

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF DISH
NETWORK DERIVATIVE
LITIGATION.

JACKSONVILLE POLICE AND FIRE
PENSION FUND,

Appellant,

vs.

CHARLES W. ERGEN; GEORGE R.
BROKAW; THOMAS A. CULLEN;
JAMES DEFRANCO; R. STANTON
DODGE; CANTEY M. ERGEN; KYLE
J. KISER; CHARLES M. LILLIS;
DAVID K. MOSKOWITZ; TOM A.
ORTOLF; AND CARL E. VOGEL,

Respondents.

Supreme Court Case No.: 69012

District Court Case No. A-13-686775-B
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Tracie K. Lindeman
Clerk of Supreme Court

Consolidated with:

Supreme Court Case No.: 69729

Appeal from Eighth Judicial District Court, State of Nevada, County of Clark
The Honorable Elizabeth Gonzalez, District Court Judge

**MOTION FOR LEAVE TO REDACT PORTIONS OF
RESPONDENT SPECIAL LITIGATION COMMITTEE OF DISH
NETWORK CORPORATION'S ANSWERING BRIEF AND
TO SEAL PORTIONS OF THE ANSWERING APPENDIX**

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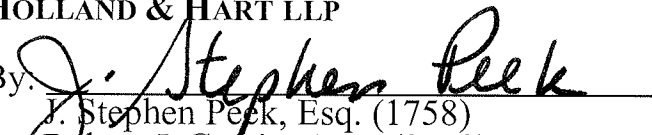
*Attorneys for the Special Litigation
Committee of DISH Network
Corporation*

The SPECIAL LITIGATION COMMITTEE OF NOMINAL DEFENDANT DISH NETWORK CORPORATION (the “SLC”), by and through its counsel of record hereby move this Court for an order granting it leave to redact portions of the Answering Brief and to seal portions of the Answering Appendix (the “Motion”). Pursuant to Rule 3.2 of the Rules Governing Sealing and Redacting Court Records (“SRCR”), upon the filing of this Motion, the Answering Brief and Answering Appendix shall be placed under seal and remain sealed.

DATED this 28th day of July, 2016.

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**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
THE MOTION FOR LEAVE TO REDACT PORTIONS OF
RESPONDENT SPECIAL LITIGATION COMMITTEE OF DISH
NETWORK CORPORATION'S ANSWERING BRIEF AND
TO SEAL PORTIONS OF THE ANSWERING APPENDIX**

**I.
INTRODUCTION**

The SLC filed *Respondent Special Litigation Committee of DISH Network Corporation's Answering Brief* (the "Answering Brief") and volumes I and II of the *Appendix to Respondent Special Litigation Committee of DISH Network Corporation's Answering Brief* (the "Answering Appendix") contemporaneously herewith. The Answering Brief discusses and cites to confidential information and documents, including information protected by the work product doctrine, which must remain confidential. *See* Answering Brief at pp. 7, 62 and 65; *see also* Answering Appendix at Vol. II AA0011-217, Vol. II AA0220-242 and Vol. II AA0243-AA0246. The SLC respectfully moves this Court for an order granting it leave to redact portions of the Answering Brief containing confidential information and to seal Volume II of the Answering Appendix.

The parties are subject to two confidentiality agreements and protective orders entered by the District Court: (1) a *Stipulated Confidentiality Agreement and Protective Order* entered on October 21, 2013 (attached hereto as **Exhibit "A"**) and (2) a *Stipulation and Protective Order* entered on March 30, 2015 (attached hereto as **Exhibit "B"**) (collectively, the "Protective Orders"). Pursuant to the Protective Orders, the parties agreed to file and maintain under seal, and/or redact, certain

Confidential Information¹ and Protected Documents.²

The SLC has redacted certain language at pages 7, 62 and 65 of the Answering Brief that should remain nonpublic for the duration of the appeal on the basis that this language contains Confidential Information. The language on page 7 describes confidential and commercially-sensitive information regarding technical issues concerning spectrum assets held by a third-party. The language redacted on pages 62 and 65 describes the contents of a document that constitutes a portion of the SLC's work product, which was produced without waiver and previously sealed

¹ The *Stipulated Confidentiality Agreement and Protective Order*, entered on October 21, 2013, permits the parties to designate as confidential:

Discovery Materials that consist[] of (i) previously non-disclosed financial information (including but not limited to profitability reports or estimates, percentage fees, commercial rates, sales report and sales margins), (ii) previously non-disclosed trade secrets, business plans or prospects, product development information, or marketing information, (iii) any information of a personal or intimate nature regarding any individual, (iv) attorney-client privileged information and work product, and (v) any other category of information hereinafter giving confidential status by the Court. In designating information as "CONFIDENTIAL—Authorized Eyes Only," the Producing Party represents that he, she or it maintains the information in confidence and in good faith believes in fact that it is confidential and that its unprotected disclosure might result in economic or competitive injury.

Ex. A § 1.

² Pursuant to the *Stipulation and Protective Order*, entered on March 30, 2015, "Protected Documents" includes, among other things, any documents selected by the SLC's counsel and provided to the SLC for its work in preparing the *Report of the Special Litigation Committee of DISH Network Corporation* filed in the District Court on October 24, 2014 (the "SLC Report"). See Ex. B. at 4:13-24.

pursuant to the District Court's March 30, 2015 *Stipulation and Protective Order* as well as pursuant to the District Court's August 21, 2015 Minute Order (attached hereto as **Exhibit "C"**). *See* Ex. B; Ex. C. Because the redacted language at pages 7, 62 and 65 of the Answering Brief contain Confidential Information under the *Stipulated Confidentiality Agreement and Protective Order* and the redacted language at pages 62 and 65 also discusses work product-information protected by the *Stipulation and Protective Order* and August 21, 2015 Minute Order, this language should remain nonpublic for the duration of the appeal, and the Court should allow this information to be redacted.

The SLC also requests that the documents identified in Volume II of the Answering Appendix, which were previously sealed by the District Court, remain sealed and nonpublic during the duration of the appeal. The documents at issue (*see* Answering Appendix at Vol. II AA0011-217, Vol. II AA0220-242 and Vol. II AA0243-AA0246) consist of certain exhibits to the Report of the Special Litigation Committee of DISH Network Corporation dated October 24, 2014, which were designated as Confidential in accordance with the *Stipulated Confidentiality Agreement and Protective Order* and contain non-public and confidential information discussing, among other things, sensitive commercial matters. On January 12, 2015, the District Court entered an order sealing certain exhibits to the SLC Report, including the documents in Volume II of the Answering Appendix that

the SLC currently requests remain under seal. A copy of the January 12, 2015 Minute Order is attached hereto as **Exhibit “D”**. Because Volume II of the Answering Appendix contains confidential documents designated as confidential and sealed by the District Court, they should remain nonpublic for the duration of the appeal, and the Court should allow Volume II of the Answering Appendix to be sealed.

II.

LEGAL ANALYSIS

The Nevada Rules for Sealing and Redacting Court Records (“SRCR”) requires records sealed pursuant to a district court order to be provided to the Nevada Supreme Court in the event of an appeal. *See* SRCR 7 (“A civil court record or any portion of it that was sealed in the trial court shall be made available to the Nevada Supreme Court in the event of an appeal.”). The sealed records shall remain sealed and any motion to unseal previously sealed records must be filed in the Supreme Court action. *See id.* (“Court records sealed in the trial court shall be sealed from public access in the Nevada Supreme Court subject to further order of that court.”).

Court records that are sealed may be examined by the public only after entry of a court order allowing access to the record in accordance with the SRCR. *See* SRCR 4(1). Rule 4 provides that “[a] sealed court record in a civil case shall be

unsealed only upon stipulation of all the parties, upon the court's own motion, or upon a motion filed by a named party or another person." SRCR 4(2). Any party opposing the motion to unseal shall appear at a hearing and show cause why the motion should not be granted. *Id.* The responding party must show that compelling circumstances continue to exist or that other grounds provide a sufficient legal or factual basis for keeping the record sealed. *Id.*

SRCR 3 sets forth the grounds upon which the Court may seal or redact documents or exhibits filed with the Court:

Grounds to seal or redact; written findings required. The court may order the court files and records, or any part thereof, in a civil action to be sealed or redacted, provided the court makes and enters written findings that the specific sealing or redaction is justified by identified compelling privacy or safety interests that outweigh the public interest in access to the court record. The parties' agreement alone does not constitute a sufficient basis for the court to seal or redact court records. The public interest in privacy or safety interests that outweigh the public interest in open court records include findings that:

(a) The sealing or redaction is permitted or required by federal or state law;

(b) The sealing or redaction furthers an order entered under NRCP 12(f) or JCRCP 12(f) or a protective order entered under NRCP 26(c) or JCRCP 26(c);

(c) The sealing or redaction furthers an order entered in accordance with federal or state laws that serve to protect the public health and safety;

(d) The redaction includes only restricted personal

information contained in the court record;

(e) The sealing or redaction is of the confidential terms of a settlement agreement of the parties;

(f) The sealing or redaction includes medical, mental health, or tax records;

(g) The sealing or redaction is necessary to protect intellectual proprietary or property interests such as trade secrets as defined in NRS 600A.030(5); or

(h) The sealing or redaction is justified or required by another identified compelling circumstance.

SRCR 3(4) (emphasis supplied). In accordance with the requirements of the Protective Orders, and consistent with the provisions of SRCR Rule 3, the SLC requests that the Court permit the public version of the Answering Brief to be filed in redacted form and to seal certain portions of the Answering Appendix.

Here, redacting portions of the Answering Brief and sealing portions of the Answering Appendix are warranted under SRCR 3(4)(a), (b), (c), and (h). The redacted language contained on page 7 of the Answering Brief describes confidential and commercially-sensitive information regarding technical issues concerning spectrum assets held by a third-party. Accordingly, the redaction is justified by compelling circumstances.

The language redacted on pages 62 and 65 describe a document that constitutes a portion of the SLC's work product, which was produced without waiver and previously sealed pursuant to the District Court's March 30, 2015

Stipulation and Protective Order and also previously sealed pursuant to the District Court's August 21, 2015 Minute Order. *See* Ex. B; Ex. C. The underlying document constitutes work product because it was selected by the SLC's counsel and provided to the SLC for its work in preparing the SLC Report. *See* Ex. B. at 3:25-4:25. Jacksonville sought production of this work product, and the SLC objected. In an effort to resolve the parties' dispute, the SLC agreed to produce this document to Jacksonville on the condition that Jacksonville enter into the *Stipulation and Protective Order*. *See* Ex. B at 3:7-16. Through the *Stipulation and Protective Order*, Jacksonville agreed and the District Court ordered that the document – a “Protected Document” –

shall continue to be afforded attorney work product protection . . . while in the possession of derivative plaintiff Jacksonville and its counsel[,] . . . and the production of the Protected Documents shall not waive the work product protection for such documents, nor waive the work product protection for any other documents possessed by the members of the SLC or counsel for the SLC[.]

Ex. B. at 4:19-25. Further, the *Stipulation and Protective Order* precludes Jacksonville and its counsel's use of the document “for any purpose other than to respond to the Motion to Defer” to the SLC's Determinations that the Claims Should Be Dismissed, which was filed in the underlying litigation and is at issue in this appeal. *See id.* at 5:13-18. Because the language redacted on pages 62 and 65 of the Answering Brief cites to and discusses work product-information protected by

the *Stipulation and Protective Order* and sealed pursuant to the District Court's August 21, 2015 Minute Order, compelling circumstances exist under SRCR 3(4)(a), (b), (c), and (h) to redact the language in the Answering Brief to ensure that the information remains nonpublic for the duration of the appeal.

Similarly, the documents identified in Volume II of the Answering Appendix, which were previously sealed by the District Court, must remain sealed and nonpublic during the duration of the appeal. Specifically, the documents at issue (*see* Answering Appendix at Vol. II AA0011-217, Vol. II AA0220-242 and Vol. II AA0243-AA0246) consist of certain exhibits to the SLC Report, which were designated as Confidential in accordance with the *Stipulated Confidentiality Agreement and Protective Order* or contain confidential information. On January 12, 2015, the District Court entered an order sealing certain exhibits to the SLC Report, including the documents in Volume II of the Answering Appendix that the SLC currently requests remain under seal. *See* Ex. D. Because the documents contained in Volume II of the Answering Appendix contain information protected by multiple court orders as being Confidential and were previously sealed by the District Court, compelling circumstances exist under SRCR 3(4)(a), (b), (c) and (h) to seal Volume II of the Answering Appendix.

In addition, the Court's public policy favoring redaction weighs in favor of allowing redaction of the Answering Brief and sealing only portions of the

Answering Appendix rather than filing both entirely under seal.

Until the Court has had an opportunity to review the Answering Brief and Volume II of the Answering Appendix and make a ruling on its confidentiality status, the SLC requests that the Court immediately permit the public version of the Answering Brief to be filed in redacted form and seal Volume II of the Answering Appendix in order to protect them from public view. *See* SRCR 3.2 (“When a motion to seal or redact a court record has been filed, the information to be sealed or redacted remains confidential for a reasonable period of time until the court rules on the motion.”). If the confidential information contained therein remains available for the public to view and then is later confirmed by the Court as protected, the SLC will suffer irreparable harm because there is no way to “unring the bell” once the confidential information has been made public and reviewed. Accordingly, redaction of the Answering Brief and sealing Volume II of the Answering Appendix is warranted under the SRCR.

III.

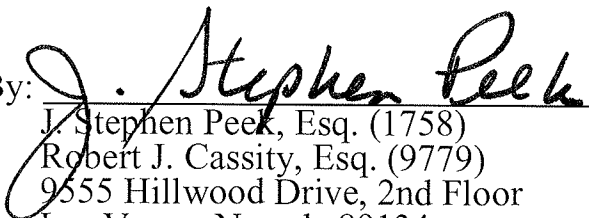
CONCLUSION

Based on all of the foregoing reasons, the SLC respectfully requests that the Court issue an order permitting the public version of the Answering Brief to be filed in redacted form and to seal certain portions of the Answering Appendix. The SLC

will also file with the Court and provide to all parties a nonpublic version of the Answering Brief and Answering Appendix.

DATED this 28th day of July, 2016.

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CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of July, 2016, a true and correct copy of the foregoing **MOTION FOR LEAVE TO REDACT PORTIONS OF RESPONDENT SPECIAL LITIGATION COMMITTEE OF DISH NETWORK CORPORATION'S ANSWERING BRIEF AND TO SEAL PORTIONS OF THE ANSWERING APPENDIX** was electronically filed with the Nevada Supreme Court. Electronic Service of the foregoing document shall be made in accordance with the Master Service List to the persons and email addresses listed below:

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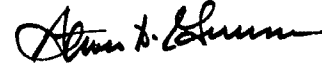
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EXHIBIT A

EXHIBIT A

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22 CARL E. VOGEL

23 **DISTRICT COURT**
24 **CLARK COUNTY, NEVADA**

25 **IN RE DISH NETWORK CORPORATION**
26 **DERIVATIVE LITIGATION**

Case No.: A-13-686775-B
Dept. No.: XI

**STIPULATED CONFIDENTIALITY
AGREEMENT AND PROTECTIVE
ORDER**

27 Plaintiff JACKSONVILLE POLICE AND FIRE PENSION FUND ("Plaintiff"), by and
28 through its undersigned attorneys of record, Nominal Defendant DISH NETWORK
CORPORATION ("DISH"), by and through its undersigned attorneys of record, and Defendants
CHARLES W. ERGEN, JOSEPH P. CLAYTON, JAMES DEFRANCO, CANTEY M. ERGEN,
DAVID K. MOSKOWITZ, TOM A. ORTOLF and CARL E. VOGEL (together with DISH,
"Defendants"), by and through their undersigned attorneys of record, hereby stipulate and agree,

014414-0015-10789788.3

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1 pursuant to N.R.C.P. 29 and EDCR 7.50, that the use and handling of Confidential Information (as
 2 defined herein) and Discovery Material (as defined herein) in these proceedings shall be governed
 3 by and subject to the provisions below;

4 Plaintiff and Defendants, separately and each of them, are each a "party" and are
 5 collectively referred to as the "parties." Any reference to a party or a person or non-party means,
 6 unless otherwise indicated, a natural person, firm, entity, corporation, partnership, proprietorship,
 7 association, joint venture, subsidiary, division, affiliate, parent company, and any other form of
 8 business organization or arrangement, and includes the party or person or non-party's officers,
 9 directors, managers, members, employees, agents, representatives, shareholders, independent
 10 contractors, attorneys, accountants, and all other person(s) over which the party or person or non-
 11 party has control or which act or purport to act on their behalf. Any party or any person or non-
 12 party producing or disclosing Confidential Information or Discovery Material pursuant to the terms
 13 set forth below is referred to as the "Producing Party," and the party or any person or non-party
 14 receiving or being given access to confidential information or material is referred to as the
 15 "Receiving Party."

16 1. Confidential Information. "Confidential Information" means any and all
 17 information, documents, materials, items and things produced, disclosed or otherwise revealed in
 18 discovery in this case, regardless of the medium or manner generated, stored or maintained,
 19 including but not limited to testimony adduced at depositions upon oral examination or upon
 20 written questions, answers to interrogatories or requests for admission, or other forms of discovery
 21 responses (collectively, "Discovery Material") that the Producing Party designates as
 22 "CONFIDENTIAL—Authorized Eyes Only" pursuant to Section 2. The Producing Party shall, in
 23 good faith, designate as "CONFIDENTIAL—Authorized Eyes Only" only such Discovery
 24 Materials that consists of (i) previously non-disclosed financial information (including but not
 25 limited to profitability reports or estimates, percentage fees, commercial rates, sales report and
 26 sales margins), (ii) previously non-disclosed trade secrets, business plans or prospects, product
 27 development information, or marketing information, (iii) any information of a personal or intimate
 28 nature regarding any individual, (iv) attorney-client privileged information and work product, and

(v) any other category of information hereinafter giving confidential status by the Court. In designating information as "CONFIDENTIAL—Authorized Eyes Only," the Producing Party represents that he, she or it maintains the information in confidence and in good faith believes in fact that it is confidential and that its unprotected disclosure might result in economic or competitive injury.

2. Designation of Confidential Information by Receiving Party. All Discovery Material in this case that has not been designated as Confidential Information by the Producing Party shall be deemed Confidential Information for the first five (5) business days after production. During those five days, any Receiving Party may designate any Discovery Material received as Confidential Information under the same designation procedure and according to the same rules applicable to the Producing Party as set forth herein. If, at the expiration of the five-day period, no Party notifies the Producing Party of its intent to designate Discovery Material as Confidential Information, any non-designated Discovery Material shall be treated as not Confidential Information unless otherwise designated as Confidential Information as set forth herein.

When the Producing Party produces, discloses or otherwise reveals Confidential Information, it shall be clearly designated at the expense of the Producing Party as "CONFIDENTIAL—Authorized Eyes Only" and treated as Confidential Information by the Receiving Party. The legend "CONFIDENTIAL—Authorized Eyes Only" shall be stamped or affixed to the Discovery Material(s) in such a way as to not obliterate or obscure any written matter. With respect to a multi-page document that contains Confidential Information, the designation should be made, to the extent possible, on each page of the document. If designation in the manner set forth herein is impossible or impractical, the Producing Party may use such other method of designation as is reasonable under the circumstances. The Producing Party shall, in good faith, designate as "CONFIDENTIAL—Authorized Eyes Only" only such Discovery Materials, pursuant to and consistent with Section 1, that it reasonably believes constitutes Confidential Information, and the Producing Party shall use best efforts to designate Discovery Materials as containing Confidential Information prior to production or disclosure by the Producing Party. In the event any Discovery Materials that contain Confidential Information are

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made available for inspection by a party, there will be no waiver of confidentiality by virtue of such inspection before the material is copied and produced with a confidentiality designation by the Producing Party.

If the Producing Party determines that any of its Discovery Material produced in the course of discovery in this action should have been designated as provided herein, it shall advise the Receiving Party of this fact in writing as soon as practicable, and all copies of such Discovery Material deemed to be Confidential Information shall be marked "CONFIDENTIAL—Authorized Eyes Only" at the expense of the Producing Party and treated as Confidential Information by all parties. The Receiving Party shall promptly destroy or return the previously undesignated copies of Confidential Information upon receiving substitute copies of the Discovery Materials properly designated as "CONFIDENTIAL—Authorized Eyes Only." Nothing herein shall preclude a party from disputing any designation of Discovery Materials by a party as Confidential Information under Section 11. By designating Discovery Materials as containing Confidential Information, the Producing Party is certifying to the Court that there is a good faith basis in law and in fact for the designation within the meaning of N.R.C.P. 26(g).

3. Use of Confidential Information Generally. All Confidential Information designated as provided herein in Section 2 shall be used by the Receiving Party solely for the purposes of this lawsuit, shall not be disclosed to anyone other than those persons identified herein in Section 5, and shall be handled in the manner set forth herein until such designation is removed by the Producing Party or by order of the Court. Such Confidential Information shall not be used by any Receiving Party or other person granted access thereto under this Stipulated Confidentiality Agreement and Protective Order ("Stipulation and Order" or "Protective Order") for any purpose outside of this lawsuit, including, but not limited to, a business or competitive purpose, publicity, or in another legal dispute or proceeding, without prior written consent of the Producing Party or approval from the Court. Nothing herein shall preclude the Producing Party from using its own Confidential Information.

The Receiving Party, or any person or non-party receiving or being given access to Confidential Information, must proceed as follows:

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1 a. Store and maintain such Confidential Information in a secure manner, within
 2 their exclusive possession and control;
 3 b. Take all measures reasonably necessary to maintain the confidentiality of
 4 such Confidential Information; and

5 c. Not permit or participate in, directly or indirectly, the unauthorized
 6 production, disclosure, or use of such Confidential Information.

7 All Parties and persons or non-parties obtaining, receiving or being given access to
 8 Confidential Information in accordance with this Stipulation and Order consent to the continuing
 9 jurisdiction of the Court for the purpose of enforcing the terms of this Stipulation and Order and
 10 remedying any violation(s) thereof.

11 **4. Use of Confidential Information in Depositions.** Any party shall have the right to
 12 use Confidential Information during depositions taken in connection with this case unless
 13 otherwise agreed to by the Parties in writing or on the record at the deposition. However, to the
 14 extent a third party deponent (or a person or non-party not otherwise authorized to receive
 15 Confidential Information under Section 5 herein) is present, that third party deponent or person or
 16 non-party shall be required to confirm, in writing or orally on the record, that it accepts the words
 17 and substance of the form Attachment A affixed to this Stipulation and Order prior to
 18 dissemination or disclosure of Confidential Information. Counsel for the affected Party may also
 19 request that all individual(s) not qualified to obtain, receive or be given access to Confidential
 20 Information under this Stipulation and Order (other than the third-party deponent's legal counsel)
 21 leave the deposition session during any portion where Confidential Information is used, disclosed
 22 or referred to. At any deposition session, upon inquiry with regard to the content of a document,
 23 material, item or thing marked "CONFIDENTIAL—Authorized Eyes Only," or whenever counsel
 24 for a party deems that the answer to a question may result in the disclosure of Confidential
 25 Information, or whenever counsel for a party deems that the answer to any question has resulted in
 26 the disclosure of Confidential Information, the deposition (or portions thereof) may be designated
 27 by the affected party as containing Confidential Information subject to the provisions of this
 28 Stipulation and Order. When such designation has been made, the testimony or the transcript of

such testimony shall be disclosed only to those parties or persons or non-parties described herein in Section 5 and to the testifying third party deponent (including the third party deponent's legal counsel), and the Confidential Information contained therein shall be used only as specified in this Stipulation and Order. Moreover, all originals and copies of deposition transcripts that contain Confidential Information and/or exhibits containing Confidential Information shall be prominently marked "CONFIDENTIAL—Authorized Eyes Only" on the cover thereof and, if and when filed with the Court, the portions of such transcript so designated shall be filed under seal as required under Section 6 herein.

Counsel must designate portions of a deposition transcript, by page and line number(s), including any confidential exhibit(s), as "CONFIDENTIAL—Authorized Eyes Only" on the record at the deposition, or within ten (10) business days of receiving the transcript and corresponding exhibit(s). Designations may be made by letter to counsel of record or on the record during the deposition. Portions of deposition transcripts so designated shall be treated as Confidential Information by the parties as set forth herein. If all or a portion of a videotaped deposition is intended to be designated as Confidential Information, the videocassette, videotape, DVD, CD-ROM or other electronic medium storing or maintaining the deposition testimony shall be stamped or affixed "CONFIDENTIAL—Authorized Eyes Only." During the ten (10) business day period, the entire transcript, or other recording of deposition testimony, shall be treated as Confidential Information. If no confidential designations are made within the ten (10) business day period, the entire transcript shall be considered not Confidential Information.

5. Disclosure of Confidential Information. Confidential Information produced pursuant to this Stipulation and Order may be disclosed or made available only to the persons designated below:

- (a) Retained counsel and in-house counsel for a party (including attorneys associated with retained counsel's law firm and the paralegal, clerical, and secretarial staff employed by retained counsel, and attorneys working under the leadership of retained counsel for a party, to the extent such persons are deemed reasonably necessary by the party's counsel to aid in the prosecution, defense or settlement of

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- 1 this action);
- 2 (b) A Defendant, or officers, directors, and employees of a Defendant deemed
- 3 reasonably necessary by counsel for the Defendant to aid in the defense, or
- 4 settlement of this action;
- 5 (c) Outside experts or consultants (together with their clerical and secretarial staff)
- 6 retained by counsel for a party to assist in the prosecution, defense, or settlement of
- 7 this action, to the extent reasonably necessary to perform their work in connection
- 8 with this action, provided, however, that no such expert or consultant shall be
- 9 employed or retained by, or otherwise working for, any party (other than the
- 10 Defendants and their affiliates) in connection with the proceedings captioned *In re:*
- 11 *LightSquared Inc., et al.*, Case No. 12-12080 (SCC), pending in the United States
- 12 Bankruptcy Court for the Southern District of New York;
- 13 (d) Clerical and data processing personnel, including third party vendors, involved in
- 14 the production, reproduction, organizing, filing, coding, cataloging, converting,
- 15 storing, retrieving, and review of Discovery Material, to the extent reasonably
- 16 necessary to assist a party or its counsel in these proceedings;
- 17 (e) This Court and its staff and any other court, tribunal or dispute resolution officer
- 18 duly appointed, chosen or assigned in connection with this action;
- 19 (f) Court reporter(s) and videographers(s) employed in this action;
- 20 (g) A witness or person or non-party appearing at a deposition in this action (including
- 21 his or her counsel), subject to the terms of Section 4;
- 22 (h) The original source of the Confidential Information (its author), and any
- 23 addressee(s) or recipient(s) of communications or material that is designated as
- 24 Confidential Information, including but not limited to addressee(s) or recipient(s) of
- 25 confidential e-mail communications and/or confidential correspondence;
- 26 (i) Any other person as to whom the parties in writing agree or that the Court in this
- 27 action designates; and
- 28

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(j) Any governmental agency or regulating authority to the extent disclosure is required by applicable law.

To facilitate the expedited production of Confidential Information and Discovery Material in connection with Count I of the Verified Amended Derivative Complaint, dated September 12, 2013, Plaintiff agrees that Confidential Information and Discovery Material will be made only available to its retained counsel, its in-house counsel, and counsel working under Plaintiff's retained counsel's leadership until the bankruptcy court presiding over *In re: LightSquared Inc., et al.*, Case No. 12-12080 (SCC), pending in the United States Bankruptcy Court for the Southern District of New York, conducts the bankruptcy plan confirmation hearing currently scheduled for December 6, 2013 and issues a final order confirming a plan of reorganization in that case. Following the bankruptcy plan confirmation hearing and a final order confirming a bankruptcy plan, any Confidential Information produced pursuant to this Stipulation and Order may also be disclosed or made available to up to three (3) officers, directors or employees of Plaintiff, designated by counsel for Plaintiff as reasonably necessary to aid in the defense or settlement of this action. Prior to receiving Confidential Information, the three (3) designated representatives of Plaintiff must execute the Confidentiality Agreement set forth in Attachment A to this Stipulation and Order.

Any person or non-party to whom Confidential Information is disclosed or revealed pursuant to subparts (b), (c), (d), (f), (g) or (i) of this Section shall be given a copy of this Stipulation and Order advised (1) that the Confidential Information is being disclosed pursuant to an Order of the Court and agreement of the Parties; (2) that the Confidential Information may not be disclosed by such person or non-party to any other person or non-party not permitted to have access to the Confidential Information pursuant to this Stipulation and Order; and (3) that any violation of this Protective Order may result in the imposition of such sanctions as the Court deems proper. Prior to delivering or disseminating any Confidential Information to any person or non-party designated in subparts (c), (d), (f), (g) or (i) of this Section, above, such person or non-party shall be required to execute a copy of the form Attachment A affixed to this Stipulation and Order. No party (or its counsel) shall discourage any persons or non-parties from signing a copy of the

1 form Attachment A affixed to this Stipulation and Order.

2 6. Filing of Confidential Information With the Court. Any Confidential
3 Information that any party or non-party files with the Court, including transcripts of depositions or
4 portions thereof, documents produced in discovery, information obtained from inspection of
5 premises or things, and answers to interrogatories or requests for admissions, exhibits and all other
6 documents that have previous thereto been designated as containing Confidential Information, or
7 any pleading, motion, brief or memorandum reproducing, paraphrasing, or containing such
8 Confidential Information, shall be filed and maintained under seal in compliance with Part VII of
9 the Nevada Supreme Court Rules Governing Sealing and Redacting Court Records. The filing
10 must be placed in a sealed envelope bearing the title of the case and the notation:

11 **"CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER
12 To Be Opened Only Upon Further Order Of This Court
Or For the Sole Use of The Court And Its Employees"**

13 All such sealed envelopes shall not be opened except for the sole use of the Court or its
14 employees or as otherwise ordered by the Court. Further, all such sealed envelopes shall be
15 maintained by the Clerk of the Court separate from public records in this action and shall be
16 released only upon further order of the Court; however, the same shall remain available to the
17 parties and all persons or non-parties entitled to receive Confidential Information pursuant to
18 Section 5.

19 7. Knowledge of Unauthorized Use or Possession of Confidential Information.

20 The Receiving Party or its counsel shall immediately notify counsel for the Producing Party
21 in writing if it learns of any unauthorized possession, knowledge, use or disclosure of any
22 Confidential Information in any manner inconsistent with the terms of this Stipulation and Order.
23 The Receiving Party shall promptly furnish the Producing Party in writing with the full details of
24 such unauthorized possession, knowledge, use or disclosure. With respect to such unauthorized
25 possession, knowledge, use or disclosure, the Receiving Party shall assist the Producing Party in
26 preventing its recurrence of and shall cooperate fully with the Producing Party in any litigation to
27 prevent unauthorized use or further dissemination of Confidential Information. The Receiving
28

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1 Party shall further use its best efforts to retrieve all copies of Confidential Information obtained by
2 persons or non-parties not authorized to possess, know or otherwise receive Confidential
3 Information under this Stipulation and Order, and provide such person or non-party with a copy of
4 this Stipulation and Order.

5 **8. Copies, Summaries or Abstracts.** Any and all copies, summaries, abstracts,
6 compilations or exact duplications of Confidential Information shall be marked
7 "CONFIDENTIAL---Authorized Eyes Only" and shall be considered Confidential Information
8 subject to the terms and conditions of this Protective Order. Attorney-client communications and
9 attorney work product regarding Confidential Information shall not be subject to this Section,
10 regardless of whether they summarize, abstract, paraphrase, or otherwise reflect Confidential
11 Information, provided that the holders of such communications and work product maintain its
12 confidentiality.

13 **9. Information Not Confidential.** The restrictions set forth in this Protective Order
14 shall not be construed:

15 (a) To apply to information lawfully obtained by a party from any non-party to this
16 litigation, if that non-party had the right to disclose such information subsequent to
17 the production of information by the Producing Party, subject to and in accordance
18 with Section 10 herein; or

19 (b) To apply to information or other materials that have been or become part of the
20 public domain by publication or otherwise and not due to any unauthorized act or
21 omission on the part of a Receiving Party; or

22 (c) To apply to information or other materials that, under law, have been declared to be
23 in the public domain.

24 For purposes of this Stipulation and Order, "tax returns" shall not be declared as
25 information or other Discovery Material that is or has become part of the public domain, unless
26 such tax returns have been made publicly available pursuant to state or federal law or otherwise
27 have been voluntarily made publicly available by the taxpayer.

28 **10. Production of Confidential Information by Non-Parties.** Promptly and in no

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event later than five (5) business days of receipt of any information, documents, materials, items or things produced by a non-party voluntarily or in response to a subpoena or court order, the party receiving such information, documents, materials, items or things shall provide all parties in this case with copies thereof. Any party who reasonably believes in good faith that any materials produced by a non-party contain Confidential Information may, within ten (10) business days of receipt thereof, designate the materials as "CONFIDENTIAL—Authorized Eyes Only" pursuant to and consistent with Section 2. Until this ten (10) business day period expires, the parties shall treat all such materials produced by a non-party as Confidential Information. If no objections or confidential designations are made within the ten (10) day period, the materials shall be considered not Confidential Information.

Nothing herein shall be construed as authorizing or encouraging a party to disobey a lawful directive from this or another court or tribunal.

11. Challenges to Confidentiality Designations. If at any time counsel for the Receiving Party believes in good faith that counsel for the Producing Party has unreasonably designated certain Discovery Materials as containing Confidential Information, or believes in good faith that it is necessary to disclose Confidential Information to persons or non-parties other than those permitted by this Protective Order, the Receiving Party may make an appropriate application to this Court requesting that the specific Discovery Materials be excluded from the provisions of this Protective Order or be made available to specified other persons or non-parties; however, prior to seeking relief from the Court, the Parties must comply with the requirements of EDCR 2.34 to attempt to resolve informally any and all dispute(s) relating to confidentiality designations or the disclosure of Confidential Information to persons or non-parties not identified in Section 5. A party may seek an Order Shortening Time to object to the disclosure or designation of Confidential Information. The party claiming confidentiality shall have the burden of establishing confidentiality. Until the Court issues a ruling, all parties shall continue to afford the Discovery Material(s) in dispute the protection to which it is entitled under this Protective Order, and will not disclose or reveal the disputed Discovery Material(s) to the person or non-party at issue.

12. Use of Confidential Information in Court. In the event that any Confidential

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Information is used or referenced in any pretrial Court proceeding in this action, it shall not lose its confidential status through such use, and the party using or referring to such Confidential Information shall take all reasonable steps to maintain its confidentiality during such use or reference, including without limitation, requesting that the Court seal any transcript or portion(s) thereof with respect to such proceeding. Nothing in this Protective Order, or designations of confidentiality hereunder, shall in any way affect the treatment of Confidential Information at the trial of this action. Should the Producing Party desire that Confidential Information be treated as

confidential at trial, the Producing Party must make an appropriate request to the Court for such treatment at the time set forth by the Court for consideration of motions *in limine* or at such other time as directed by the Court.

13. Reservation of Rights. This Protective Order is entered solely for the purpose of facilitating the exchange of Discovery Materials among the parties to this action without involving the Court unnecessarily in the process. Notwithstanding, the Parties hereby reserve the following rights:

a. Nothing in this Protective Order, nor the production of any Discovery Materials under the terms of this Protective Order, nor any proceedings pursuant to this Protective Order, shall be deemed or construed (i) to have the effect of an admission or a waiver by any party of the confidentiality or non-confidentiality of any such materials; (ii) to alter the confidentiality or the non-confidentiality of any such materials; (iii) to alter any existing or pending obligation of any party or the absence thereof; or (iv) to affect in any way the authenticity or admissibility of any document, testimony or other evidence at trial.

b. Entry of this Protective Order does not preclude any party from seeking or opposing additional or different protection for particular information or documents.

c. Each party may object to the production, disclosure or use of any Discovery Materials that a party designates as containing Confidential Information on any other ground(s) it deems appropriate, including, but not limited to, attorney-client privilege, work product, or any other privilege or protection provided under applicable law.

d. This Stipulation and Order shall neither enlarge nor affect the proper scope

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1 of discovery in this case or any other litigation, nor shall this Stipulation and Order imply that
2 Confidential Information is discoverable, relevant or admissible in this case or any other litigation.

3 e. Nothing in this Stipulation and Order is intended to expand or limit a party's
4 right under the Nevada Rules of Civil Procedure or other applicable state or federal law to pursue
5 costs and attorneys' fees incurred in making a motion to challenge a confidentiality designation
6 pursuant to Section 11 herein.

7 **14. Inadvertent Failure to Designate Information as Confidential.** The inadvertent
8 failure of a Party to designate Discovery Materials as Confidential Information (whether in the
9 form of documents, interrogatories, testimony or otherwise, and whether produced by that Party or
10 a third party) shall not be deemed, by itself, to be a waiver of the Party's right to so designate such
11 Discovery Materials. Immediately upon learning of any such inadvertent failure, the Party seeking
12 a confidentiality designation shall notify all Parties of such inadvertent failure and take such other
13 steps as necessary to correct such failure after becoming aware of it. However, disclosure by a
14 Receiving Party of such Discovery Materials to any other person or non-party prior to later
15 designation of the Discovery Materials by the Producing Party in accordance with this Stipulation
16 and Order shall not violate the terms of this Stipulation and Order. Notwithstanding the foregoing,
17 a Receiving Party that discloses inadvertently disclosed Discovery Material prior to its subsequent
18 designation as Confidential Information pursuant to this Section must take any and all good faith,
19 reasonable efforts to remediate the disclosure, including, but not limited to, seeking the return of
20 the disseminated Confidential Information and having persons to whom the Confidential
21 Information was given execute a copy of the form Attachment A.

22 **15. Amendment.** This Stipulation and Order may be amended from time to time by
23 written agreement of counsel for the Parties, which agreement shall be submitted to the Court in
24 advance for its approval.

25 **16. Return or Destruction of Confidential Information.** Within thirty (30) days after
26 the conclusion of this action, including any appeal thereof, or at such other time as the parties may
27 agree in writing, all Discovery Material, together with all copies, excerpts, summaries and
28 compilations thereof, which have been designated as containing Confidential Information or

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otherwise treated by the parties as confidential, shall be returned to the Producing Party. In lieu of returning such designated Discovery Materials as provided herein, counsel for the Receiving Party may certify in writing to counsel for the Producing Party that the Discovery Materials, together with all copies, excerpts, summaries and compilations thereof, which have been designated as containing Confidential Information have been destroyed. This section shall not apply to the Court or its staff.

17. Injunctive Relief Available. Each party acknowledges that monetary remedies may be inadequate to protect each party in the case of unauthorized disclosure or use of Confidential Information and that injunctive relief may be appropriate to protect each party's rights in the event there is any such unauthorized disclosure or use of Confidential Information, in addition to whatever relief may be available at law or in equity.

18. Other Actions And Proceedings. If a Receiving Party (a) is subpoenaed in another action or proceeding, (b) is served with a demand in another action or proceeding in which

it is a party, or (c) is served with any legal process by one not a party to this Stipulation and Order, seeking Discovery Materials that were produced or designated as containing Confidential Information pursuant to this Stipulation and Order, the Receiving Party shall forward the subpoena, demand or legal process by hand, email or facsimile transmission to counsel for the Producing Party within five (5) business days of receipt of such subpoena, demand or legal process or such shorter notice as may be required to provide the Producing Party with the opportunity to object to the immediate production of the requested Discovery Materials to the extent permitted by law. Should the person seeking access to the Confidential Information take action against the Receiving Party or anyone else covered by this Stipulation and Order to enforce such a subpoena, demand or other legal process, the Receiving Party shall respond by setting forth the existence of this

Stipulation and Order. The Producing Party is solely responsible for intervening to object or seek a limitation of such subpoena, demand or other legal process. The Receiving Party agrees that it will provide its best efforts to cooperate fully with any effort by the Producing Party to object to or limit such disclosure of Confidential Information. In no event shall this stipulation be interpreted to impose a requirement on the Receiving Party to defy a final, non-appealable Court order in any

1 action.

2 **19. No Waiver of Privilege.** Disclosure (including production) of information that a
3 party or non-party later claims should not have been disclosed because of a privilege, including,
4 but not limited to, the attorney-client privilege or work product doctrine ("Privileged
5 Information"), shall not constitute a waiver of, or estoppel as to, any claim of attorney-client
6 privilege, attorney work product, or other ground for withholding production as to which the
7 Producing or Receiving Party would be entitled in the action.

8 **20. Effect of Disclosure of Privileged Information.** The Receiving Party hereby
9 agrees to return, sequester, or destroy any Privileged Information disclosed or produced by
10 Producing Party upon request, except that, subject to the requirements below, the Receiving Party
11 may retain one copy for submission to the Court in connection with any challenge to the request
12 for the return, sequester, or destruction of purportedly Privileged Information pursuant to Section
13 11. If the Receiving Party retains a copy, the copy must be treated as Confidential Information and
14 the Receiving Party must make its application to the Court pursuant to Section 11 within ten (10)
15 days of the request by the Producing Party to return, sequester, or destroy the Privileged
16 Information.

17 If the Receiving Party reasonably believes that Privileged Information has been
18 inadvertently disclosed or produced to it, it shall promptly notify the Producing Party and sequester
19 such information until instructions as to disposition are received. The failure of any party to
20 provide notice or instructions under this Section shall not constitute a waiver of, or estoppel as to,
21 any claim of attorney-client privilege, attorney work product, or other ground for withholding
22 production as to which the Producing Party would be entitled in this action.

23 **21. Order Survives Termination.** This Protective Order shall survive the termination
24 of this action, including any appeals thereof, and the Court shall retain continuing jurisdiction to
25 enforce or resolve any dispute concerning the use of Confidential Information disclosed hereunder.

26 **22. Compliance with this Order.** All counsel of record in this action shall make a
27 good faith effort to comply with the terms of this Stipulation and Order, and ensure that their
28 clients, and the persons or non-parties receiving or being given access to Confidential Information

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1 pursuant to Section 5 herein, similarly comply herewith. No Receiving Party may utilize any
2 portion of Confidential Information for its/his/her own personal or business advantage or gain,
3 aside from purpose(s) related to these proceedings.

4 In the event of a change in counsel, new counsel shall execute a copy of the form
5 Attachment A affixed to this Stipulation and Order.

6 **23. Miscellaneous.** When interpreting this Stipulation and Order:

7 a. The term "and" includes the term "or" and the term "or" includes the term
8 "and";

9 b. Defined terms shall have the meanings ascribed to such terms where used or
10 defined;

11 c. The paragraph headings are for convenience only and in no way limit or
12 enlarge the scope or meaning of the language thereof; and

13 d. The terms herein shall be construed as a whole according to their fair and
14 ordinary meaning and not strictly for or against any party.

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DATED this _____ day of October, 2013.

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By: _____
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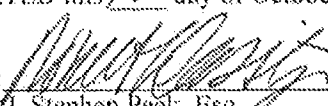
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DATED this 16th day of October, 2013.

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Ortolf*

PROTECTIVE ORDER

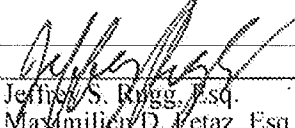
Having considered the foregoing and finding good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the foregoing Stipulated Confidentiality Agreement and Protective Order is GRANTED.

Dated this 16 day of October, 2013.


DISTRICT COURT JUDGE

Prepared and submitted by:

By: 
Jeffrey S. Rigg, Esq.
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NETWORK CORPORATION and
DEFENDANTS JOSEPH P.
CLAYTON, JAMES DEFRANCO,
CANTEY M. ERGEN, DAVID K.
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FORM ATTACHMENT "A"
CONFIDENTIALITY AGREEMENT

I, _____, do hereby acknowledge and agree as follows:

1. I have received and read the Stipulated Confidentiality Agreement and Protective Order entered in the matter entitled *In re Dish Network Corporation Derivative Litigation*, Case No. A-13-686775-B, pending before the Eighth Judicial District Court, Clark County, Nevada, of which the form of this agreement is an attachment.

2. I understand the terms and provisions of the Stipulated Confidentiality Agreement and Protective Order and agree to be bound by and to strictly adhere to all of its terms and provisions.

3. I hereby submit to the jurisdiction of the Clark County, Nevada District Court solely for the purpose of enforcement of the Stipulated Confidentiality Agreement and Protective Order and this Confidentiality Agreement.

DATED this ____ day of _____, 20__.

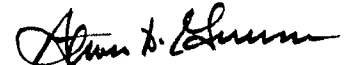
[Signature]

[Name, Address, Telephone Number]

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190 BROADWAY, SUITE 2600
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(213) 892-3300

EXHIBIT B

EXHIBIT B



CLERK OF THE COURT

1 **SAO**

2 J. Stephen Peek

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4 Robert J. Cassity

5 Nevada Bar No. 9779

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18 Robert S. Brady (*Pro Hac Vice*)

19 C. Barr Flinn (*Pro Hac Vice*)

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24 Phone: (302) 571-6600

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26 *Attorneys for the Special Litigation Committee*
27 *of Dish Network Corporation*

28 **DISTRICT COURT**
CLARK COUNTY, NEVADA

IN RE DISH NETWORK CORPORATION
DERIVATIVE LITIGATION

Case No. A-13-686775-B
Dept. No. XI

**STIPULATION AND
PROTECTIVE ORDER**

WHEREAS, on July 25, 2014, plaintiff Jacksonville Police and Fire Pension Fund ("Jacksonville") filed the Verified Second Amended Shareholder Derivative Complaint of Jacksonville Police and Fire Pension Fund Pursuant to Rule 23.1 of the Nevada Rules of Civil Procedure ("Second Amended Complaint") purporting to assert claims on behalf of DISH Network Corporation ("DISH") against certain DISH directors and officers;

1 WHEREAS, on October 24, 2014, the Special Litigation Committee (the "SLC") of
2 DISH, after conducting an investigation, filed with the Court a report (the "SLC Report"), in
3 which it presented its determination that pursuing the claims asserted in the Second Amended
4 Complaint was not in DISH's best interests;

5 WHEREAS, on November 17, 2014, the SLC filed a Motion to Defer to the SLC's
6 Determination that the Claims Should Be Dismissed (the "Motion to Defer"), by which the SLC
7 requested that the claims of the Second Amended Complaint be dismissed with prejudice on the
8 ground that they were not in DISH's best interest;

9 WHEREAS, on December 10, 2014, Jacksonville filed its opposition to the Motion to
10 Defer, and on January 5, 2015, the SLC filed its Reply in Support of the Motion to Defer;

11 WHEREAS, at the hearing on January 12, 2015, and in further response and opposition
12 to the Motion to Defer, Jacksonville served an affidavit (the "Rule 56(f) Affidavit") seeking
13 discovery pursuant to Rule 56(f), by which Jacksonville requested, among other discovery,
14 certain documents (the "Rule 56(f) Requests");

15 WHEREAS, by order dated January 12, 2015, the Court granted the Rule 56(f) Motion to
16 the extent that it requested discovery concerning the "independence and thoroughness of the
17 investigation by the Special Litigation Committee;"

18 WHEREAS, on January 26, 2015, in response to the Rule 56(f) Requests, the SLC
19 objected to producing, among other documents, (1) summaries of interviews conducted by the
20 SLC and/or its counsel; (2) documents provided to the SLC by its counsel; and (3) any drafts of
21 the SLC Report provided to persons other than the SLC or its counsel before the SLC Report was
22 filed with the Court (collectively the "Disputed Documents"), on the asserted grounds, among
23 other grounds, that they constitute attorney work product, may be subject to a common-interest
24 privilege with respect to third parties outside DISH, are highly confidential, and exceed the scope
25 of permissible discovery from a special litigation committee on the issues of independence of the
26 SLC and thoroughness of the SLC's investigation;

1 WHEREAS, the SLC has expressed to Jacksonville its concern that the Disputed
2 Documents should not be produced in a manner that might permit their use against DISH in
3 cases pending or that may be asserted against DISH, including cases pending in the United States
4 Bankruptcy Court for the Southern District of New York and the United States District Court for
5 the District of Colorado, which address or may address issues related to the factual and legal
6 issues raised and discussed in the Second Amended Complaint and the SLC Report;

7 WHEREAS, the SLC and Jacksonville have met and conferred in an effort to resolve the
8 disputes between the SLC and Jacksonville concerning the SLC's objections to the production of
9 the Disputed Documents and other documents;

10 WHEREAS, to resolve aspects of the disputes described above, the SLC has indicated
11 that it will agree to produce, and will produce, the Disputed Documents specified below,
12 provided that a stipulated protective order is entered by the Court setting forth the terms set forth
13 herein; and

14 WHEREAS, Jacksonville has agreed to accept such terms in exchange for the SLC's
15 agreement to produce such documents;

16 NOW, THEREFORE, IT IS STIPULATED AND ORDERED AS FOLLOWS:

17 1. Following approval and entry by the Court of this Stipulated Protective Order, the
18 SLC shall produce the following Disputed Documents:

19 A. the final versions of all memoranda prepared by counsel for the SLC
20 summarizing interviews conducted by the SLC in the investigation leading to the SLC
21 Report (the "Interview Summaries"), whether or not such memoranda were provided to
22 the members of the SLC, except to the extent such memoranda contain information that is
23 subject to the attorney-client privilege of DISH (although the redaction of any such
24 information shall be disclosed on an appropriate privilege log);

25 B. any documents collected by counsel for the SLC during the investigation
26 leading to the SLC Report from persons other than counsel for the SLC that were
27 provided, before the SLC Report was filed, to the members of the SLC by counsel for the
28

1 SLC (the "Selected Documents"), except to the extent such documents have already been
2 provided to Jacksonville as exhibits to the SLC Report or constitute or contain
3 information that is subject to the attorney-client privilege of DISH (although the
4 withholding or redaction of any such information shall be disclosed on an appropriate
5 privilege log); and

6 C. any drafts of the SLC Report or excerpts of such drafts that were disclosed
7 to persons, other than the members of the SLC or counsel for the SLC (the "Subject Draft
8 Reports"), including or constituting any such drafts or excerpts that were disclosed to
9 DISH's FCC counsel and/or other counsel for DISH, except to the extent such drafts or
10 excerpts contain information that is subject to the attorney-client privilege of DISH
11 (although the redaction of any such information shall be disclosed on an appropriate
12 privilege log);

13 2. The SLC asserts that the Interview Summaries, the collection of the Selected
14 Documents, and the Subject Draft Reports (the "Protected Documents") constitute attorney work
15 product of counsel for the SLC that is protected from disclosure under the common law, the
16 common-interest privilege, and Nevada Rule of Civil Procedure 26. Without admitting or
17 denying the SLC's work product assertions, the parties hereby agree, and the Court orders, that
18 the SLC and/or its counsel shall mark all Protected Documents produced to Jacksonville as
19 "Protected Documents," and the Protected Documents shall continue to be afforded attorney
20 work product protection and/or common-interest privilege protection while in the possession of
21 derivative plaintiff Jacksonville and its counsel and the other parties to this litigation and their
22 counsel, and the production of the Protected Documents shall not waive the work product
23 protection for such documents, nor waive the work product protection for any other documents
24 possessed by the members of the SLC or counsel for the SLC;

25 3. The SLC, its members and counsel shall not be required to produce for the
26 Motion to Defer any documents that are properly protected from disclosure as attorney work
27 product of counsel for the SLC, other than the Protected Documents, including, without
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1 limitation, (a) any draft or final memoranda, analyses or email prepared by counsel for the SLC
2 or at their request, whether or not disclosed to members of the SLC, (b) any drafts of the SLC
3 Report other than the Subject Draft Reports, whether or not disclosed to the members of the
4 SLC, or (c) any drafts of or documents prepared by the SLC's counsel concerning any reports,
5 briefs or other documents filed by the SLC with the Court, whether or not disclosed to members
6 of the SLC;

7 4. The Protected Documents may not be disclosed by Jacksonville, the other parties
8 to this litigation or their counsel to any person other than (a) the parties to this litigation;
9 (b) Bernstein Litowitz Berger & Grossmann LLP, Holley Driggs Walch Puzey Thompson, Block
10 & Leviton, LLP, Gardy & Notis, LLP, Robbins Arroyo LLP, and Kessler Topaz Meltzer &
11 Check, LLP in their capacity as counsel for Jacksonville in this litigation; and (c) provided that
12 appropriate procedures are undertaken to preserve their confidentiality, the Court;

13 5. Jacksonville and its counsel shall not use the Protected Documents for any
14 purpose other than to respond to the Motion to Defer in this litigation. For the avoidance of
15 doubt, Jacksonville's and/or its counsel's use of the Protected Documents to respond to the
16 Motion to Defer in this litigation may include use of the Protected Documents in depositions of
17 any DISH employee or director taken in connection with Jacksonville's response to the Motion
18 to Defer.

19 A. If the Motion to Defer is denied, within 20 days after entry of the order
20 denying the Motion to Defer, the Protected Documents and all hard and electronic copies
21 thereof shall either be destroyed or returned to the SLC, as shall be certified by
22 Jacksonville, upon written request from the SLC or the SLC's counsel, within the 20
23 days.

24 B. If the Motion to defer is granted, within 20 days after the order granting
25 the Motion to Defer becomes final and no longer subject to any appeal the Protected
26 Documents and all hard and electronic copies thereof shall either be destroyed or returned
27 to the SLC within the 20 days.

C. All parties to this litigation reserve any rights or arguments they may have as to whether Jacksonville may discover or use the Protected Documents in this litigation for some other purpose.

DATED this 27 day of March, 2015

By: 

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Mazimilien D. Fetaz, Esq. (NBN 12737)
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Attorneys for Director Defendants

DATED this ____ day of March, 2015

By: 

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Lead Counsel for Plaintiff

DATED this ____ day of March, 2015

By: 

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*Attorneys for Defendants Charles W. Ergen
and Cantey M. Ergen*

DATED this ____ day of March, 2015

By: 

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DATED this 26th day of March, 2015

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Lead Counsel for Plaintiff

DATED this ____ day of March, 2015

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*Attorneys for Defendants Charles W. Ergen
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Attorneys for Director Defendants

DATED this ____ day of March, 2015

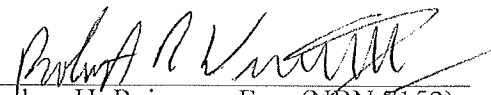
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DATED this 26th day of March, 2015

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*Attorneys for Defendants Charles W. Ergen
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1285 Avenue of the Americas
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Lead Counsel for Plaintiff

DATED this ____ day of March, 2015

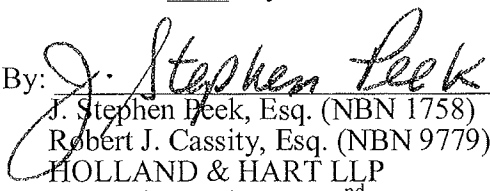
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*Attorneys for Defendants Charles W. Ergen
and Cantey M. Ergen*

DATED this 27th day of March, 2015

By:

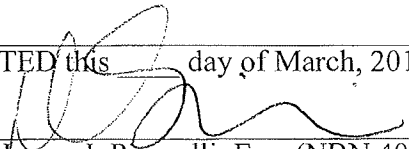

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	Wilmington, DE 19801 <i>Attorneys for the Special Litigation Committee of Dish Network Corporation</i>
DATED this _____ day of March, 2015 By:  James J. Pisanelli, Esq. (NBN 4027) Debra J. Spinelli, Esq. (NBN 9695) PISANELLI BICE PLLC 400 South 7 th Street, Suite 300 Las Vegas, Nevada 89101 Bruce R. Braun SIDLEY AUSTIN LLP One South Dearborn Chicago, IL 60603 <i>Attorneys for Defendant Thomas A. Cullen, Kyle J. Kiser, and R. Stanton Dodge</i>	

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PROTECTIVE ORDER

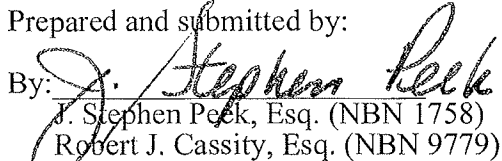
Having considered the foregoing and finding good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the foregoing
Stipulation and Protective Order is GRANTED.

Dated this ____ day of March, 2015


DISTRICT COURT JUDGE

Prepared and submitted by:

By: 
J. Stephen Peek, Esq. (NBN 1758)
Robert J. Cassity, Esq. (NBN 9779)
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EXHIBIT C

EXHIBIT C

REGISTER OF ACTIONS**CASE No. A-13-686775-B****Jacksonville Police and Fire Pension Fund, Plaintiff(s) vs. Charles Ergen, Defendant(s)**§
§
§
§
§
§
§
§Case Type: **Business Court**Date Filed: **08/09/2013**Location: **Department 11**Cross-Reference Case Number: **A686775**Supreme Court No.: **69012
69729****RELATED CASE INFORMATION****Related Cases**

A-13-688862-B (Consolidated)

A-14-693887-B (Consolidated)

PARTY INFORMATION**Lead Attorneys****Defendant** **Ergen, Charles W.****Joshua H. Reisman**
Retained
702-727-6258(W)**Plaintiff** **Jacksonville Police and Fire Pension Fund****Brian W. Boschee**
Retained
702-791-0308(W)**EVENTS & ORDERS OF THE COURT**08/21/2015 **All Pending Motions** (3:00 AM) (Judicial Officer Gonzalez, Elizabeth)**Minutes**

08/21/2015 3:00 AM

- THE SPECIAL LITIGATION COMMITTEE'S MOTION TO SEAL SUPPLEMENTAL REPLY IN SUPPORT OF ITS MOTION TO DEFER AND CERTAIN EXHIBITS THERETO PLAINTIFF'S MOTION TO REDACT ITS SUPPLEMENTAL OPPOSITION TO THE SLC'S MOTION TO DEFER TO THE SLC'S DETERMINATION THAT THE CLAIMS SHOULD BE DISMISSED PLAINTIFF'S MOTION TO SEAL SUPPLEMENTAL OPPOSITION TO THE SLC'S MOTION TO DEFER TO THE SLC'S DETERMINATION THAT THE CLAIMS SHOULD BE DISMISSED AND APPENDIX OF EXHIBITS TO SUPPLEMENTAL OPPOSITION TO THE SLC'S MOTION TO DEFER TO THE SLC'S DETERMINATION THAT THE CLAIMS SHOULD BE DISMISSED The Court has reviewed the supplements to the motion to seal and redact filed by Plaintiff and the SLC, exhibits 1 and 2 to the motion to compel relate to sensitive business and litigation information and includes attorney work product accordingly the request to seal those exhibits is granted. The motion to seal the

supplemental opposition to the motion to defer is GRANTED IN PART. The following exhibits are permitted to be sealed or redacted as noted below: 1 Redacted version due to atty client privilege and atty work product as submitted in supplement 2 Redacted version due to atty client privilege and atty work product as submitted in supplement 3 Redacted version due to atty client privilege and atty work product as submitted in supplement 5 Redact third party email address and resubmit 6 Sealed due to atty work product and sensitive business information 9 Sealed due to atty work product and sensitive business information 10 Sealed due to atty work product and sensitive business information 12 Sealed due to BK order and sensitive business information 14 Redact third party email address and resubmit 16 Redact third party email address and resubmit 17 Redact third party email address and resubmit 18 Redact third party email address and resubmit 20 Redact third party email address and phone numbers and resubmit 22 Redact third party email address and resubmit 23 Redact third party email address and resubmit 24 Redact third party email address and resubmit 25 Redact third party email address and resubmit 26 Redact third party email address and resubmit 27 Redact third party email address and resubmit 28 Redact third party email address and resubmit 30 Redact third party email address and resubmit 31 Redact third party email address and resubmit 32 Redact phone number and resubmit 33 Redact third party email address and resubmit 34 Redact third party email address and resubmit 35 Redact third party email address and resubmit 36 Redact third party email address and resubmit 37 Redact third party email address and resubmit 38 Redact third party email address and resubmit 42 Redact third party email address and resubmit 48 Sealed due to atty work product and sensitive business information 49 Sealed due to atty work product and sensitive business information 51 Sealed due to atty work product and sensitive business information 52 Sealed due to atty work product and sensitive business information 53 Sealed due to atty work product and sensitive business information 55 Sealed due to atty work product and sensitive business information 60 Sealed due to atty work product and sensitive business information 70 Sealed due to atty work product and sensitive business information 72 Sealed due to atty work product and sensitive business information 73 Sealed due to atty work product and sensitive business information 77 Sealed due to atty work product and sensitive business information 78 Sealed due to atty work product and sensitive business information 79 Sealed due to atty work product and sensitive business information 80 Sealed due to atty work product and sensitive business information 81 Sealed due to atty work product and sensitive business information 82 Sealed due to atty work product and sensitive business information 83 Sealed due to atty work product and sensitive business information 84 Sealed due to atty work product and sensitive business information 87 Sealed due to atty work product and sensitive business information 97 Sealed due to atty work product and sensitive business information 98 Sealed due to atty work product and sensitive business information The motion to seal the supplemental reply to the motion to defer is GRANTED IN PART. The following exhibits are permitted to be sealed or redacted as noted below: D Sealed due to atty work product and sensitive business information E Sealed due to atty work product and sensitive business information J Sealed due to atty work product and sensitive business information K Sealed due to atty work product and sensitive business information CLERK'S NOTE: The above minute order has been distributed to Brian Boschee, Esq. (702-791-1912), Kirk Lenhard, Esq. (702-382-8135), James Pisanelli, Esq. (702-214-2101), and Joshua Reisman, Esq. (702-446-6756)

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EXHIBIT D

EXHIBIT D

REGISTER OF ACTIONS**CASE No. A-13-686775-B****Jacksonville Police and Fire Pension Fund, Plaintiff(s) vs. Charles Ergen, Defendant(s)**§
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§Case Type: **Business Court**Date Filed: **08/09/2013**Location: **Department 11**Cross-Reference Case Number: **A686775**Supreme Court No.: **69012
69729****RELATED CASE INFORMATION****Related Cases**

A-13-688862-B (Consolidated)

A-14-693887-B (Consolidated)

PARTY INFORMATION**Lead Attorneys****Defendant** **Ergen, Charles W.****Joshua H. Reisman**
Retained
~~702-727-6258(W)~~**Plaintiff** **Jacksonville Police and Fire Pension Fund****Brian W. Boschee**
Retained
702-791-0308(W)**EVENTS & ORDERS OF THE COURT**01/12/2015 **All Pending Motions** (10:30 AM) (Judicial Officer Gonzalez, Elizabeth)**Minutes**

01/12/2015 10:30 AM

- HEARING... THE OFFICER DEFENDANTS' MOTION TO DISMISS THE SECOND AMENDED COMPLAINT... DEFENDANT CHARLES W. ERGEN AND CANTEY M. ERGEN'S MOTION TO DISMISS THE SECOND AMENDED DERIVATIVE COMPLAINT OF JACKSONVILLE POLICE AND FIRE PENSION FUND... THE SPECIAL LITIGATION COMMITTEE'S MOTION TO DISMISS FOR FAILURE TO PLEAD DEMAND FUTILITY... THE SPECIAL LITIGATION COMMITTEE'S MOTION TO DEFER TO THE SLC'S DETERMINATION THAT THE CLAIMS SHOULD BE DISMISSED... DIRECTOR DEFENDANTS' MOTION TO DISMISS THE SECOND AMENDED COMPLAINT... THE SPECIAL LITIGATION COMMITTEE OF NOMINAL DEFENDANT DISH NETWORK CORPORATION'S MOTION TO REDACT THE SPECIAL LITIGATION COMMITTEE'S REPORT AND TO SEAL CERTAIN EXHIBITS THERETO... PLAINTIFF'S NOTICE OF MOTION AND MOTION TO REDACT ITS OPPOSITION TO THE SLC'S MOTION

TO DEFER TO ITS DETERMINATION THAT THE CLAIMS SHOULD BE DISMISSED Also present: Attorney Bruce Braun for Defendants Thomas Cullen, Kyle Kiser & R. Stanton Dodge. THE SPECIAL LITIGATION COMMITTEE'S MOTION TO DEFER TO THE SLC'S DETERMINATION THAT THE CLAIMS SHOULD BE DISMISSED: Arguments by counsel regarding the SLC's motion to defer. Judge Chapman's findings submitted by Mr. Lebovitch to the Court and MARKED as Court's Exhibit 1; Brian Boschee's affidavit in support of Plaintiff's opposition to SLC's motion to defer MARKED as Court's Exhibit 2. (See worksheet). Upon inquiry of the Court, Mr. Lebovitch advised discovery, without any disputes, will take 150 to 180 days, and agreed to 90. Mr. Peek addressed 56(f) relief. COURT stated findings, and ORDERED, request for 56(f) relief GRANTED; 90-day discovery period PROVIDED related to independence and thoroughness of the SLC investigation; if there are any disputes that prevent completion of discovery within 90 days, the Court will reconsider extending that period; however, if there are no disputes, the 90-day period will stand. Upon its conclusion, counsel are to file supplemental briefs and matter will be heard. Mr. Peek to prepare the order. THE OFFICER DEFENDANTS' MOTION TO DISMISS THE SECOND AMENDED COMPLAINT...DEFENDANT CHARLES W. ERGEN AND CANTEY M. ERGEN'S MOTION TO DISMISS THE SECOND AMENDED DERIVATIVE COMPLAINT OF JACKSONVILLE POLICE AND FIRE PENSION FUND...THE SPECIAL LITIGATION COMMITTEE'S MOTION TO DISMISS FOR FAILURE TO PLEAD DEMAND FUTILITY...DIRECTOR DEFENDANTS' MOTION TO DISMISS THE SECOND AMENDED COMPLAINT: Mr. Peek submitted on his motion to dismiss. Mr. Rugg stated he believes the Court should have additional information regarding the bankruptcy. Comments by Mr. Frawley regarding the fifth proposal now in bankruptcy court and that he believes the SLC should give an update at the end of the 90-day period. Mr. Pisanelli argued motion to dismiss on behalf of the Officer Defendants. Mr. Reisman stated he will rely on the briefs but request supplemental briefing based on what transpires in bankruptcy court. Mr. Frawley stated February 23rd is the current schedule for the bankruptcy trial. COURT ORDERED, matter SET for status check regarding supplemental filing on the March 6, 2015 Chambers calendar; motions to dismiss CONTINUED thereto; the discovery period will RUN through April 13, 2015; supplemental opposition DUE April 27, 2015; supplemental reply DUE May 8, 2015; hearing on the motion to defer CONTINUED to May 14, 2015 at 8:30 AM. Colloquy regarding counsel's request to redact two sentences in today's record. COURT ORDERED, transcript and minutes of today's proceedings SEALED. 3-6-15 - CHAMBERS STATUS CHECK...THE OFFICER DEFENDANTS' MOTION TO DISMISS THE SECOND AMENDED COMPLAINT...DEFENDANT CHARLES W. ERGEN AND CANTEY M. ERGEN'S MOTION TO DISMISS THE SECOND AMENDED DERIVATIVE COMPLAINT OF JACKSONVILLE POLICE AND FIRE PENSION FUND...THE SPECIAL LITIGATION COMMITTEE'S MOTION TO DISMISS FOR FAILURE TO PLEAD DEMAND FUTILITY...DIRECTOR DEFENDANTS' MOTION TO DISMISS THE SECOND AMENDED COMPLAINT 5-14-15 8:30 AM THE SPECIAL LITIGATION COMMITTEE'S MOTION TO DEFER TO THE SLC'S DETERMINATION THAT THE CLAIMS SHOULD BE DISMISSED CLERK'S NOTE: The Special Litigation Committee of Nominal Defendant Dish Network Corporation's Motion to Redact the Special Litigation Committee's Report and to Seal Certain Exhibits Thereto and Plaintiff's Notice of Motion and Motion to Redact its Opposition to the SLC's Motion to Defer to its Determination that the Claims Should be Dismissed previously set on the January 16, 2015 Chambers calendar ADVANCED to today's oral calendar and GRANTED. / dr CLERK'S NOTE: Pursuant to the Court's ruling on April 7, 2015, transcript and minutes of January 12, 2015 proceedings are UNSEALED. / dr

Parties Present

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