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[Your Name]

[Your Title]

[Your Company]

[Street Address, City, State ZIP]

May 14, 2026

[Opposing Counsel Name]

[Firm Name]

[Address]

**Re: U.S. Patent No. 8868772B2 — Response to Assertion of Infringement**

Dear Counsel,

We acknowledge receipt of your correspondence asserting infringement of U.S. Patent No. 8868772B2 (the "8868772B2 Patent"). After preliminary review, we have substantial concerns about the validity, enforceability, and scope of the asserted claims, summarized below. We reserve all rights and defenses.

## **1. Subject Patent — Summary**

A detailed analysis of U.S. Patent 8,868,772 B2 is provided below.

Patent Summary

- Title: Apparatus, system, and method for adaptive-rate shifting of streaming content
- Assignee: Dish Technologies LLC
- Inventors: R. Drew Major, Mark B. Hurst
- Filing Date: April 28, 2005
- Issue Date: October 21, 2014
- Abstract: An apparatus for adaptive-rate shifting of streaming content includes an agent controller module configured to simultaneously request at least portions of a plurality of streamlets. The agent controller module is further configured to continuously monitor streamlet requests and subsequent responses, and accordingly request higher or lower quality streamlets. A staging module...

## **2. Validity Concerns under 35 U.S.C. § 102 — Prior Art**

We have identified prior-art references that, in our preliminary view, anticipate one or more asserted claims of the 8868772B2 Patent:

Based on a review of the patent's file wrapper and citations, the following prior art references

are most relevant to US Patent 8,868,772 B2. This analysis focuses on references cited during the patent's prosecution and listed on the issued patent, as these were considered by the USPTO examiner.

#### Analysis of Prior Art for US Patent 8,868,772 B2

The following prior art references were cited by the examiner or the applicant during the prosecution of the patent. The analysis considers their potential to anticipate the claims of US 8,868,772 B2, with a focus on independent claim 1.

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##### 1. US Patent 7,765,312 B2

- Full Citation: US Patent 7,765,312 B2, "Method and system for providing media data to a client over a computer network," assigned to Microsoft Corporation.
- Publication Date: July 27, 2010 (Filed: June 24, 2002).
- Brief Description: This patent describes a system for streaming media content by dividing it into smaller pieces. A client device requests these pieces from a server. The system can switch between different bit rates for the media stream based on network...

### 3. Obviousness under 35 U.S.C. § 103

Independent of § 102, we believe the asserted claims are obvious in view of combinations of prior art that a person having ordinary skill in the art would have been motivated to combine:

Based on the provided prior art analysis, here is an analysis of the obviousness of US patent 8,868,772 B2 under 35 U.S.C. § 103, as of May 8, 2026.

#### Obviousness Analysis of US Patent 8,868,772 B2

A determination of obviousness under 35 U.S.C. § 103 requires analyzing whether the differences between the claimed invention and the prior art are such that the claimed invention as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art (PHOSITA).

The analysis of independent claim 1 of the '772 patent, in light of the provided prior art, suggests a strong case for obviousness. The core concepts—segmenting video, providing multiple quality streams, and client-side monitoring to adaptively switch between them—were well-known in the art prior to the patent's priority date of April 30, 2004.

#### Level of Ordinary Skill in the Art

A person having ordinary skill in the art in 2004 in the field of media streaming would have had a degree in computer science or electrical engineering (or equivalent experience) and several years of experience...

### 4. Litigation History of the Patent

Public records reflect that the 8868772B2 Patent has been the subject of the following litigation, which informs our view of the asserted claims and your client's enforcement posture:

- Dish Technologies L.L.C. v. fuboTV Inc. — 1:23-cv-01305 · U.S. District Court for the District of Delaware · filed 2023-11-30 · Active
- Dish Technologies L.L.C. v. Vidgo, Inc. — 1:23-cv-01000 · U.S. District Court for the District of Delaware · filed 2023-09-11 · Active
- Dish Technologies L.L.C. v. Frndly TV, Inc. — 1:23-cv-00987 · U.S. District Court for the District

of Delaware · filed 2023-09-07 · Active

- Dish Technologies L.L.C. v. Philo, Inc. — 1:23-cv-00986 · U.S. District Court for the District of Delaware · filed 2023-09-07 · Active
- Dish Technologies L.L.C. et al. v. DirecTV, LLC et al. — 1:23-cv-08971 · U.S. District Court for the Southern District of New York · filed 2023-10-11 · Active
- Dish Technologies L.L.C. et al. v. Videotron Ltd. — 2:24-cv-00066 · U.S. District Court for the District of Utah · filed 2024-01-24 · Active
- Dish Technologies L.L.C. et al. v. Eastlink — 2:23-cv-00624 · U.S. District Court for the District of Utah · filed 2023-09-11 · Active
- Dish Technologies L.L.C. et al. v. Cogeco Inc. et al. — 2:23-cv-00553 · U.S. District Court for the District of Utah · filed 2023-08-11 · Active
- ...and 1 additional case(s)

## 5. Request

In light of the foregoing, we request that your client (i) provide a detailed claim chart identifying each accused product or service and mapping every limitation of each asserted claim, (ii) identify any prior art known to your client, including any references cited during prosecution or reexamination, and (iii) substantiate the basis for any damages or licensing demand. We are prepared to discuss the matter further once we have received and reviewed the foregoing.

Sincerely,

[Your Name]

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