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*FILED IN ECFS*

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554

**Re: IB Docket No. 12-343; Sprint Nextel Corp. and SoftBank Corp., Joint Application for Consent to Transfer International and Domestic Authority**

Dear Ms. Dortch:

On behalf of DISH Network Corporation (“DISH”), this letter responds to a written ex parte presentation made by Applicant SoftBank Corporation (“SoftBank”) on May 23, 2013.<sup>1</sup> SoftBank’s letter, in turn, replies to a presentation made by DISH on May 16, 2013, about reports of extortionate conduct on the part of SoftBank—conduct that is related to this transaction.<sup>2</sup> According to those reports, SoftBank had threatened banks that, if they funded DISH’s competing offer for Sprint, they would hurt their chances of participating in the planned Initial Public Offering (“IPO”) of the Chinese e-commerce giant Alibaba Group Holding Ltd. (“Alibaba”), in which SoftBank apparently has a 33% equity stake.<sup>3</sup>

SoftBank’s letter is most notable for what it does not say. SoftBank does not deny the conduct reported by Reuters and the Financial Times or dispute the accuracy of these reports. Rather, SoftBank dwells on whether it is in a “position to make determinations” concerning

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<sup>1</sup> Letter from John R. Feore et al., Counsel for SoftBank Corp., Starburst I, Inc., and Starburst II, Inc., to Marlene H. Dortch, FCC, IB Docket No. 12-343 (May 23, 2013) (“SoftBank Letter”).

<sup>2</sup> Letter from Pantelis Michalopoulos, Counsel to DISH Network Corp., to Marlene H. Dortch, FCC, IB Docket No. 12-343 (May 16, 2013).

<sup>3</sup> See Soyoung Kim and Olivia Oran, *Exclusive: SoftBank Asks Banks Not to Finance DISH’s Sprint Bid*, Reuters.com, May 10, 2013, <http://www.reuters.com/article/2013/05/10/net-us-sprint-softbank-idUSBRE9490YB20130510> (last visited May 15, 2013); see also Paul J. Davies, *SoftBank Leans on Banks in Effort to Disrupt DISH’s Sprint Bid*, Financial Times, May 13, 2013, <http://www.ft.com/intl/cms/s/0/77c60e2a-bb99-11e2-82df-00144feab7de.html> (last visited May 15, 2013).

Alibaba's decisions—it says it is in no such position.<sup>4</sup> But that is not the question; the question is whether SoftBank made the reported threats.

What is more, the combination of SoftBank's statement that it is in no position to make decisions for Alibaba and SoftBank's non-denial of its reported conduct puts front and center the alleged communications between SoftBank and the banks. What did SoftBank say in any such communications? Did it offer the "caveat" that it is in no position to make decisions for Alibaba? That is unlikely, if SoftBank was threatening the banks, as reported. Did SoftBank rather say or imply to the banks that it is in fact in a position to influence these determinations? This raises the further question whether the statement SoftBank makes here is consistent with those allegedly made to the banks. SoftBank should disclose the content of any such communications, whether written or verbal.

But, SoftBank says, its reported conduct is irrelevant.<sup>5</sup> In DISH's view, it is relevant for at least two reasons. First, SoftBank is incorrect that the global financial markets are "a market wholly unrelated to any communications or ancillary market."<sup>6</sup> The ability to finance day-to-day operations, mergers, and acquisitions is critical for a company to compete effectively in the fixed-cost-intensive telecommunications industries. Indeed, SoftBank's assertion of irrelevance is belied by the purported act itself, which, had it been successful, would have foreclosed DISH's pursuit of Sprint. And this is the second reason why SoftBank's reported conduct is relevant: had the threats reportedly made by SoftBank been successful, the fate of Sprint would have been determined neither by its shareholders (who would be deprived of a higher price) nor by the public interest, but by the fear of certain banks that they would not be tapped to participate in Alibaba's IPO.<sup>7</sup>

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<sup>4</sup> SoftBank Letter at 2.

<sup>5</sup> *Id.*

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

<sup>7</sup> SoftBank tries to refute DISH's point about SoftBank's involvement in the financial sector in Japan by describing SBI Holdings as "a wholly different and unrelated Japanese public company." *Id.* This is apparently not so. SBI Holdings apparently started as the finance arm of SoftBank. See About the Author, Yoshitaka Kitao, *The SBI Group Vision & Strategy: Continuously Evolving Management*, books.google.com, [http://books.google.com/books/about/The\\_SBI\\_Group\\_Vision\\_Strategy.html?id=-u3wr7PX9ZoC](http://books.google.com/books/about/The_SBI_Group_Vision_Strategy.html?id=-u3wr7PX9ZoC) (last visited: May 24, 2013). While it was spun off by SoftBank in 2006, SBI Holdings' press release issued at the time said that the two companies plan to continue their "close collaboration in Japan, linking together portfolio companies such as SBI E\*TRADE Securities . . . and Yahoo! Japan," and that SBI Holdings "will of course continue the special friendship we share alongside the SoftBank family." See Press Release, SBI Holdings, *SBI Holdings Ends Capital Relationship with SoftBank* (Aug. 17,

(Continued...)

Given the important public policy considerations at issue, and the potential for anti-competitive conduct of this type on the part of Softbank, DISH again requests that the Commission either hold the proceeding in abeyance or engage in a more robust analysis of SoftBank's conduct by means of setting this application for a hearing.

Please contact the undersigned if you have any questions.

Sincerely,

\_\_\_\_\_/s/\_\_\_\_\_  
Pantelis Michalopoulos  
*Counsel for DISH Network Corporation*

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2006); *see also* Press Release, SoftBank, Foundation of Joint Venture with SBI Holdings, Inc. (Aug. 18, 2006), [http://www.softbank.co.jp/en/news/press/2006/20060818\\_01/](http://www.softbank.co.jp/en/news/press/2006/20060818_01/) (“[B]oth companies already agreed to maintain and develop [a] stronger business relationship than ever. The foundation of the joint venture designed for the financial portal site business is a part of the business rollout based on such direction.”). SoftBank is, of course, more familiar with the SoftBank conglomerate's convoluted history than DISH. DISH cannot know what the “close collaboration,” “link[s],” and “special friendship” between the two companies have consisted of. But to describe the two companies as “wholly different and unrelated” in the face of these statements appears questionable.