BUXTON HELMSLEY
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**VIA U.S. REGISTERED MAIL & ELECTRONIC MAIL**

December 27, 2023

Board of Directors – All Members
DISH Network Corporation
9601 South Meridian Blvd.
Englewood, CO 80112

c/o Mr. Timothy Messner
Executive Vice President, General Counsel and Corporate Secretary
DISH Network Corporation
9601 South Meridian Blvd.
Englewood, CO 80112
tim.messner@dish.com

Re: Evidential Financial Disclosure Violation Notice – DISH Network Corp. (the "**Company**" or "**DISH**")

Ladies and Gentlemen of the DISH Board (the "**Board**"):

The Buxton Helmsley Group, Inc. ("**BHG**" or "**we**"), a New York-based investment fund manager, hereby addresses the DISH Board, after extensive analysis of the Company's periodic filings with the U.S. Securities and Exchange Commission (the "**SEC**"), in addition to other materials and data. In short, we believe it is evident that the Company is materially (or, to be more accurate, is "grossly") misrepresenting its financial condition to not only the Company's current and prospective investors, but also to regulators, including the SEC. We believe the evidence is clear that the Company is already, in fact, net asset insolvent, even in the midst of these apparent materially false statements of financials. We also believe that such net asset insolvency will be *even further* evidenced upon this Company finally coming clean in its financial disclosures.

If the Company fails to correct these evidentially materially false statements of financials prior to full consummation of the merger with EchoStar Corporation ("**EchoStar**") (and prior to the filing of another quarterly financial disclosure with the SEC, by either company), such a failure to correct would constitute apparent accounting and securities fraud. If no corrections are made, BHG will then simply adjust our analysis to account for the combined financials to demonstrate that being the case.

Additionally, with regard to the EchoStar-DISH merger, any attempt by the Company to creatively write off the below-discussed evidenced losses, without reporting those losses as actual losses (indeed, through the profit and loss statement), would be in violation of the below-referenced accounting standards and securities laws. We do not believe the Chief Accounting Officer of EchoStar will wish to become tangled

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in this mess, when EchoStar can simply withdraw from the contemplated merger and avoid scrutiny. Lastly, with regard to the EchoStar-DISH merger, the fact that the DISH Board accepted the level of value consideration for DISH equity holders it did, essentially proves that our below analysis is spot-on and that this Board – in fact – apparently knew that the balance sheet statements for DISH filed with the SEC were materially false.

We are sending this letter to the Board, to provide an opportunity for the Company to substantively respond to (attempt to set forth any defense to) our findings. Absent a compelling, substantive response from the Company, we are prepared to go public on these matters, in the interest of the investing public. **We expect that the Company will provide us with a substantive response to this letter by January 12, 2024, given the serious nature of this matter.** Should we be required to go public on these matters (in the event of the Company's refusal to cure the evidential violations of accounting standards and securities laws), we will be forced to include citations of relevant case law that supports our analysis, for ease of application by your investors and creditors, in addition to EchoStar investors and creditors (and class-action law firms).

We proactively forewarn that any attempt to threaten BHG, or to spin our "wheels" with nonsensical "defenses", will severely backfire, result in no further response from us, and our taking action based on the information in our possession. We further note that we are not interested in a conference call with members of the Board or management, as has been proposed by previous companies we have been forced to send similar communications (certain of those entities, noted shortly). Any response to this letter must be in written form, so that we may consult with legal counsel and financial advisors, as necessary.

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We believe it is first critically important to point out (for the Board) BHG's history of success in uncovering and exposing evidenced misconduct at public companies, including but not limited to evidenced accounting and securities violations/misrepresentations and other related improprieties.

BHG, most recently, exposed how twice-bankrupt pharmaceutical manufacturer Mallinckrodt plc. (formerly, NYSE: MNK) had engaged in a multibillion-dollar scheme of concealing asset value depreciation expenses; not only leading up to and throughout the entirety of its Chapter 11 proceedings initiated in October 2020, but also a repeat, mirror scheme after having emerged from those initial reorganization proceedings. Within a short period after BHG published its extensive analysis and findings,[1] the Company's stock plummeted over 85% and creditors had cornered the Company into repeat bankruptcy negotiations. The Company re-filed for bankruptcy protection shortly thereafter (just a year after emerging from the first bankruptcy proceedings).

BHG also exposed similar accounting improprieties and apparent violations of law at Endo International plc. (formerly, NASDAQ: ENDP). Within five days of BHG issuing its public report, *The Wall Street Journal* reported the Company was under siege by first-lien creditors and was forced into bankruptcy negotiations. Endo filed for bankruptcy protection shortly thereafter, after admitting over $2 billion in intangible asset losses (based on the very same accounting standards and securities laws discussed below).

[1] March 17, 2023, Public Letter from BHG to Mallinckrodt plc.: https://www.buxtonhelmsley.com/mnk/20230317company.pdf

All that said, the Board should now firmly understand that BHG has a very tight grasp on accounting standards and securities laws, and has no problem articulately arguing any such evidenced violations thereof.

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## I. REPORTING OBLIGATIONS OF THE COMPANY

The Company has affirmed (within its periodic filings made with the SEC) its understanding, on numerous occasions, that it is bound to comply with the Generally Accepted Accounting Principles of the United States ("**GAAP**"). The Company is also, as a publicly traded issuer of the United States, subject to that particular section of the U.S. Securities Act of 1933 known as Regulation S-X (as is officially codified at 17 C.F.R. § 210, "**Regulation S-X**").

As the Company is aware, Regulation S-X not only obligates – as a baseline – compliance with GAAP, but also includes numerous, independent catch-all disclosure obligation provisions, the intent of which is to ensure there are no crafty GAAP loopholes for exploitation by creatively dishonest fiduciaries.

## II. COMPANY IS EVIDENT TO BE MATERIALLY INFLATING THE VALUE OF ITS ASSETS

Our primary concerns relate to the Company's financial reporting surrounding intangible assets (particularly, the "FCC Authorizations" line item). These intangible assets, given their definite lifespan, are particularly governed by those GAAP standards codified under ASC 360 (titled "*Property, Plant, and Equipment*").

Under GAAP ASC 360, the Company must report relevant assets at no material extent higher than their fair value. Upon the acquisition of such a definite-lived asset, the Company is obligated to forecast the decline (depreciation) of the asset's fair value over time, by establishing a depreciation amortization schedule. Over the course of the useful life of such an asset, the value is then periodically charged off (amortized), in an attempt to ensure the asset's fair value is not reported materially higher than the true, fair value of the asset, at the time of each financial reporting period. While an asset relevant to reporting obligations under ASC 360 (such as a building owned by the Company) may gain market value over the course of ownership, and thereby exceed the book value of such an asset, such gains in market value may *not* be accrued (the fair value of such assets may be higher than the book value, but *not* materially lower). On the other hand, any losses in the value of an asset, which render the fair value of the asset to be lower than the book value of the asset, must be reported. While the goal of establishing such an amortization schedule is, again, to report the value depreciation of an asset over time, it is very unlikely that a management would be entirely accurate in its initial value depreciation forecasting, at the onset of such an asset's acquisition (as part of establishing such a depreciation amortization schedule). Rather, over the course of an asset's useful life, numerous "triggering events" may occur, to render such an asset's value to be possibly "impaired". A non-exhaustive list of possible "triggering event" examples are noted under ASC 360 (particularly, at ASC 360-10-35-21):

a. A significant decrease in the market price of a long-lived asset (asset group);
b. A significant adverse change in the extent or manner in which a long-lived asset (asset group) is being used or in its physical condition;

c. A significant adverse change in legal factors or in the business climate that could affect the value of a long-lived asset (asset group), including an adverse action or assessment by a regulator;
d. An accumulation of costs significantly in excess of the amount originally expected for the acquisition or construction of a long-lived asset (asset group);
e. A current-period operating or cash flow loss combined with a history of operating or cash flow losses or a projection or forecast that demonstrates continuing losses associated with the use of a long-lived asset (asset group); or
f. A current expectation that, more likely than not, a long-lived asset (asset group) will be sold or otherwise disposed of significantly before the end of its previously estimated useful life.

At the time such a "triggering event" occurs, the asset(s) must be assessed for value "impairment". "Impairment" must be reported if the fair value of the asset is materially lower than the carrying value on the books of the Company. Where such depreciation of an asset has occurred, the loss is required to be reported via an "impairment charge", which – pursuant to GAAP – is the difference between the carrying value of the asset and its true, fair value in reality. At times, evidence may indicate that an asset's value is impaired (has depreciated beyond the post-amortization carrying value), and a more specific "triggering event" may be found to have occurred upon further investigation (in the "impairment testing" process).

In an instance where a company's management only records periodic amortization charges (according to that "depreciation amortization schedule", as previously discussed), but has not recorded any further impairment charges, such a scenario implies that management was perfectly accurate as part of the forecasting required to establish the in-use depreciation amortization schedule. Such perfect accuracy, and an implication that no unexpected triggering events have occurred, is highly unlikely (nearly impossible).

The Company currently is reporting approximately $53.7 billion of total asset value, of which approximately 71% pertains to intangible assets. Moreover, the Company's intangible assets are almost entirely related to the previously mentioned "FCC Authorization" balance sheet line item. Based in large part on the massive certified intangible asset value, this Company is certifying approximately $18.4 billion in "shareholder's equity" value.

It should be noted that the Company has not reported any impairment of asset value since Q1 2020. The Company had understandably reported $356.4 million in asset value impairment that quarter, at the time the Company's common stock price had dropped materially below the value of equity carried on the books of the Company, given the amount of intangible asset value carried on the books of the Company (such a decline in stock price would not necessarily trigger an asset write-down, where a company's balance sheet is not so intangible asset heavy as this Company). As the Company knows, numerous public market participants (such as sophisticated security analysts with extensive industry knowledge, who are – beyond studying DISH under a microscope – also tracking DISH competitors) are continuously building financial models that forecast cash flows from the Company's assets to derive a fair value for those assets. The Company clearly understood that when the consensus of the Company's equity value (as was evidenced in the open market) was materially lower than this management's projections,[2] such a loss was required to be reported.

[2] Which are inherently biased, given this leadership's incentives not to lower its forecasts, for the sake of not having to report losses that would negatively affect insider incentive compensation.

After the Company was compelled to report asset value impairment in Q1 2020, the Company's stock price has dropped to the extent that it is now trading ~85% below this leadership's certified value of equity. Certain junior bond issues of the Company are also trading at such distressed levels that they are effectively yielding a ~30% annualized interest rate. Such an interest rate not only implies risk, but a consensus (which correlates with the open market's consensus of the Company's equity) that the Company's bonds are, more likely than not, under-secured by asset value (to then leave negative shareholder equity value, despite this Company ironically continuing to report over $18.8 billion in "shareholder's equity" value (a certified ~35% margin of net asset equity)). **Not only has the open market concluded that the Company's bonds are more likely than not under-secured by asset value (to leave zero net asset equity, or "shareholder's equity"), but <u>Standard & Poor's has concluded an approximate 0% recovery availability for holders of the Company's 3.375% bond issue maturing August 15, 2026 (for which, there remains ~$2.9 billion in principal borrowings outstanding, to give perspective as to the sheer extent of capital structure under-securement)</u>.** Therefore, while the Company may wishfully claim that open market participants are wrong in their valuation of the Company's net asset equity (essentially, management arguing they disagree with the world, and that their biased conclusions should stand), Standard & Poor's has reached an even more dire conclusion with respect to the amount of asset value securing the Company's capital structure interests; <u>thus, even Standard & Poor's (one of the most astute financial research entities in the industry) has also concluded that net asset equity value *does not* flow up through to the interests of equity holders (and apparently by a long shot, given their published recovery rating, and the size of those bond issues)</u>.

In short, the Company is well aware that, if it were to auction its assets today, there is virtually no chance of realizing value anywhere near to the extent of achieving the delivery of $18.8 billion to the Company's equity holders. **BHG asks this Board and management, here and now, what bidders this Company has in its back pocket to achieve such a delivery of value ($18.8 billion) to the Company's equity holders (we assume you would have accepted such a materially differential bid, if such a serious, plausible bid actually existed)?** This leadership already knows that, if such a serious bidder existed, it would already be swiping up the Company's bonds and equity like hotcakes, at such "discounts". That clearly is not occurring, with a simple glance at the charts of this Company's issued securities.

Very simply, this Company has no evidence of anywhere near $18.8 billion in equity value existing in reality, only has evidence to the contrary, and *continues* to certify essential fiction to this Company's current and prospective investors (not to mention, the counterparty to your merger agreement). This Company is, in fact, more likely than not actually net asset insolvent, as even Standard & Poor's has indicated. This is a massive, material factual misstatement of reality to the investing public that we demand be immediately cured, absent evidence of a serious, plausible bidder willing to submit a bid for the Company that supports the $53.7 billion total asset value this leadership is actively certifying within its periodic disclosure filings with the SEC.

We believe it is also abundantly clear that multiple recent, historical financial disclosures filed with the SEC should be restated, given that this reality of value is not suddenly new as of this letter to the Company; it has long been apparent and evidenced. The fact that the Company's leadership has had its heads stuck in a warped cloud of delusion, which has resulted in the omission of billions of dollars in evidenced losses from this Company's financial statements, or has made intentional misstatements, does not absolve this leadership of restating recent financial statements where those financial losses were already evidenced but conveniently ignored (perhaps, for the sake of just as conveniently propping up this

Company's insider incentive compensation). This Company may not omit tens of billions of dollars in financial losses from financial statements and then only suddenly disclose them in a bankruptcy court (or a crafty merger attempt, as an attempt to get out of such a snowballed "pickle" of financial disclosure omissions), if they should get there (which is not out of the picture, given certain most relevant dynamics of the Company's clearly dire financial condition). This leadership has been obligated to report such losses each quarter, as they are evidenced to fall, and this Company's leadership is just-as-evidenced to have grossly failed to uphold their obligation of reporting reality.

We will lastly note, the Board evidenced their conclusion that the fair value of assets left – at most – less than $3 billion in equity value (at latest, the Company's Form 8-K filing on October 2, 2023), this leadership still certified net asset value of over $18 billion (within the Company's Form 10-Q filing on November 6, 2023).

## III. APPARENT CREDITOR PREFERENCE VIOLATIONS

Beyond the Company's evident grossly material misstatements of financials, we believe the Company is engaging in what would be deemed creditor preference violations at a time of evidenced net asset insolvency (that allegation, directly supported by the previously cited published opinion of Standard & Poor's). The Company has reported recent losses that have further eroded net asset equity value, and — after reporting the massive omitted losses discussed here that have been conveniently omitted from financial statements — we believe such creditor preference violations will be even further apparent. We believe unsecured creditors would starkly oppose (and take action) if they were made fully aware that certain (improperly preferred) bondholders are receiving full recoveries (full repayment of principal obligations, whether as part of a vendor's invoice or a bond issue), at the same time that certain other unsecured creditors (inappropriately prejudiced) could be presented with an empty bag at any moment.

## IV. APPARENT CONFLICTS OF INTEREST

It would clearly be in the best interests of EchoStar shareholders to buy DISH assets free-and-clear out of a Section 363 bankruptcy sale, where the evidentially under-secured debt of DISH could be stripped away from the assets. Why, then, wouldn't EchoStar's Board, and in particular, its Chairman Ergen, push for such a scenario? BHG can only begin to guess. That said, we suspect it likely has something to do with Chairman Ergen's conflicting roles as both the controlling shareholder and Chairman of both EchoStar and DISH. As a fiduciary to DISH, he has an incentive to cover up any evident accounting and securities fraud occurring at DISH, in a way that would inequitably enrich DISH shareholders just enough to maximally avoid questions about DISH financial statements. This also helps DISH avoid a bankruptcy filing that would force the Company to fully "undress" in the bankruptcy court and be ordered by that court to answer the looming questions about DISH's financial statements.

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We do not believe it necessary to continue this discussion any further here, as we believe the evidential accounting and securities misconduct at this Company is already starkly apparent enough. If we are required to publicly advocate for investors here, however, we will — of course — elaborate much further. As stated before, we will then also include case law to support our analysis, for ease of reference by those investors being apparently misled in this situation. Not only that, but we will cite statements from conference calls that implicate this leadership has been keeping expected cash flows on the books of the Company that never came to fruition, in violation of GAAP and Regulation S-X. We believe class-

action law firms, far and wide, will also support our analysis here, just as they apparently saw enough foundation to file a class-action securities fraud lawsuit after our report was released on the evident repeated fraud scheme engaged in by the leadership of Mallinckrodt plc.

**Given the nature of these matters, we have copied the board of directors, Chief Executive Officer, Chief Accounting Officer, and Chief Legal Officer, at EchoStar (we believe class-action firms would agree it being a serious breach of those fiduciaries' duties to EchoStar investors, if the contemplated merger closing is followed through on, with knowledge of and given the contents of this letter).** Moreover, based on the below, we believe class-action law firms would agree the evidence will demonstrate that EchoStar investors would be – if the contemplated merger is actually consummated – massively harmed as a result of the equity value consideration given to DISH equity holders as part of the merger agreement, given that the below evidences DISH security trading prices were based on artificially inflated financial statements at the time of the EchoStar merger agreement execution (and, therefore, DISH shareholders are to be given consideration based on such artificially inflated financials as part of the merger agreement, at the far inequitable expense of EchoStar shareholders).

**If this Board and EchoStar wish to follow through with closing on the contemplated merger, we advise the leadership of both entities deliver a copy of this letter to your mutual independent auditors at KPMG LLP; it will look even worse if such a communication/document is effectively hidden from auditors.**

Once again, we expect receipt of a response to this letter by **January 12, 2024**, should this Board wish to attempt a durable defense to these matters (the evidence is crystal clear, and even Standard & Poor's publishings affirm our analysis and findings). There will also not be an extension of that deadline, as these matters are far too simple to require one. Such a response from the Company also does not guarantee our mind will change into believing there is an insufficient foundation to allege these apparent material misstatements as we have here.

Lastly, the Company is — once more — reminded that any attempts to threaten BHG about going public on these matters will not dissuade us on any level; only realistic counter-evidence will dissuade us, though we would be surprised if the Company has any, under the circumstances. The Company should appropriately file notice of an inability to file a timely quarterly financial disclosure with the SEC, should it require time to resolve these matters beyond the standard reporting deadline. Once again, the Company will be called out if it attempts to sweep these massive losses (affirmed by the consideration given in the DISH-EchoStar merger) under the rug without actually reporting them as a loss, as a crafty way to not only improperly avoid reporting losses, but simultaneously to keep insider incentive compensation propped up as artificially as this Company's financial statements. Lastly, once again, the evidence of these losses was clear for more than one historical quarterly financial disclosure filed by the Company with the SEC; those financial statements must therefore be restated.

We look forward to receiving a prompt response from the Company (by the prior-stated deadline), assuming such a response would have any substance. If the Company wishes to speak with BHG's legal counsel, contact details for the Company's legal counsel may be sent to the undersigned and communication will timely be established.

Very Truly Yours,

Alexander E. Parker
Senior Managing Director
The Buxton Helmsley Group, Inc.

**CC (by e-mail and post):**

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