

The Honorable Gordon H. Smith
President and CEO



February 28, 2011

The Honorable Jay Rockefeller
United States Senate
Senate Commerce Committee

The Honorable Kay Bailey Hutchison
United States Senate
Senate Commerce Committee

The Honorable Fred Upton
U.S. House of Representatives
House Energy & Commerce Committee

The Honorable Henry Waxman
U.S. House of Representatives
House Energy & Commerce Committee

Dear Chairmen Rockefeller and Upton and Ranking Members Waxman and Hutchison,

I bring to your attention a story that appeared in the Feb. 25 edition of Communications Daily suggesting that yet another company continues a policy of warehousing "surplus spectrum" that, if deployed, presumably could help alleviate the alleged "spectrum crisis" that has garnered attention from Congress and the Federal Communications Commission.

According to Communications Daily, Dish Network recently made what the Dish CEO termed a speculative investment in unused airwaves because spectrum "has value, just as an asset."

This is not the first case of spectrum speculation by Dish Network. Indeed, Dish CEO Charlie Ergen proudly proclaimed on a November 2010 earnings call with investment analysts that Dish bought 700 MHz spectrum from broadcasters as "a building block ... a pretty good inflation hedge, and they're not making any more of that spectrum. If we're not able to strategically do something with that spectrum, there's probably other people who are able to do that. ... I think one of the better things that we did was that we resisted the temptation to go out and try to build it out and spend more money on the buildout for it without really knowing where we want to go. ... I don't know whether our timing's right or not on 700 MHz. At some point, that will be a valuable spectrum to somebody. And if we can figure out a way to use it, that's good. If we can't then somebody else will own it." ¹

¹ Charles Ergen, *Dish Network CEO Discusses Q3 2010 Results - Earnings Call Transcript*, Q&A Section, SeekingAlpha.com (Nov. 5, 2010), available at: <http://seekingalpha.com/article/235177-dish-network-ceo-discusses-q3-2010-results-earnings-call-transcript?part=qanda> (last visited Feb 28, 2011)

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Dish is hardly alone in its strategic decision to warehouse spectrum; indeed, top Time Warner Cable officials have frankly admitted that their company, too, is engaged in spectrum hoarding.

The pattern of spectrum speculation from Time Warner Cable and Dish Network is especially troubling given that the FCC's National Broadband Plan proclaimed a year ago that there is a "looming spectrum crisis." In that report, authors of the NBP suggested that local television stations (who collectively returned 108 MHz of spectrum to the government less than two years ago following the successful analog to digital TV transition) need to relinquish another 120 MHz of spectrum to help "solve" the alleged crisis.

To reiterate NAB's longstanding position: Broadcasters will not oppose the return of spectrum by local TV stations that choose voluntarily to relinquish airwaves. However, we will strongly oppose the forcible return of spectrum from broadcasters who choose not to "volunteer." In addition, we will oppose forced relocation of TV stations into bandwidth that would harm viewers' ability to receive full high definition TV, new niche programming choices via "multicasting", and live and local mobile digital television.

NAB respectfully recommends that an independent agency -- perhaps the Government Accountability Office -- conduct a top-to-bottom review of spectrum hoarding and/or spectrum speculation. If America is truly facing a spectrum shortage, then it is imperative that policymakers receive an unbiased and thorough report on how private companies like Dish, Time Warner Cable and government agencies are using or warehousing this precious resource.

In closing, broadcasters believe strongly that our industry can play a critical role in alleviating any future "spectrum crisis," primarily because our "one-to-everyone" transmission architecture is far more efficient in delivering high demand video content than the "one-to-one" transmission system of cell phones and the Internet. We see a world where broadcasting and broadband are complementary, and we look forward to working with you to help sustain America's competitive edge in technology.

Best regards,



Gordon H. Smith