in good faith in applying for the <.direct> gTLD. Objector’s allegations of bad faith are without merit or credibility.

Moreover, Objector has not shown, and cannot show, that DISH applied for or operates TLDs or registrations in TLDs which are identical or confusingly similar to the marks of others.² DISH has strong trademarks and intends to brand its .direct websites

² DISH notes that Objector could have, but did not, apply for a gTLD consisting of its brand.

with its trademarks. Objector has failed to show any bad faith or intent. DISH has acted in good faith and candidly.

5. Whether and to what extent the applicant has used, or has made demonstrable preparations to use, the sign corresponding to the gTLD in connection with a bona fide offering of goods or services or a bona fide provision of information in a way that does not interfere with the legitimate exercise by the objector of its mark rights.

As Mr. Khemka notes, the concept of providing “direct” services to its customers has been key to DISH’s business and success. “DISH provides programming and content “direct” to consumers. It will provide telecommunications services “direct” to consumers. DISH offers consumers direct choice, direct value, and direct service. “Direct” service has been a key element of DISH’s offerings since its founding. That is why DISH selected <.direct> as a gTLD.” Khemka Decl., para. 7 (Attachment 1 hereto). DISH did not select <.direct> with the intent that it refer to Objector or its services. Khemka Decl., para. 11.

6. Whether the applicant has marks or other intellectual property rights in the sign corresponding to the gTLD, and, if so, whether any acquisition of such a right in the sign, and use of the sign, has been bona fide, and whether the purported or likely use of the gTLD by the applicant is consistent with such acquisition or use.

DISH applied for .direct as a “true” generic gTLD. It is not intended to be a brand. It is too common a word to be a brand. However, as noted above, it has direct application to the kind of services DISH offers—direct to the consumer.

As noted, DISH intends to use the closed domain to reinforce its brands and in promoting consumer confidence. As a closed domain, DISH will set the criteria for registration, which will be limited to persons and entities which meet the DISH-established criteria. As Mr. Khemka states: “Operating .direct as a closed domain will help us to deliver and arrange for DISH services in a secure fashion and help us to fight counterfeit and unauthorized sellers. DISH currently has over 3000 retailers, which are authorized to sell and set up the DISH services for consumers. We envision that our retailers will be able to register for second level domain names; the retailer will then use those domain names and associated websites for communications with their customers and to promote their services as authorized DISH retailers.” Khemka Decl., para. 8 (Attachment 1 hereto).

By controlling the use of the gTLD, DISH will increase consumer confidence in the DISH Network as well as its ability to oversee the retailers servicing its network. That will assist DISH in guarding against the use or sales of counterfeit or unauthorized signals or products. DISH’s use of this gTLD thus will be in the public interest as well as consistent with DISH’s business plan.

7. Whether and to what extent the applicant has been commonly known by the sign corresponding to the gTLD, and if so, whether any purported or likely use of the gTLD by the applicant is consistent therewith and bona fide.

DISH has been a provider of direct-to-home satellite based television services since 1996. Khemka Decl., para. 3. As the second largest provider in the United States of such “direct” services, DISH’s application for <.direct> must be viewed as bona fide. The generic term “direct” is readily applicable to DISH as well as to other entities that provide direct-to-consumer or direct-to-home services. DISH does not intend to claim exclusive trademark rights in the term “direct.” Indeed, it could not have exclusive rights in such a generic term (as demonstrated by the thousands of registered U.S. trademarks using that word). Nevertheless, as also noted above, DISH intends to use the <.direct> TLD as a closed domain to facilitate and further its business and service the public.

8. Whether the applicant’s intended use of the gTLD would create a likelihood of confusion with the objector’s mark as to the source, sponsorship, affiliation, or endorsement of the gTLD.

Objector has failed to show that DISH’s use of “direct” as a gTLD would create a likelihood of confusion with Objector’s marks. As the ICANN standards state, for a likelihood of confusion to exist, “it must be probable, not merely possible that confusion will arise in the mind of the average, reasonable Internet user. Mere association, in the sense that the applied-for TLD brings another trademark to mind, is insufficient to find a likelihood of confusion.” Dispute Resolution Procedures, ICANN gTLD Applicant Guidebook at Module 3.5.1.

The applied for gTLD <.direct> simply is not confusingly similar to Objector’s marks. As noted above, “direct” is not identical to any of Objector’s marks; Objector’s marks create very different overall impressions, with the “TV” portion often most prominent. Objector’s marks are best understood as compound words composed of 2 parts, “direct” and “tv”. The addition of “tv” makes Objector’s marks into a two word phrase. Additionally, “tv” is a well-understood word in the English language referring to a television. In contrast, the applied-for TLD <.direct> has no connotation or commercial impression associated with television. As “direct” by itself without a “v” added is a generic English word, the appearance, sound, connotation and commercial impression of the applied for TLD is not confusingly similar to Objector’s marks.

Dr. Maronick’s survey confirmed that there is no likelihood of confusion between the applied for gTLD .direct and “DirecTV” or Objector. In this survey, respondents were asked “If you were to see a domain name ending with “.direct” would you associate it with any particular company or organization?” Those who said yes, were asked “what company or organization?” Less than 6% of respondents (11 persons out of 216 responding) mentioned DirecTV as that company. Most respondents (159 out of 216) did not name any company at all. See Survey Report, annexed to Maronick Declaration (Attachment 32 hereto). That demonstrates that there is no association or likely confusion here.

When asked whether the hypothetical second-level domain name “television.direct” was associated with any company, 46 respondents (out of 213 answering that question) said yes, it was associated with a company. When those 46 were then asked to identify the company, 9 persons then said DirecTV and 6 persons said DISH. When any such company was identified, only 3 people out of 216 identified any association of “television.direct” with DIRECTV versus DISH. *Id.* That is, only 4% of the sample population associated <television.direct> with the Objector. See Maronick Decl. and annexed Survey Report (Attachment 2 hereto). While Objector clearly has some association with “direct television” it is *de minimus*, at best, and at worst, statistically no greater than DISH’s own association with <television.direct>. As Dr. Maronick notes, at least 15%-20% association generally is required before a finding of likely confusion would be made³ Accordingly, no likelihood of confusion exists or will likely arise between the applied-for .direct gTLD and Objector’s trademarks.

Objector has failed to show that the applied for gTLD in <direct> **takes unfair advantage** of and/or **unjustifiably impairs** or creates any likelihood or probability of confusion by and between Objectors limited trademark rights. As the totality of the evidence establishes no such harm will arise, Applicant’s application for the <direct> gTLD should be confirmed and Objector’s attempt to monopolize the common, generic word “direct” rejected.

CONCLUSION

For the above reasons, Objector’s Legal Rights Objection to the DISH application for the .direct gTLD should be dismissed.

A schedule and description listing all supporting evidence/documentation for Attachments 1 through 4 is attached.

VI. Panel (of Experts)

(Procedure, art. 13; WIPO Rules for New gTLD Dispute Resolution, para. 8)

The Applicant/Respondent elects to have the dispute decided by a three-member Panel.

³ That is consistent with the holdings of various courts in the United States assessing confusion in trademark cases. “Figures below 20% become problematic because they can only be viewed against the background of other evidence weighing for and against a conclusion of likely confusion.” J. Thomas McCarthy, 6 McCarthy on Trademarks and Unfair Competition § 32:188. See also *RJR Foods, Inc. v. White Rock Corp.*, 603 F.2d 1058, 1061 (2d Cir. 1979) (upholding district court’s finding of likelihood of confusion based on consumer study showing 15-20% rate of confusion in conjunction with other evidence).

VII. Other Legal Proceedings

Applicant DISH is not aware of any other legal proceedings that have been commenced or terminated in connection with the applied-for TLD.

VIII. Communications (Procedure, art. 6(b), 11(c))

A copy of this Response has been sent electronically to WIPO on 16 May 2013, by email to lro@wipo.int.

IX. Payment

(Procedure, art. 11(f); WIPO Rules for New gTLD Dispute Resolution, para. 10; Annex D to WIPO Rules for New gTLD Dispute Resolution)

As required by the Procedure and WIPO Rules for New gTLD Dispute Resolution, payment in the amount of USD 10,000 was made by wire transfer on 15 May 2013. Evidence of such payment is provided as Annex 4.

By submitting this Response, the Applicant/Respondent acknowledges and agrees that further payments may be required, e.g., in the event the parties elect Determination by a three-member Panel, or as may otherwise be provided in the Procedure and WIPO Rules for New gTLD Dispute Resolution.

X. Certification

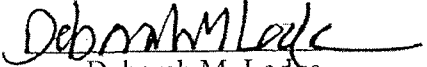
The Applicant/Respondent understands and agrees that its claims and remedies concerning this proceeding in relation to the applied-for TLD, the instant Response to a Legal Rights Objection and the Determination thereof shall be solely against the Objector, and neither the Expert(s)/Panel(ists), nor WIPO and its staff, nor ICANN and its Board members, employees and consultants shall be liable to any person for any act or omission in connection with any proceeding conducted under this Procedure.

By submitting this Response to a Legal Rights Objection to the WIPO Center the Applicant/Respondent hereby agrees to abide and be bound by the provisions of the applicable New gTLD Dispute Resolution Procedure and WIPO Rules for New gTLD Dispute Resolution.

The Applicant/Respondent certifies that the information contained in this Response is to the best of the Applicant's/Respondent's knowledge complete and accurate, that this Response is not being presented for any improper purpose, such as to harass, and that the assertions in this Response are warranted under the Procedure and

under applicable law, as it now exists or as it may be extended by a good-faith and reasonable argument.

Respectfully submitted,


Deborah M. Lodge
Patton Boggs LLP

Outside counsel for Applicant

May 16, 2013

ATTACHMENT 3

Before the:

**WORLD INTELLECTUAL PROPERTY ORGANIZATION
ARBITRATION AND MEDIATION CENTER**

THE DIRECTV GROUP INC.

(Objector)

-v-

Dish DBS Corporation

(Applicant/Respondent)

TLD string objected to: <.DIRECT>

LEGAL RIGHTS OBJECTION

I. Introduction

1. This Legal Rights Objection is hereby submitted to the World Intellectual Property Organization Arbitration and Mediation Center (“WIPO Center”) for determination in accordance with the New gTLD Dispute Resolution Procedure (“Procedure”), provided as an Attachment to Module 3 of the gTLD Applicant Guidebook (“Applicant Guidebook”) approved by the Internet Corporation for Assigned Names and Numbers (“ICANN”) on June 20, 2011 and as updated on January 11, 2012, and the World Intellectual Property Organization Rules for New gTLD Dispute Resolution for Existing Legal Rights Objections (“WIPO Rules for New gTLD Dispute Resolution”) in effect on the day when the relevant Application for a new gTLD was submitted.

II. The Parties

A. The Objector

2. The Objector in this proceeding is The DIRECTV Group, Inc., a Delaware corporation with a place of business at 2230 East Imperial Highway, El Segundo, California 90245.
3. The Objector’s contact details are:

Address: 2230 East Imperial Highway
El Segundo, California 90245
Phone: 202.857.6169
E-mail: davis.jim@arentfox.com
Fax: 202.857.6395

4. The Objector's authorized representative in this proceeding is:

Name: James R. Davis, II c/o Arent Fox LLP
Address: 1717 K Street, NW
Washington, DC 20036
Phone: 202.857.6169
E-mail: davis.jim@arentfox.com
Fax: 202.857.6395

5. The Objector's preferred contact details for purposes of this proceeding are:

For electronic-only material

Method: e-mail
Address: davis.jim@arentfox.com
Contact: James R. Davis, II

For any hardcopy material

Method: post/courier
Name: James R. Davis, II c/o Arent Fox LLP
Address: 1717 K Street, NW
Washington, DC 20036

B. The Applicant/Respondent

6. The Applicant/Respondent in this proceeding is Dish DBS Corporation, a Colorado corporation with a principal place of business at 9601 S. Meridian Boulevard, Englewood Colorado 80112. Copies of the printout of the relevant ICANN posting are provided as **Annex A**.
7. All information known to the Objector regarding how to contact the Applicant/Respondent is as follows:

Address: Dish DBS Corporation
Gretchen Olive and Chad Hilyard
9601 S. Meridian Boulevard
Englewood, Colorado 80112

Phone: 303.723.1000 and 302.636.5401 and 303.723.1725
Fax: 303.723.1699 and 302.636.5454 and 720.514.8846
Email: cscngtlds26@cscinfo.com and chad.hilyard@dish.com

III. TLD string objected to (applied-for TLD string):

8. This Objection concerns the applied-for TLD string identified below:

<.DIRECT>

IV. Jurisdictional Basis for the Objection

9. By applying for a new gTLD, the Applicant/Respondent has accepted the applicability of the Procedure and the WIPO Rules for New gTLD Dispute Resolution.

By filing the present Objection to a new gTLD, the Objector accepts the applicability of this Procedure and the WIPO Rules for New gTLD Dispute Resolution.

The parties cannot derogate from the Procedure without the express approval of ICANN and from the WIPO Rules for New gTLD Dispute Resolution without the express approval of the WIPO Center.

V. Factual and Legal Grounds

10. The Objector's basis for standing under the Procedure is:

Objector The DIRECTV Group Inc. and its subsidiaries (collectively "DIRECTV") own exclusive worldwide rights to the name and mark DIRECTV and a family of DIRECT marks. DIRECTV owns numerous trademark registrations in the United States and globally for its DIRECTV and DIRECT marks. Attached as **Annexes B and C** is information regarding DIRECTV's global portfolio of DIRECTV and DIRECT trademark registrations. DIRECTV uses its name and marks in various ways to advertise and promote a wide range of goods and services, including digital television entertainment services and providing television and audio services to subscribers through satellite transmissions. DIRECTV and Applicant/Respondent are direct competitors and promote and provide their services to the same actual and prospective customers using many of the same marketing and trade channels.

11. This Objection is based on the following grounds:

"Existing Legal Rights Objection", which refers to the objection that the string comprising the potential new gTLD infringes the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law.

12. This Objection is valid and should be upheld for the following reasons:

The potential use of the applied-for gTLD by the Applicant/Respondent

(i) takes unfair advantage of the distinctive character and the reputation of the Objector DIRECTV's name and registered and unregistered DIRECTV and DIRECT trademarks and service marks ("Marks"),

(ii) unjustifiably impairs the distinctive character and the reputation of DIRECTV's name and Marks, and

(iii) otherwise creates an impermissible likelihood of confusion between the applied-for gTLD and DIRECTV's name and Marks.

a. DIRECTV is the owner of the distinctive and famous name and mark DIRECTV, as well as a family of DIRECTV and DIRECT marks. DIRECTV aggressively protects its valuable marks through registration with the United States Patent & Trademark Office and trademark offices around the world. By issuing registrations those trademark offices have repeatedly recognized the validity of the DIRECTV and DIRECT marks, and DIRECTV's exclusive ownership of and right to use those marks in connection with a wide range of goods and services, particularly with regard to providing telecommunications and television services to consumers.

Among others, DIRECTV owns the following DIRECTV trademark registrations:

Trademark	Country	Reg. No.	Goods & Services
DIRECTV and Design	U.S.	2,939,061	Telecommunications equipment
DIRECTV and Design	U.S.	2,618,102	Telecommunications services
DIRECTV	U.S.	2,698,197	Various telecommunications and TV programming services, and other goods and services
DIRECTV	U.S.	2,503,432	Various telecommunications services and other goods
DIRECTV PLUS	U.S.	2,418,301	Telecommunications equipment
DIRECTV AIRBORNE	U.S.	2,802,621	Satellite transmission and programming services
DIRECTV CINEMA	Argentina	2,411,727	Class 38 services
DIRECTV CINEMA	Argentina	2,411,728	Class 41 services
DIRECTV NEXUS	Chile	954942	Telecommunications products and services
DIRECTV	Columbia	216133	Telecommunications services
DIRECTV	Venezuela	217970	Telecommunications products
DIRECTV	Venezuela	011907	Television programming and production services
ACCESS DIRECTV	European Union	010084713	Various goods and services in Classes 16, 35, 38 and 42

See **Annex B** for copies of selected DIRECTV trademark registration certificates.

Among others, DIRECTV owns the following DIRECT-based trademark registrations:

Trademark	Country	Reg. No.	Goods and Services
WORLDDIRECT	U.S.	3,040,990	TV programming services
WORLDDIRECT	U.S.	3,301,673	Satellite TV and broadcasting services
DIRECTVIEW	U.S.	4,234,282	Research and analysis re consumer viewing habits
DIRECTVIEW and Design	U.S.	4,234,313	Research and analysis re consumer viewing habits
PINOYDIRECT	U.S.	3,822,587	TV programming services
HINDIDIRECT	U.S.	3,272,839	Satellite TV broadcasting and

			TV programming
MANDARINDIRECT	U.S.	3,283,553	Satellite TV broadcasting and TV programming
DIRECTVIEW	European Union	008447542	Various goods and services in Classes 9, 16, 35 and 42

See **Annex C** for copies of selected DIRECT-based trademark registration certificates.

DIRECTV also makes common law use of DIRECT trademarks. For example, the company's monthly programming publication is branded "Satellite DIRECT Magazine" and it uses the mark DIRECTOTAL for one of its Caribbean programming options. **Annex F. *Id.***¹

b. At least as early as 1994, Objector began using its DIRECTV name and mark in connection with the delivery of high quality digital television services and the distribution and installation of satellite television dish receivers, tuning boxes and other products and services related to such services. Since that time, Complainant has continually used its Marks in commerce and created a globally famous family of DIRECTV and DIRECT marks.

c. DIRECTV is America's leading satellite television service. Its more than 16,000 employees offer more than 285 digital channels to over 20 million subscribers in the United States, with approximately 15 million additional subscribers in Latin America, the Caribbean and globally. The company provides access to quality programming delivered to homes, airports, hotels, restaurants, hospitals, office buildings, airplanes, automobiles and portable electronics. It offers content of such famous networks as CNN, CNBC, Fox, HBO, ABC, CBS, NBC, ESPN, Discovery, Animal Planet and others, and its innovations in creating its own broadcast content have led to several Emmy Awards. DIRECTV has won seven Emmy Awards for technical achievement in engineering and one Primetime Emmy award for interactive television.

d. DIRECTV extensively promotes its name and family of DIRECTV and DIRECT marks through a wide range of media, including print, radio, television and Internet advertising. As a result of such extensive advertising and promotion, DIRECTV's DIRECTV and DIRECT marks have become globally famous and consumers associate the marks solely with DIRECTV.

e. The DIRECTV trademark was listed in the 2012 edition of the BrandFinance Global 500 ranking of the world's most valuable brands, with a value of approximately \$8.2 Billion. **Annex D.** The DIRECTV brand has appeared on the BrandFinance Global 500 ranking every year since 2008. In 2012 DIRECTV received significant press coverage when the company's "Cable Effects" advertising campaign received the prestigious Cannes Lion award and, during a speech in Cannes at the time, former President Bill Clinton identified the DIRECTV advertisements as his favorite commercial campaign. **Id.**

¹ DIRECTV has provided representative examples of registration certificates and specimens showing uses of DIRECTV and DIRECT trademarks; however, given the substantial scope of relevant registrations and uses of the trademarks DIRECTV has not provided an exhaustive list. DIRECTV can provide additional evidence if requested by the panel.

- f. DIRECTV generates significant sales revenue as a result of the advertising and marketing it conducts under its name and family of DIRECTV and DIRECT marks.
- g. As a result of DIRECTV's extensive and global promotional and advertising activities, the DIRECTV and DIRECT marks serve to identify and indicate the source of DIRECTV's goods and services to the consuming public and have become well-known to, and widely recognized by consumers. Examples of how the Marks are used on DIRECTV's goods and services are provided as **Annexes E and F**.
- h. DIRECTV operates and promotes its services via the toll-free telephone number 1-800-DIRECTV. See **Annex G**.
- i. Since at least as early as 1995, DIRECTV has used the domain name DIRECTV.COM to promote its services online and communicate with existing and potential customers by, for example, sending promotional and other emails under the "DIRECTV.COM" domain name and operating a Web site at www.DIRECTV.com **Annex H**. In 2012 an average of more than 10 million people visited DIRECTV's primary Web site each month at www.DIRECTV.com, generating a monthly average of more than 110 million page views.
- j. Notwithstanding DIRECTV's substantial and longstanding prior investment in its family of DIRECTV and DIRECT marks, Applicant Dish DBS Corporation - a subsidiary of Dish Network Corporation and a direct competitor of DIRECTV - seeks approval to operate the gTLD string .DIRECT as a restricted TLD for exclusive use by Dish, its affiliates and business partners. **Annex A** (gTLD App. Para. 18(a)).
- k. At its Web site, Dish describes itself as "a leader in satellite TV, providing subscribers with the highest-quality programming and technology at the best value." **Annex I**. Similarly, in its gTLD application Dish claims that it and its affiliated entities are leading providers of subscription television services and satellite and Internet access services. **Annex A** (gTLD App. Para. 18(b)).
- l. Dish and DIRECTV are direct competitors. Dish acknowledges this in promotional and marketing materials, including at its Web site where it dedicates numerous pages and charts to comparisons between Dish and DIRECTV. **Annex J**.
- m. Dish plans to use the gTLD string .DIRECT as part of a new branding strategy, e.g., to "[u]nify the full breadth of products and services offered by Applicant and its affiliated entities under one brand umbrella." **Annex A** (gTLD App. Para. 18(b)(iii)) (emphasis added).
- n. In its application, Dish lists several ways in which it seeks to use the gTLD string .DIRECT, including:
- creating a connected digital presence and personalized brand experience for customers and other business partners;
 - delivering product and service marketing and advertising;
 - enabling marketing campaign activation;
 - simplifying Internet user navigation to information about Dish's products and services; and
 - meeting future client expectations and competitive market demands.

Annex A (gTLD App. Para. 18(a)).

o. Paragraph 18(a) of Dish's application therefore provides some detail to support the company's claims under Paragraph 18(b)(iii), i.e., Dish intends to use .DIRECT as a tool and medium to communicate with the public and consolidate Dish's advertising and marketing of its television, broadcasting and other services, and to do so under the umbrella brand .DIRECT or DIRECT.

p. It is indisputable that the gTLD string ".DIRECT" is nearly identical to DIRECTV's core intellectual property, including its name, and its family of DIRECTV and DIRECT trademarks, and its primary domain name "DIRECTV.COM."

q. Upon information and belief Dish does not own any trademark registrations for, or proprietary rights to, DIRECT. DIRECTV is unaware of any public information demonstrating that Dish has made a bona fide use of .DIRECT or DIRECT trademarks, and certainly no use or preparation that predates DIRECTV's established rights and priority. To the contrary, consumers have long associated DIRECT with DIRECTV and its services and trademarks, not Dish.

r. As a result, if Dish is permitted to consolidate "the full breadth of [its] products and services . . . under one brand umbrella" of .DIRECT, the millions of consumers that have for many years associated the DIRECTV and DIRECT marks with DIRECTV will be misled and confused into believing that DIRECTV created, is responsible for, or endorses any communications, Web sites, emails or other marketing activity generated by Dish using the TLD .DIRECT. Indeed, regardless of the trademarks used, any advertising or promotional activity emanating from .DIRECT for satellite, television and similar services will be perceived by the public as originating from DIRECTV.

s. Dish is deemed to at least have constructive knowledge of DIRECTV's registered trademarks. As a direct competitor, Dish has for many years had actual knowledge of DIRECTV's extensive uses of and exclusive rights to a family of DIRECTV and DIRECT trademarks. There is no legitimate, bona fide reason why Dish – a company that has created equity in its own DISH mark – would seek to operate a gTLD string that is one letter short of a direct competitor's name and house brand, and identical to its DIRECT marks. Any use by Dish of such a gTLD or branding strategy is certain to confuse and mislead consumers as to the source, origination and sponsorship of the underlying services.

t. Dish's bad faith is further shown by its expressed intent to use the confusingly similar string .DIRECT to create an "umbrella" branding platform for Dish to promote and market services that compete with DIRECTV and its DIRECTV and DIRECT marks, and are the same as or closely related to the services protected under DIRECTV's trademark registrations and promoted through emails sent under ".DIRECTV.COM" and provided at www.DIRECTV.com.

u. Ironically, in its application Dish acknowledges that "the proliferation of cybersquatting and typosquatting has placed a great burden on consumers to carefully tread online because there is no guarantee that what looks like a branded website is indeed an authorized website of the brand owner." **Annex A** (gTLD App. Para.

18(b)). After acknowledging this serious problem, Dish then proceeds to allege that the confusingly similar string .DIRECT

“will enable customers and other business partners and Internet users to distinguish on the face of the domain name alone whether the site is an authorized company site because the gTLD will be a restricted, exclusively - controlled online environment where only authorized Applicant and affiliated entity web properties and e-mail will exist and operate online.”

Id. To the contrary, consumers immediately and overwhelmingly will be confused and misled “on the face of the domain name alone” if Dish is permitted to use .DIRECT to brand, advertise and promote television services that compete directly with DIRECTV’s well-established and famous DIRECTV and DIRECT services.

v. The panelists should therefore reject Dish’s application to help ensure consumers will not be confused or misled as to the source of television and similar services promoted under the .DIRECT domain and brand, and to prevent Dish from piggybacking unfairly on the enormous international goodwill that DIRECTV has created in its portfolio of DIRECTV and DIRECT trademarks.

VI. Panel (of Experts)

13. The Objector elects to have the dispute decided by a three-member Panel

VII. Other Legal Proceedings

14. Objector is not aware of any other legal proceedings that have been commenced or terminated in connection with the applied-for TLD that forms the basis for the Objection.

VIII. Communications

15. A copy of this Objection has been sent electronically to the Applicant/Respondent on March 12, 2013, by Federal Express and email to

Dish DBS Corporation
Gretchen Olive and Chad Hilyard
9601 S. Meridian Boulevard
Englewood, Colorado 80112
cscngtlds26@cscinfo.com and chad.hilyard@dish.com

and to ICANN on March 12, 2013, by email to newgtld@icann.org

IX. Payment

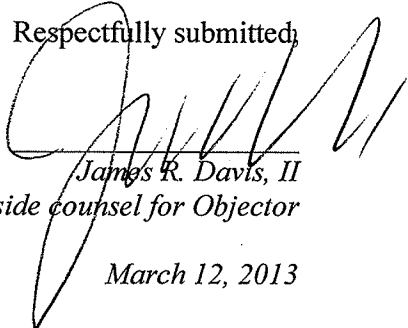
16. As required by the Procedure and WIPO Rules for New gTLD Dispute Resolution, payment has been made by credit card in the amount of USD 10,000 (plus additional fees related to the method of payment).

By submitting this Objection, the Objector acknowledges and agrees that further payments may be required, e.g., in the event the parties elect Determination by a three-member Panel, or as may otherwise be provided in the Procedure and WIPO Rules for New gTLD Dispute Resolution.

X. Certification

17. The Objector understands and agrees that its claims and remedies concerning the application of the applied-for TLD, the instant Legal Rights Objection and the Determination thereof shall be solely against the Applicant/Respondent, and neither the Expert(s)/Panel(ists), nor WIPO Center and its staff, nor ICANN and its Board members, employees and consultants shall be liable to any person for any act or omission in connection with any proceeding conducted under this Procedure.
18. By submitting this Objection to the WIPO Center the Objector hereby agrees to abide and be bound by the provisions of the applicable New gTLD Dispute Resolution Procedure and WIPO Rules for New gTLD Dispute Resolution.
19. The Objector certifies that the information contained in this Objection is to the best of the Objector's knowledge complete and accurate, that this Objection is not being presented for any improper purpose, such as to harass, and that the assertions in this Objection are warranted under the Procedure and under applicable law, as it now exists or as it may be extended by a good-faith and reasonable argument.

Respectfully submitted,


James R. Davis, II
Outside counsel for Objector

March 12, 2013

EXHIBIT J

DON'T
PAY 19% MORE
WITH
DIRECTV

**DON'T PAY MORE WITH
DIRECTV.**

The average DISH customer spent 19% less than the average DIRECTV customer. Switch to DISH and start getting more for your money.

GET STARTED

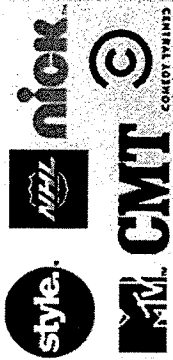
Comparison based on DIRECTV quarterly earnings press release and DISH 10-Q reports for Q3 2012.

SIMPLY SUPERIOR SERVICE.

DISH is #1 in Customer Satisfaction among the nation's largest cable and satellite providers.¹ Meanwhile, DIRECTV has been working hard to earn a D+ rating from the Better Business Bureau.² Plus, DIRECTV doesn't



LEARN MORE

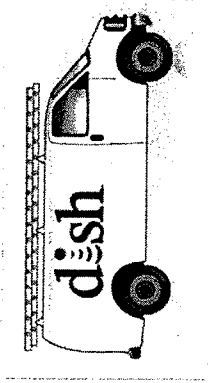


Choose Wisely.

DIRECTV removed over 20 channels and raised the price of Choice Xtra—that's not much of a choice.

LEARN MORE

LEARN MORE

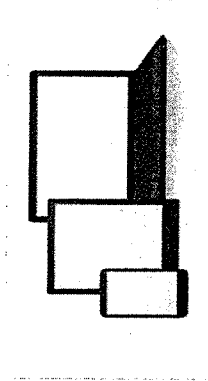


Free Installation.

Get TV installed in up to 6 rooms FREE — DIRECTV charges extra for that.

GET STARTED

LEARN MORE



DISH Anywhere™ Technology.

Only DISH offers DISH Anywhere™, giving you the ability to watch live and recorded TV anywhere on any compatible mobile device.

LEARN MORE



MY ACCOUNT

PERKS

UPGRADES

PAY-PER-VIEW

DISH ANYWHERE™

THE BEST VALUE IN TV.

It's simple. The competition continues to make their customers pay more money and gives them less value. DISH offers 5 packages with everyday prices under \$60. The competition? Not even close.



AND THE NATION'S LARGEST CABLE PROVIDERS.