

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

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Tracie K. Lindeman
Clerk of Supreme Court

District Court Case No.
A-13-686775-B

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**

**APPENDIX TO RESPONDENT SPECIAL LITIGATION COMMITTEE OF
DISH NETWORK CORPORATION'S ANSWERING BRIEF
(VOLUME I of II)**

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CHRONOLOGICAL INDEX

Date	Document Description	Volume	Bates No.
2008-01-16	Certificate of Amendment to Articles of Incorporation of DISH Network Corp. (f/k/a EchoStar Communications Corp.)	I	AA0001 – AA0010
2010-10-01	Credit Agreement between LightSquared LP, LightSquared Inc., the Other Guarantors Party Hereto, the Lenders Party Hereto, UBS Securities LLC, and UBS AG, Stamford Branch (Filed Under Seal)	II	AA0011 – AA0217
2012-05-09	Notice to Administrative Agent by LightSquared LP	I	AA0218 – AA0219
2013-05-02	Minutes of DISH Network Corporation Annual Meeting of the Board of Directors (Filed Under Seal)	II	AA0220 – AA0242
2013-05-28	Email from R. Hopkinson to R. Strickland (Filed Under Seal)	II	AA0243 – AA0246
2014-01-22	Transcript, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC) (Bankr. S.D.N.Y)	I	AA0247 – AA0376
2014-04-29	Annual Report of DISH Network Corp., (Form 10-K/A)	I	AA0377 – AA0426
2015-01-12	Affidavit of Brian W. Boschee in Support of Plaintiff's Opposition to SLC's Motion to Defer to Its determinations That the Claims Should Be Dismissed	I	AA0427 – AA0443
2015-03-30	Stipulation and Protective Order	I	AA0444 – AA0454

ALPHABETICAL INDEX

Date	Document Description	Volume	Bates No.
2015-01-12	Affidavit of Brian W. Boschee in Support of Plaintiff's Opposition to SLC's Motion to Defer to Its determinations That the Claims Should Be Dismissed	I	AA0427 – AA0443
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2014-04-29	DISH Network Corp., Annual Report (Form 10-K/A)	I	AA0377 – AA0426
2013-05-28	Email from R. Hopkinson to R. Strickland (Filed Under Seal)	II	AA0243 – AA0246
2013-05-02	Minutes of DISH Network Corporation Annual Meeting of the Board of Directors (Filed Under Seal)	II	AA0220 – AA0242
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2015-03-30	Stipulation and Protective Order	I	AA0444 – AA0454
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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 **APPENDIX TO RESPONDENT SPECIAL LITIGATION COMMITTEE OF DISH NETWORK CORPORATION'S ANSWERING BRIEF (Vol. I of II)** 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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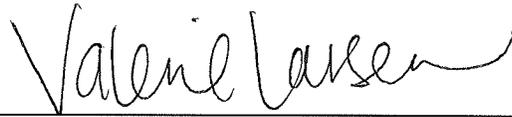
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SERVED VIA HAND DELIVERY

The Honorable Elizabeth Gonzalez
Eighth Judicial District Court, Dept. XI
Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89155



An Employee of HOLLAND & HART LLP



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Filed in the office of 	Document Number 20080033774-24
Ross Miller Secretary of State State of Nevada	Filing Date and Time 01/16/2008 3:40 PM
	Entity Number C6744-1995

Certificate of Amendment
 (PURSUANT TO NRS 78.385 AND 78.390)

USE BLACK INK ONLY - DO NOT HIGHLIGHT

ABOVE SPACE IS FOR OFFICE USE ONLY

Certificate of Amendment to Articles of Incorporation
For Nevada Profit Corporations
 (Pursuant to NRS 78.385 and 78.390 - After Issuance of Stock)

1. Name of corporation:

EchoStar Communications Corporation

2. The articles have been amended as follows (provide article numbers, if available):

Article I of the Articles of Incorporation is hereby amended to provide as follows:

Name

The name of the corporation shall be **DISH NETWORK CORPORATION** (the "Corporation").

Article V of the Articles of Incorporation is hereby amended to provide as follows:

Voting and Conversion Rights

1. Voting Rights.

(a) Except as otherwise required by law or, in any Preferred Stock Statement and Certificate of Designations, Preferences and Rights ("Certificate of Designations"), with respect to all matters upon which stockholders are entitled to vote or to which stockholders are entitled to give consent, the holders of any outstanding shares of Class A Common Stock, Class B Common Stock, Class C Common Stock and Preferred Stock shall vote together without regard to class, and every holder of any outstanding shares of the Class A Common Stock and Class C Common Stock shall be entitled to cast one vote . . . (See attachment for additional amendments)

3. The vote by which the stockholders holding shares in the corporation entitling them to exercise at least a majority of the voting power, or such greater proportion of the voting power as may be required in the case of a vote by classes or series, or as may be required by the provisions of the articles of incorporation have voted in favor of the amendment is: 208,059,154 Class B Shares

4. Effective date of filing (optional):

1/20/08

(must not be later than _____ days after the certificate is filed)

5. Officer Signature (Required):

X

*If any proposed amendment would alter or change any preference or any relative or other right given to any class or series of outstanding shares, then the amendment must be approved by the vote, in addition to the affirmative vote otherwise required, of the holders of shares representing a majority of the voting power of each class or series affected by the amendment regardless of limitations or restrictions on the voting power thereof.

IMPORTANT: Failure to include any of the above information and submit the proper fees may cause this filing to be rejected.

This form must be accompanied by appropriate fees.

Nevada Secretary of State AM 78.385 Article 2007
 Revised Oct. 01/01/07

AA0001

000403

CERTIFICATE OF AMENDMENT OF

ARTICLES OF INCORPORATION

OF

ECHOSTAR COMMUNICATIONS CORPORATION

(Pursuant to Sections 78.385 and 78.390 of the Nevada Revised Statutes)

The undersigned, being a duly authorized officer of EchoStar Communications Corporation, a Nevada corporation (the "Corporation"), pursuant to Sections 78.385 and 78.390 of the Nevada Revised Statutes (the "NRS") DOES HEREBY CERTIFY:

FIRST: The original Articles of Incorporation of the Corporation (the "Articles of Incorporation") was filed with the Secretary of State of the State of Nevada on the 26th day of April, 1995; a Restated Articles of Incorporation of the Corporation was filed with the Secretary of State of the State of Nevada on the 20th day of June, 1995; a Certificate of Amendment of Articles of Incorporation of the Corporation was filed with the Secretary of State of the State of Nevada on the 20th day of June, 1995; a Certificate of Amendment of Articles of Incorporation of the Corporation was filed with the Secretary of State of the State of Nevada on the 30th day of June, 1999; a Certificate of Amendment of Articles of Incorporation of the Corporation was filed with the Secretary of State of the State of Nevada on the 21st day of October, 1999; a Certificate of Amendment of Articles of Incorporation of the Corporation was filed with the Secretary of State of the State of Nevada on the 7th day of February, 2000; a Certificate of Amendment of Articles of Incorporation of the Corporation was filed with the Secretary of State of the State of Nevada on the 29th day of March, 2000; and a Certificate of Amendment of Articles of Incorporation of the Corporation was filed with the Secretary of State of the State of Nevada on the 19th day of May, 2003.

SECOND: Pursuant to Section 78.390 of the NRS, the Board of Directors of the Corporation duly adopted resolutions (i) setting forth a proposed amendment (the "Amendment") to the Articles of Incorporation of the Corporation, (ii) recommending the Amendment to the stockholders of the Corporation, and (iii) seeking the required consent and approval, under the NRS, of the holders of a majority of the outstanding shares of the Corporation entitled to vote thereon.

THIRD: Thereafter, pursuant to resolutions of the Board of Directors of the Corporation, the Amendment was submitted to a majority of the holders of the shares of outstanding capital stock of the Corporation entitled to vote thereon, and pursuant to Section 78.320 of the NRS a majority of such holders voted to authorize the amendment to the Articles of Incorporation of the Corporation.

FOURTH: Article 1 of the Articles of Incorporation is hereby amended to provide as follows:

Name

The name of the corporation shall be DISH NETWORK CORPORATION (the "Corporation").

FIFTH: Article V of the Articles of Incorporation is hereby amended to provide as follows:

Voting and Conversion Rights

I. Voting Rights.

(a) Except as otherwise required by law or, in any Preferred Stock Statement and Certificate of Designations, Preferences and Rights ("Certificate of Designations"), with respect to all matters upon which stockholders are entitled to vote or to which stockholders are entitled to give consent, the holders of any outstanding shares of Class A Common Stock, Class B Common Stock, Class C Common Stock and Preferred Stock shall vote together without regard to class, and every holder of any outstanding shares of the Class A Common Stock and Class C Common Stock shall be entitled to cast one vote in person or by proxy for each share of the Class A Common Stock and Class C Common Stock held by such holder; every holder of any outstanding shares of Class B Common Stock shall be entitled to cast ten votes in person or by proxy for each share of Class B Common Stock held by such holder; and every holder of any outstanding shares of Preferred Stock shall be entitled to cast, in person or by proxy for each share of Preferred Stock held by such holder, the number of votes specified in the applicable Certificate of Designations; provided however, in the event of a "Change in Control" of the Corporation, the holders of any outstanding shares of Class C Common Stock shall be entitled to cast ten votes in person or by proxy for each share of Class C Common Stock held by such holder. As used herein, a "Change of Control" of the Corporation means: (i) any transaction or series of transactions, the result of which is that the Principals and their Related Parties (as such terms are hereinafter defined), or an entity controlled by the Principals and their Related Parties, cease to be the "beneficial owners" (as defined in Rule 13(d) (3) under the Securities Exchange Act of 1934) of at least 30% of the total equity interests of the Corporation and to have the voting power to elect at least a majority of the Board of Directors of the Corporation; or (ii) the first day on which a majority of the members of the Board of Directors of the Corporation are not continuing directors. "Principals" means Charles W. Ergen, James DeFranco, and David K. Moskowitz. "Related Parties" means, with respect to any Principal: (y) the spouse and each immediate family member of such Principal; and (z) each trust, corporation, partnership or other entity of which such Principal beneficially holds an 80% or more controlling interest.

(b) A quorum for the purpose of shareholder meeting shall consist of a majority of the voting power of the Corporation. If a quorum is present, the effective vote of a majority of the voting power represented at the meeting and entitled to vote on the subject matter shall be the act of the shareholders, unless the vote of a greater proportion or number is required by any provisions contained in the NRS. Notwithstanding any provisions contained in the NRS requiring the vote of shares possessing two-thirds of the voting power of the Corporation to take action, absent a provision herein to the contrary, in the case of such provisions the affirmative vote of a majority of the voting power shall be the act of the shareholders.

(c) Holders of Common Stock shall not be entitled to cumulate their votes in the election of directors and shall not be entitled to any preemptive rights to acquire shares of any class or series of capital stock of the Corporation. Subject to any preferential rights of holders of Preferred Stock, holders of Common Stock shall be entitled to receive their pro rata shares, based upon the number of shares of Common Stock held by them, of such dividends or other distributions as may be declared by the Board of Directors from time to time and of any distribution of the assets of the Corporation upon its liquidation, dissolution or winding up, whether voluntary or involuntary.

2. Conversion Rights.

(a) Each share of Class B Common Stock and Class C Common Stock shall be convertible at the option of the holder thereof into Class A Common Stock of the Corporation in accordance with this Article V. In order to exercise the conversion privilege, a holder of Class B Common Stock or Class C Common Stock shall surrender the certificate evidencing such Class B Common Stock or Class C Common Stock to the Corporation at its principal office, duly endorsed to the Corporation or, in the case of uncertificated shares, instruct the Corporation's transfer agent to surrender such shares to the Corporation and, in either case, accompanied by written notice to the Corporation that the holder thereof elects to convert a specified portion or all of such shares. Class B Common Stock or Class C Common Stock converted at the option of the holder shall be deemed to have been converted on the day of surrender of the certificate representing such shares for conversion in accordance with the foregoing provisions or, in the case of uncertificated shares, on the day in which the Corporation's transfer agent receives instruction to effect a book entry transfer to the Corporation, and at such time the rights of the holder of such Class B Common Stock or Class C Common Stock, as such holder, shall cease and such holder shall be treated for all purposes as the record holder of Class A Common Stock issuable upon conversion. As promptly as practicable on or after the conversion date, the Corporation shall issue and mail or deliver to such holder a certificate or certificates for the number of Class A Common Stock issuable upon conversion or shall instruct the Corporation's transfer agent to effect a book entry transfer to reflect such Class A Common Stock issuable upon conversion, computed to the nearest one hundredth of a full share, and a certificate or certificates or book entry transfer for the balance of Class B Common Stock or Class C Common Stock surrendered, if any, not so converted into Class A Common Stock.

(b) The Class B Common Stock and Class C Common Stock shall be convertible into one share of Class A Common Stock for each share of Class B Common Stock or Class C Common Stock so converted (the "Conversion Rate"). In the event the Corporation shall at any time subdivide or split its outstanding Class A Common Stock, into a greater number of shares or declare any dividend payable in Class A Common Stock, the Conversion Rate in effect immediately prior to such subdivision, split or dividend shall be proportionately increased, and conversely, in case the outstanding Class A Common Stock of the Corporation shall be combined into a smaller number of shares, the Conversion Rate in effect immediately prior to such combination shall be proportionately decreased.

(c) Upon any adjustment of the Conversion Rate then and in each such case the Corporation shall give written notice thereof, by first-class mail, postage prepaid, addressed to the registered holders of Class B Common Stock and Class C Common Stock at the addresses

of such holders as shown on the books of the Corporation, which notice shall state the Conversion Rate resulting from such adjustment and the increase or decrease, if any, in the number of shares receivable at such price upon the conversion of Class B Common Stock or Class C Common Stock, setting forth in reasonable detail the method of calculation and the facts upon which such calculation is based.

(d) The holders of Class B Common Stock and Class C Common Stock shall have the following rights to certain properties received by the holders of Class A Common Stock:

(i) In case the Corporation shall declare a dividend or distribution upon Class A Common Stock payable other than in cash out of earnings or surplus or other than in Class A Common Stock, then thereafter each holder of Class B Common Stock or Class C Common Stock upon the conversion thereof will be entitled to receive the number of shares of Class A Common Stock into which such Class B Common Stock or Class C Common Stock shall be converted, and, in addition and without payment therefor, the property which such holder would have received as a dividend if continuously since the record date for any such dividend or distribution such holder: (A) had been the record holder of the number of Class A Common Stock then received; and (B) had retained all dividends or distributions originating directly or indirectly from such Class A Common Stock.

(ii) If any capital reorganization or reclassification of the capital stock of the Corporation, or consolidation or merger of the Corporation with another corporation, or the sale of all or substantially all of its assets to another corporation shall be effected in such a way that holders of Class A Common Stock shall be entitled to receive stock, securities or assets with respect to or in exchange for a Class A Common, then, as a condition of such reorganization, reclassification, consolidation, merger or sale, lawful and adequate provision shall be made whereby the holders of Class B Common Stock and Class C Common Stock shall thereafter have the right to receive, in lieu of Class A Common Stock of the Corporation immediately theretofore receivable upon the conversion of such Class B Common Stock and Class C Common Stock, such shares of stock, securities or assets as may be issued or payable with respect to or in exchange for a number of outstanding Class A Common Stock equal to the number of Class A Common Stock immediately theretofore receivable upon the conversion of such Class B Common Stock and Class C Common Stock had such reorganization, reclassification, consolidation, merger or sale not taken place, and in any such case appropriate provision shall be made with respect to the rights and interests of the holders of the Class B Common Stock and Class C Common Stock to the end that the provisions hereof (including without limitation provisions for adjustments of the Conversion Rate and of the number of shares receivable upon the conversion of such Class B Common Stock and Class C Common Stock) shall thereafter be applicable, as nearly as may be, in relation to any shares of stock, securities or assets thereafter receivable upon the conversion of such Class B Common Stock and Class C Common Stock. The Corporation shall not effect

any such reorganization, reclassification, consolidation, merger or sale, unless prior to the consummation thereof the surviving corporation (if other than the Corporation), the corporation resulting from such consolidation or the corporation purchasing such assets shall assume by written instrument executed and mailed to the registered holders of the Class B Common Stock and Class C Common Stock at the last address of such holders appearing on the books of the Corporation, the obligation to deliver to such holders such shares of stock, securities or assets as, in accordance with the foregoing provisions, such holders may be entitled to receive.

(e) In case at any time:

(iii) the Corporation shall pay any dividend payable in stock upon Class A Common Stock or make any distribution (other than regular cash dividends to the holders of Class A Common Stock); or

(iv) the Corporation shall offer for subscription pro rata to the holders of Class A Common Stock any additional shares of stock of any class or other rights; or

(v) there shall be any capital reorganization, reclassification of the capital stock of the Corporation, or consolidation or merger of the Corporation with, or sale of all or substantially all of its assets, to another corporation (provided however, that this provision shall not be applicable to the merger or consolidation of the Corporation with or into another corporation if, following such merger or consolidation, the shareholders of the Corporation immediately prior to such merger or consolidation own at least 80% of the equity of the combined entity); or

(vi) there shall be a voluntary or involuntary dissolution, liquidation or winding up of the Corporation;

then, in any one or more of the aforesaid cases, the Corporation shall give written notice, by first-class mail, postage prepaid, addressed to the holders of Class B Common Stock and Class C Common Stock at the addresses of such holders as shown on the books of the Corporation, of the date on which: (A) the books of the Corporation shall close or a record shall be taken for such dividend, distribution or subscription rights; or (B) such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding up shall take place, as the case may be. Such notice shall also specify the date as of which the holders of Class A Common Stock of record shall participate in such dividend, distribution, or subscription rights, or shall be entitled to exchange their Class A Common Stock for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding up, as the case may be. Such written notice shall be given at least 20 days prior to the action in question and not less than 20 days prior to the record date or the date on which the Corporation's transfer books are closed in respect thereto.

SIXTH: Article VIII of the Articles of Incorporation is hereby amended to provide as follows:

Corporate Opportunity

1. Certain Acknowledgements; Definitions. The provisions of this Article VIII shall, to the fullest extent permitted by law, delineate the doctrine of "corporate opportunities," as it applies to the Corporation, define the conduct of certain affairs of the Corporation and its Subsidiaries and the Corporation's and its Subsidiaries' directors and officers as they may involve EchoStar Holding Corporation ("EchoStar") and its Subsidiaries, and the powers, rights, duties and liabilities of the Corporation and its Subsidiaries and the Corporation's and its Subsidiaries' directors, officers and employees in connection therewith. In recognition and anticipation that (a) directors and officers of the Corporation and its Subsidiaries may serve as directors, officers and employees of EchoStar and its Subsidiaries, (b) the Corporation and its Subsidiaries, directly or indirectly, may engage and are expected to continue to engage in the same, similar or related lines of business as those engaged in by EchoStar and its Subsidiaries and other business activities that overlap with or compete with those in which EchoStar and its Subsidiaries may engage, (c) the Corporation and its Subsidiaries may have an interest in the same areas of business opportunity as EchoStar and its Subsidiaries, (d) the Corporation and its Subsidiaries may engage in material business transactions with EchoStar and its Subsidiaries, including, without limitation, receiving services from, providing services to or being a significant customer or supplier to EchoStar and its Subsidiaries, and that the Corporation, EchoStar and/or one or more of their respective Subsidiaries may benefit from such transactions, and (e) as a consequence of the foregoing, it is in the best interests of the Corporation that the rights of the Corporation and its Subsidiaries, and the duties of any directors or officers of the Corporation or any of its Subsidiaries, be determined and delineated in respect of (x) any transactions between the Corporation and its Subsidiaries, on the one hand, and EchoStar and its Subsidiaries, on the other hand, and (y) any potential transactions or matters that may be presented to officers and directors of the Corporation and its Subsidiaries, or of which such officers or directors may otherwise become aware, which potential transactions or matters may constitute business opportunities of the Corporation or any of its Subsidiaries, and in recognition of the benefits to be derived by the Corporation and its Subsidiaries through its continued contractual, corporate and business relations with EchoStar and its Subsidiaries and of the benefits to be derived by the Corporation and its Subsidiaries by the possible service as directors or officers of the Corporation and its Subsidiaries of persons who may also serve from time to time as directors, officers and employees of EchoStar or any of its Subsidiaries, the provisions of this Article VIII shall, to the fullest extent permitted by law, regulate and define the conduct of the business and affairs of the Corporation and its Subsidiaries in relation to EchoStar and its Subsidiaries, and as such conduct and affairs may involve EchoStar's and its Subsidiaries directors, officers and employees, and the powers, rights, duties and liabilities of the Corporation and its Subsidiaries and their respective officers and directors in connection therewith and in connection with any potential business opportunities of the Corporation and its Subsidiaries. Any person purchasing or otherwise acquiring any shares of capital stock of the Corporation, or any interest therein, shall be deemed to have notice of and to have consented to the provisions of this Article VIII. For purposes of this Article VIII, "Control" and derivative terms means the possession of the power to direct or cause the direction of the management and policies of a person, whether through the possession of voting securities, by contract or otherwise; and "Subsidiary" means, with respect to any person, any other person that such first person directly or indirectly Controls. References in this Article VIII to "directors," "officers" or "employees" of any person shall be deemed to include those persons who hold similar positions or exercise similar powers and

authority with respect to any such person that is a limited liability company, partnership, joint venture or other non-corporate entity or any close corporation governed directly by its stockholders.

2. Certain Agreements and Transactions Permitted. No contract, agreement, arrangement or transaction (or any amendment, modification or termination thereof) entered into between the Corporation and/or any of its Subsidiaries, on the one hand, and EchoStar and/or any of its Subsidiaries, on the other hand, before EchoStar ceased to be a wholly-owned subsidiary of the Corporation shall be void or voidable or be considered unfair to the Corporation or any of its Subsidiaries for the reason that EchoStar or any of its Subsidiaries is a party thereto, or because any directors, officers or employees of EchoStar or a Subsidiary of EchoStar are a party thereto, or because any directors, officers or employees of EchoStar or a Subsidiary of EchoStar were present at or participated in any meeting of the board of directors, or committee thereof, of the Corporation, or the board of directors, or committee thereof, of any Subsidiary of the Corporation, that authorized the contract, agreement, arrangement or transaction (or any amendment, modification or termination thereof), or because his, her or their votes were counted for such purpose. The Corporation may from time to time enter into and perform, and cause or permit any of its Subsidiaries to enter into and perform, one or more contracts, agreements, arrangements or transactions (or amendments, modifications or supplements thereto) with EchoStar or any Subsidiary thereof pursuant to which the Corporation or a Subsidiary thereof, on the one hand, and EchoStar or a Subsidiary thereof, on the other hand, agree to engage in contracts, agreements, arrangements or transactions of any kind or nature with each other, or agree to compete, or to refrain from competing or to limit or restrict their competition, with each other, including to allocate and cause their respective directors, officers and employees (including any such persons who are directors, officers or employees of both) to allocate opportunities between, or to refer opportunities to, each other. To the fullest extent permitted by law, no such contract, agreement, arrangement or transaction (nor any such amendments, modifications or supplements), nor the performance thereof by the Corporation, EchoStar or any Subsidiary of the Corporation or EchoStar, shall be considered contrary to any fiduciary duty owed to the Corporation (or to any Subsidiary of the Corporation, or to any stockholder of the Corporation or any of its Subsidiaries) by any director or officer of the Corporation (or by any director or officer of any Subsidiary of the Corporation) who is also a director, officer or employee of EchoStar or any Subsidiary thereof. To the fullest extent permitted by law, no director or officer of the Corporation or any Subsidiary of the Corporation who is also a director, officer or employee of EchoStar or any Subsidiary thereof shall have or be under any fiduciary duty to the Corporation (or to any Subsidiary of the Corporation, or to any stockholder of the Corporation or any of its Subsidiaries) to refrain from acting on behalf of the Corporation or EchoStar, or any of their respective Subsidiaries, in respect of any such contract, agreement, arrangement or transaction or performing any such contract, agreement, arrangement or transaction in accordance with its terms and each such director or officer of the Corporation or any Subsidiary of the Corporation who is also a director, officer or employee of EchoStar or any Subsidiary thereof shall be deemed to have acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation, and shall be deemed not to have breached his or her duties of loyalty to the Corporation and their respective stockholders, and not to have derived an improper personal benefit therefrom.

3. Duties of Directors and Officers Regarding Potential Business Opportunities: No Liability for Certain Acts or Omissions. If a director or officer of the Corporation or any Subsidiary of the Corporation is offered, or otherwise acquires knowledge of, a potential transaction or matter that may constitute or present a business opportunity for the Corporation or any of its Subsidiaries (any such transaction or matter, and any such actual or potential business opportunity, a "Potential Business Opportunity"), such director or officer shall, to the fullest extent permitted by law, have no duty or obligation to refer such Potential Business Opportunity to the Corporation or any of its Subsidiaries, or to refrain from referring such Potential Business Opportunity to any other person, or to give any notice to the Corporation or any of its Subsidiaries regarding such Potential Business Opportunity (or any matter relating thereto), and such director or officer will not be liable to the Corporation or any of its Subsidiaries, as a director, officer, stockholder or otherwise, for any failure to refer such Potential Business Opportunity to the Corporation or any of its Subsidiaries, or for referring such Potential Business Opportunity to any other person, or for any failure to give any notice to the Corporation or any of its Subsidiaries regarding such Potential Business Opportunity or any matter relating thereto, unless all of the following conditions are satisfied: (A) the Corporation has expressed an interest in such business opportunity as determined from time to time by the Corporation's Board of Directors as evidenced by resolutions appearing in the Corporation's minutes; (B) such Potential Business Opportunity was expressly offered to such director or officer solely in his or her capacity as a director or officer of the Corporation or as a director or officer of any Subsidiary of the Corporation; and (C) such opportunity relates to a line of business in which the Corporation or any Subsidiary of the Corporation is then directly engaged. In the event the preceding conditions are satisfied with respect to a particular Potential Business Opportunity, then such Potential Business Opportunity shall be offered first to the Corporation. In the event the preceding conditions are satisfied and the Corporation declines to pursue such Potential Business Opportunity, the directors, officers and other members of management of the Corporation shall be free to engage in such Potential Business Opportunity on their own and this paragraph shall not limit the right of any director, officer or other member of management of the Corporation to continue a business existing prior to the time that such area of interest is designated by the Corporation. This paragraph shall not be construed to release any employee of this Corporation (other than a director, officer or member of management) from any duties which may be owed to this Corporation.

4. Amendment of Article VIII. No alteration, amendment or repeal, or adoption of any provision inconsistent with any provision of this Article VIII shall have any effect upon (a) any agreement between the Corporation or a Subsidiary thereof and EchoStar or a Subsidiary thereof that was entered into before such time or any transaction entered into in connection with the performance of any such agreement, whether such transaction is entered into before or after such time, (b) any transaction entered into between the Corporation or a Subsidiary thereof and EchoStar or a Subsidiary thereof before such time, (c) the allocation of any business opportunity between the Corporation or a Subsidiary thereof and EchoStar or a Subsidiary thereof before such time, or (d) any duty or obligation owed by any director or officer of the Corporation or any Subsidiary of the Corporation (or the absence of any such duty or obligation) with respect to any potential business opportunities of the Corporation or any Subsidiary of the Corporation which such director or officer was offered, or of which such director or officer otherwise became aware, before such time.

5. Renunciation. In addition to, and notwithstanding the foregoing provisions of this Article VIII, a potential transaction or business opportunity (1) that the Corporation or its Subsidiaries is not financially able, contractually permitted or legally able to undertake, or (2) that is, from its nature, not in the line of the Corporation's or its Subsidiaries' business, is of no practical advantage to the Corporation or its Subsidiaries or that is one in which the Corporation or its Subsidiaries has no interest or reasonable expectancy, shall not, in any such case, be deemed to constitute a corporate opportunity belonging to the Corporation, or any of its Subsidiaries, and the Corporation, on behalf of itself and each Subsidiary, to the fullest extent permitted by law, hereby renounces any interest therein.

6. Termination. Notwithstanding anything in these Articles of Incorporation to the contrary, the provisions of Sections 2 and 4(a)-(c) of this Article VIII shall automatically terminate, expire and have no further force and effect from and after the date on which no the Corporation director or officer is also an EchoStar director, officer or employee.

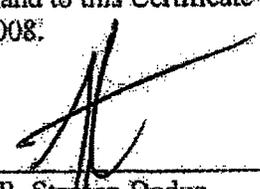
7. Deemed Notice. Any person or entity purchasing or otherwise acquiring or obtaining any interest in any capital stock of the Corporation shall be deemed to have notice and to have consented to the provisions of this Article VIII.

8. Severability. The invalidity or unenforceability of any particular provision, or part of any provision, of this Article VIII shall not affect the other provisions or parts hereof, and this Article VIII shall be enforced to the maximum extent permissible, and the remaining provisions of this Article VIII shall be unaffected thereby and will remain in full force and effect.

SEVENTH: The Amendment was duly adopted in accordance with the provisions of Sections 78.320, 78.385 and 78.390 of the NRS.

The Amendment shall become effective on January 20, 2008.

IN WITNESS WHEREOF, I have hereunto set my hand to this Certificate of Amendment of Articles of Incorporation on this 16th day of January, 2008.


Name: R. Stanton Dodge
Title: Executive Vice President, General
Counsel and Secretary

NOTICE TO ADMINISTRATIVE AGENT

May 9, 2012

This notice is being delivered to you pursuant to that certain Credit Agreement dated as of October 1, 2010 (as it may be amended, modified, extended or restated from time to time, the "Credit Agreement") among LightSquared LP (the "Borrower"), LightSquared Inc., the other Guarantors party thereto, the Lenders party thereto, UBS Securities LLC, as Arranger, Documentation Agent and Syndication Agent, and UBS AG, Stamford Branch, as Administrative Agent.

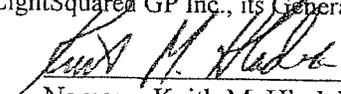
Pursuant to the definition of "Disqualified Company" in Section 1.01 of the Credit Agreement, the Borrower hereby designates each of DISH Network Corporation, DBSD North America, Inc., DIRECTV, Clearwire Corporation and XM Satellite Radio Inc. as an additional "Disqualified Company" and confirms that each of DISH Network Corporation, DBSD North America, Inc., DIRECTV and XM Satellite Radio Inc. is a bona fide operating company that is a direct competitor of the Borrower. As of the date hereof, the Borrower requests that all references to a "Disqualified Company" in the Credit Agreement shall include DISH Network Corporation, DBSD North America, Inc., DIRECTV, Clearwire Corporation and XM Satellite Radio Inc.

Please indicate your consent hereto by returning to us an executed counterpart hereof as soon as possible to Jamie.Kase@lightsquared.com. Upon your execution of such counterpart, please post a fully executed copy of this notice to the Lenders.

LIGHTSQUARED LP

By: LightSquared GP Inc., its General Partner

By:



Name: Keith M. Hladek
Title: Director

Acknowledged and agreed:

UBS AG, Stamford Branch,
as Administrative Agent

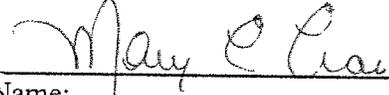
By:



Name:
Title:

Inja R. Otsa
Associate Director
Banking Products
Services, US

By:



Name:
Title:

Mary E. Evans
Associate Director
Banking Products
Services, US

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

Case No. 12-12080-scc

- - - - -x

In the Matter of:

LIGHTSQUARED INC., et al.,

Debtors.

- - - - -x

United States Bankruptcy Court
One Bowling Green
New York, New York

January 22, 2014
10:02 AM

B E F O R E:
HON. SHELLEY C. CHAPMAN
U.S. BANKRUPTCY JUDGE

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Doc#120 Statement of the Ad Hoc Secured Group of LightSquared LP Lenders and Notice of Intent to Proceed with Confirmation of the First Amended Joint Chapter 11 Plan for LightSquared LP, ATC Technologies, LLC, LightSquared Corp., LightSquared Inc. of Virginia, LightSquared Subsidiary LLC, LightSquared Finance Co., LightSquared Network LLC, LightSquared Bermuda Ltd., SkyTerra Holdings (Canada) Inc., and SkyTerra (Canada) Inc., Proposed by the Ad Hoc Secured Group of LightSquared LP Lenders (related document(s) 917) filed by Glenn M. Kurtz on behalf of Ad Hoc Group of LightSquared LP Lenders.

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LIGHTSQUARED INC., ET AL.

1 P R O C E E D I N G S

2 THE COURT: Good morning. Please have a seat.

3 Good morning everyone. I hope everyone stayed safe in
4 the snow.

5 Before we get started on the matter that's before the
6 Court today, we've gotten a number of inquiries/requests/
7 concerns about -- somebody's assistant just arrived looking
8 for -- bearing a folder.

9 UNIDENTIFIED SPEAKER: Thank you.

10 THE COURT: Sure. To talk about scheduling and some
11 other matters. And I'm just wondering what the parties'
12 collective preference is in terms of the order of things that
13 we consider today. I'm indifferent. I have an American
14 College conference call at 1 o'clock. So I'll need to take a
15 break -- I would like you -- everyone to be out of here by 1
16 o'clock, but I'll need to stop at 1 o'clock today, for at least
17 about twenty minutes for that call.

18 So what does everyone want to do?

19 Good morning, Mr. Kurtz.

20 MR. KURTZ: Good morning, Your Honor. Glenn Kurtz of
21 White & Case on behalf of the ad hoc secured group. I think it
22 makes most sense to start with the motion that we originally
23 scheduled, and then move into scheduling --

24 THE COURT: Okay.

25 MR. KURTZ: -- after that.

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1 THE COURT: All right. There's no violent objection,
2 so why don't we do that. All right?

3 I have read everything, though I did not print out, or
4 I think, this morning, get the back-up to the filing that was
5 made at 4 o'clock last evening. And that was not your fault.
6 That was just because it was snowing and we were closed. So if
7 you have that, that would be great.

8 MS. STRICKLAND: May I approach?

9 THE COURT: Yes, please. Great, thanks.

10 So what I have is, just so we're clear, the first
11 thing I have was entered at docket 1220, and that was the
12 statement of the ad hoc secured group. That was filed,
13 followed by the objection of L-Band. And I don't have the
14 docket number on that one. That was filed followed by docket
15 1238, which was the ad hoc secured group's further response.
16 And finally, docket 1246, which was the reply in further
17 support of the objection of L-Band Acquisitions.

18 So I've read all of that. And I guess, first, I'll
19 ask you if there's anything you want to tell me in addition to
20 what's been set forth in the papers? Either party? Okay.
21 Good.

22 So let me walk you through, step-by-step, what my
23 thinking is. So the first place that we have to start is with
24 the PSA. That's where you start. And I think the most
25 important -- you're going to have to give me a minute or two

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1 while I shuffle to get to the right document.

2 I think that the -- page 9 of the PSA, section 6,
3 which governs termination, is the place that you start. The
4 one piece of paper I can't seem to put my hands on is the
5 letter that was sent on the 7th terminating the PSA. I know it
6 was on Sullivan & Cromwell letterhead, but I just don't have a
7 copy of it. Could -- Mr. Lauria? Thanks.

8 MS. STRICKLAND: It's Exhibit B.

9 THE COURT: I'm sorry, which exhibit?

10 MS. STRICKLAND: It's Exhibit B.

11 THE COURT: B as in boy?

12 MS. STRICKLAND: Yes.

13 THE COURT: To which pleading?

14 MS. STRICKLAND: To docket 1238, which is the
15 statement. Their reply.

16 MR. GIUFFRA: The reply brief, Your Honor.

17 THE COURT: I have it now. So I'm not going to fish
18 for exhibits. Okay.

19 So just give me a moment, sorry.

20 So this notice is sent on behalf of LBAC, and it is
21 terminating pursuant to 6.1(f), on the basis, I believe, that a
22 milestone has not been met. Correct?

23 MS. STRICKLAND: Correct.

24 THE COURT: Okay. Then my question is -- and I think
25 that there is an attempt at an answer to this in the papers,

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1 but it's not entirely satisfactory to me -- that termination in
2 and of itself, does not withdraw the LBAC bid. The argument
3 was made that because the agreement terminates and because the
4 way "agreement" is defined in the documents, that this
5 termination, when effective, has the effect of terminating the
6 bid. And on that piece, I'm just not sure I'm there.

7 Rather, I believe that the next place to look is
8 section 1.2 of the PSA, which sets forth the stalking-horse
9 bidder's commitments. And the stalking-horse bidder's
10 commitments include that "so long as this agreement shall not
11 have been terminated, in accordance with section 6 hereof, the
12 stalking-horse bidders agrees," among other things, but in
13 1.2(f), that "it shall not withdraw the offer made pursuant to
14 the stalking-horse agreement."

15 Those are the first two steps. I'm putting aside for
16 the moment the APA in its various versions, and I'm putting
17 aside for the moment, the bid procedures order. I'll get to
18 that. But those are the first two steps.

19 So I've never seen a piece of paper, other than
20 recitations of it in pleadings, that the stalking-horse bid has
21 been terminated. And I want to clarify that, because to me,
22 the way this should have gone, according to the documents, was
23 that one of the parties to the PSA had the right to terminate
24 the bid because the milestone hadn't been met. Step one. That
25 occurred.

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1 The next thing that should have happened is that the
2 stalking-horse bidder should then have invoked 1.2(f) and
3 withdrawn its bid. It -- and I'd like confirmation that that
4 is what has occurred. Because I'm not going to -- I don't
5 think it's appropriate for me to be in the position to
6 effectuate or effect the withdrawal or the termination of the
7 bid. That's something that the bidder has to do under the
8 operative agreements. I don't think you're going to disagree
9 with me, right, Ms. Strickland?

10 MS. STRICKLAND: I'm not disagreeing with you.

11 THE COURT: Okay.

12 MS. STRICKLAND: There is -- the operative agreement
13 and the agreement to which LBAC, and for credit support
14 purposes only, DISH, was bound, is the plan support agreement.

15 THE COURT: Okay.

16 MS. STRICKLAND: So at such time as the plan support
17 agreement is formally and properly terminated through the
18 6.1(f), LBAC is free to withdraw its bid at any time.

19 THE COURT: Yes.

20 MS. STRICKLAND: And there's no contractual or other
21 requirement as to how that withdrawal has to take place.

22 THE COURT: Okay.

23 MS. STRICKLAND: Because the only contract is this
24 one.

25 THE COURT: Okay. I'm with you so far.

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1 MS. STRICKLAND: So --

2 THE COURT: But tell me -- so --

3 MS. STRICKLAND: So you're right that there isn't a
4 separate letter that says they withdraw the bid, because a
5 separate letter isn't required.

6 THE COURT: Okay.

7 MS. STRICKLAND: We can do that by handing them a
8 Post-it note or --

9 THE COURT: Well, I guess --

10 MS. STRICKLAND: -- et cetera, right now.

11 THE COURT: -- I don't have --

12 MS. STRICKLAND: But there's no --

13 THE COURT: -- I don't have any -- all I have is this
14 that terminates the PSA. I have nothing that is evidence of
15 the withdrawal of the bid by the stalking-horse bidder. If
16 that's what the stalking-horse bidder wishes to do, I need
17 something that indicates that that has occurred. I don't have
18 that, now. That's been my confusion from the very beginning.

19 And I don't want to suggest that there's anything
20 untoward about this, but I'm not going to -- I'm not going to
21 be in the position of directing, finding, ordering, or anything
22 else, that by dint of the termination of the plan support
23 agreement, which just to preview, I'm going to tell you, I
24 believe you had -- was properly effected. The milestones
25 weren't met; you terminated the plan support agreement. I

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1 mean, that's the easy one for today.

2 But now, I am -- it's a head scratcher as to why I
3 don't have a clear -- granted, there's nothing here that says
4 you have to file a notice, you have to file a piece of paper,
5 but it says that if it's been terminated, the stalking-horse
6 bidder shall not withdraw its offer.

7 So now it's been terminated. Now we have a situation
8 where the stalking-horse agreement -- the stalking-horse
9 bidder, was free to withdraw its offer.

10 MS. STRICKLAND: And it did, Your Honor. It did so
11 orally on several occasions. It also did so in these
12 pleadings. If a --

13 THE COURT: That's just a little --

14 MS. STRICKLAND: -- T-crossing --

15 THE COURT: -- it's a little odd.

16 MS. STRICKLAND: -- exercise is necessary -- and I
17 don't mean that in a flippant way -- we can send a letter in
18 fourteen minutes.

19 THE COURT: Okay. All I have is that the next thing
20 that happened was that in response to the pleading that was
21 filed by the ad hoc group, was the request by -- was kind of
22 the assumption of the fact that the bid had been withdrawn and
23 the request for the Court to basically bless it. And I just
24 think we missed a step, that I want it to be crystal clear that
25 if that's what the stalking-horse bidder wishes to do, that

LIGHTSQUARED INC., ET AL.

1 that stalking-horse bidder has withdrawn its bid.

2 MS. STRICKLAND: The stalking-horse bidder hereby
3 withdraws its bid.

4 THE COURT: All right. Before I --

5 MS. STRICKLAND: Which is an action that has been duly
6 authorized by a public company board of directors.

7 THE COURT: That's fine. I just think that there --
8 that every single I should be dotted and every single T should
9 be crossed.

10 So does anyone want to say anything with respect to
11 that kind of preliminary set of observations?

12 MR. KURTZ: Your Honor, the bulk of my argument goes
13 specifically to issues that -- concerns, including the
14 difference between terminating the PSA --

15 THE COURT: Right.

16 MR. KURTZ: -- which included obligations to the ad
17 hoc secured group, and the reason I think you're not seeing a
18 termination of the bid, is because the bid was made in a bid
19 procedures order, not to the ad hoc group, but instead to the
20 estates.

21 That happened subsequently. That doesn't include
22 termination rights. That doesn't include milestones. That is
23 irrevocable. That's why they're a stalking-horse. And I think
24 if you ask the debtors and the special committee, they'll both
25 confirm that they afforded those stalking-horse protections in

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1 September 30, October 1, months after the PSA, specifically to
2 lock in the bid.

3 And so I think we're just -- we're not, today, asking
4 Your Honor to make a ruling with respect to any defense of the
5 termination of the PSA, because we think the termination of the
6 PSA is totally irrelevant. The PSA -- the debtors are a party
7 to the PSA. The PSA is not mentioned in the subsequent bid
8 procedures order. It's not -- the bid procedures order
9 qualifies the APA. The APA didn't include milestones. The APA
10 didn't include a termination right. And that's why they got
11 stalking-horse protections. That's what a stalking-horse
12 bidder is. A stalking-horse bi --

13 THE COURT: Well, a stalking-horse bidder -- and this
14 is where this gets to be very interesting and it kind of raises
15 a lot of questions about the way we all -- you all -- courts
16 get used to proceeding in these stalking-horse situations,
17 because the bid procedures order, the bid, as it was defined in
18 the bid procedures order, refers to the 7/23 draft agreement.

19 MR. KURTZ: Correct.

20 THE COURT: Right?

21 MR. KURTZ: Correct.

22 THE COURT: But the 7/23 draft agreement actually is,
23 at least based on my now rather intense review of the
24 subsequent versions that have come in, is quite different from
25 the version of the APA that was included in the solicitation

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1 materials for the ad hoc secured group's plan.

2 MR. KURTZ: That --

3 THE COURT: Right? It is?

4 MR. KURTZ: It's different.

5 THE COURT: It is different. Okay. And, so you're
6 thinking, well, what's wrong with that? Of course it's
7 different, because the parties had an obligation to negotiate
8 in good faith and get to a form of agreement that was
9 acceptable to them that they then wished to present for
10 confirmation and more or less force the estates, through a
11 confirmation order, to engage in and implement. I'm going to
12 come back to the -- what I view as the quite material changes
13 from the 7/23 to the solicitation version.

14 But if you focus on the bid procedures order, what
15 does it mean that that was the LBAC bid? It was a draft
16 agreement? It's not -- hold on.

17 It's not enforceable. It had blanks. It had notes
18 to, come this, we're going to negotiate that. It couldn't have
19 been clearer that it was just basically the barest outlines of
20 a bid. And what was significant about it was it presented the
21 economics. That's whatever -- it presented the economics, and
22 it also presented a lot of the important non-cash components:
23 contracts, assumption of liabilities, et cetera.

24 And at least in my mind, and I think this is the way
25 most courts approach it, that's what you're approving as a

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1 stalking-horse bid in a situation where you don't have an APA
2 that's been fully negotiated by the parties to the table. So,
3 therefore, the subsequent insertion into the still draft APA of
4 a termination date -- you folks agree on that, that's very
5 nice -- that's got nothing to do with me.

6 MR. KURTZ: Correct.

7 THE COURT: That's got nothing to do with me. That
8 did not modify the milestones that were in the PSA, because you
9 folks agreed to that separately. And when we got -- missed
10 those milestones and they were extended, we did so with eyes
11 wide open. Okay.

12 So then we get to the bid procedures order. Now,
13 remember, what am I approving? I'm approving a stalking-horse
14 bid. The PSA is already in place. I think it was Mr. Barr, I
15 can't remember, who stood up and was presenting the stalking-
16 horse bid. And it became clear that the stalking-horse bidder
17 had not agreed to hang around if -- after the auction. And
18 that was of concern to me. And I said, in not so many words,
19 wait a minute, you mean if somebody outbids the stalking-horse
20 bidder, and then we pay the stalking-horse bidder the breakup
21 fee, and then the winning bidder doesn't get FCC approval the
22 stalking-horse bidder is not available, is not being held and
23 be available. And I think it was Mr. Barr said they won't
24 agree to that. And I said well, why is that okay. And I
25 think -- and maybe Mr. Sussberg was involved at this point, I'm

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1 sorry, I just can't remember. And you came back in and it was
2 placed on the record that, all right, they're going to hang
3 around for sixty days.

4 Now, here comes the really interesting part, because
5 ironically, if I were to enforce the nine words of the proviso
6 it says the bid's irrevocable. Those are what the words say.
7 But now this side of the room is telling me don't just look at
8 the words, look at the context. Because the context is crystal
9 clear that a bunch of tired lawyers wrote down words that
10 didn't precisely reflect what the deal was.

11 MR. KURTZ: I don't think that's right, Your Honor.

12 Let me --

13 THE COURT: Mr. Kurtz, remember, I was actually --

14 MR. KURTZ: I know.

15 THE COURT: -- I was right here.

16 MR. KURTZ: I know you were.

17 THE COURT: So --

18 MR. KURTZ: Can I respond to a few of those points?

19 THE COURT: Sure.

20 MR. KURTZ: Initially, Your Honor, the APA contains
21 all the essential terms. We're talking about --

22 THE COURT: But what --

23 MR. KURTZ: But let --

24 THE COURT: You better be careful, because the APA so
25 dramatically changed --

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1 MR. KURTZ: Correct.

2 THE COURT: -- from 7/23 to the time you sent it out
3 for solicitation, that that's going to be a whole other can of
4 worms. But go ahead.

5 MR. KURTZ: But, Your Honor, you qualified the bid
6 under the bid procedures order --

7 THE COURT: Correct.

8 MR. KURTZ: -- out of 7/23. And no one but you and
9 the debtors could have changed that. So we were trying to get
10 an agreement that we would proffer for you or the debtors to
11 accept at confirmation, but had no ability to change the terms
12 that were deemed a qualified stalking-horse bid that the
13 parties relied on in extending very substantial stalking-horse
14 protections. Which, again, I think the debtors and the special
15 committee will confirm. Context, they will confirm in their
16 context, they offered that because they were locking in a
17 floor.

18 THE COURT: Right.

19 MR. KURTZ: I think we all understood we were locking
20 in a floor, we said it. I have a whole bunch of record that I
21 can show you where we talked about --

22 THE COURT: Right.

23 MR. KURTZ: -- locking in the floor. The essential
24 terms of an agreement, as a matter of black letter law, is just
25 that you know what the parties were trying to accomplish, which

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1 in this case, is the sale of the spectrum at a particular price
2 without conditionality on FCC approval.

3 THE COURT: Agreed.

4 MR. KURTZ: All done. In fact, we had Mr. Cullen here
5 last week saying it was all substantially agreed to. And we
6 have a lot of other comments about them --

7 THE COURT: Well, don't -- I'm not going to get ahead
8 of myself and --

9 MR. KURTZ: Sure.

10 THE COURT: -- comment on Mr. Cullen's testimony.

11 MR. KURTZ: Okay.

12 THE COURT: But let me just stop you.

13 MR. KURTZ: Sure.

14 THE COURT: Because we then staggered through the
15 fall, and we continued the auction, and we didn't have the
16 auction, and the auction was terminated. The special committee
17 asked for more time. The ad hoc group urged, in the strongest
18 possible terms, don't give them more time, don't give them more
19 time, we have milestone issues. There was never one word to
20 the effect that we don't have to worry about the milestones,
21 the bid's irrevocable until February 14th. Never once was that
22 said. It was at every single turn, I was reminded mostly by
23 Mr. Lauria, that we're in jeopardy; we have run through the
24 milestones. And I heard it, and my view was that from the get-
25 go, I am not a fan to the gun to the head.

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1 And interestingly enough, Judge Gross in the Fisker
2 case in Delaware, very recently handed down a decision in which
3 he limited the ability of a creditor to submit a stalking-horse
4 bid and in a footnote in that decision cites what he viewed as
5 the completely false artificial deadline. So that's just an
6 interesting aside.

7 But the point is that I'm with you. I knew that those
8 deadlines were out there. I wasn't going to allow the estate's
9 hand to be forced by the deadlines. But Ms. Strickland made it
10 clear at every turn that we were blowing through the
11 milestones.

12 Now, it gets more complicated and more interesting,
13 because then the specter of we think they're not really bound,
14 that emerged at a certain point. And when that emerged I said
15 well, what do you mean you think you're not really bound. I
16 was reassured that you were really bound.

17 Then there were certain other issues that emerged, as
18 to why and whether LBAC would proceed with the bid. But the
19 one thing that remained clear throughout was on the LBAC side
20 of the room, the statements that we've gone through the
21 milestones, we're continuing to extend, we were basically on a
22 day-to-day basis. And on the ad hoc secured group side of the
23 room was out-loud concern about look, we've gotten through the
24 milestones, but never, ever, a statement you don't have to
25 worry about that, Judge, because the bid's irrevocable until

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1 February 15th.

2 So, again, I think the irony in the situation is that
3 if I -- and I agree with you, that the bid procedures order
4 trumps. I mean, that's the reflection of what we agreed to.
5 But -- so if I were to just look at those nine words, without
6 looking at the context, it would be irrevocable, because that's
7 what it says.

8 MR. KURTZ: You --

9 THE COURT: But the context is equally clear.

10 MR. KURTZ: And that --

11 THE COURT: And the lawyers were either too tired to
12 catch it, but it's clear that that phrase, that proviso, was
13 intended to capture the fact that on the record of the hearing,
14 LBAC had agreed to serve as the backup bidder for sixty days.
15 And I recall the exchange that well, there's no outside date,
16 because the confir -- because the sixty days keyed off of the
17 entry of a confirmation order, and it didn't have a hard date.
18 And there was some back-and-forth, and we came up with February
19 of 2014. And that's the way it is.

20 MR. KURTZ: Well, Your Honor, let me offer a few
21 remarks on that, because I think the context was a little
22 different.

23 I think that when we -- we sat with LBAC as a partner.
24 We tried not to stand up and tell them when we disagreed with
25 them. But we were always pretty clear, I think, in our remarks

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1 about the termination of the PSA, which was their obligations
2 to us, and which we wanted to keep live.

3 We never spoke about the termination of the bid
4 because that was governed by the bid procedures order, and that
5 was a bid to the estates that was irrevocable. We never talked
6 about -- we talked about the PSA; we never talked about the bid
7 procedures order.

8 THE COURT: But, Mr. Kurtz, I'm sorry to interrupt
9 you, but in the PSA where you set forth the obligations of the
10 stalking-horse bidder, the only thing that it says with respect
11 to irrevocability or withdrawal rights was that they --
12 stalking-horse bidder undertook not to withdraw the bid so long
13 as the PSA was not terminated.

14 MR. KURTZ: Your Honor, could I hand up a few excerpts
15 from the record?

16 THE COURT: Yeah, can you give me one second, because
17 I'm just having a problem with my computer.

18 (Pause)

19 THE COURT: Sorry, we just couldn't -- I couldn't get
20 it to log in.

21 MR. KURTZ: May I approach, Your Honor?

22 THE COURT: Yes. Oh, I didn't realize you had a whole
23 preparation, a whole binder here.

24 MR. KURTZ: Well, I was sort --

25 THE COURT: Sorry.

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1 MR. KURTZ: -- of wondering about those -- do you have
2 anything to add, what that was picking up. And -- but let
3 me --

4 THE COURT: But, by the way, I got to tell you,
5 because -- the interesting part of this all to me is that the
6 pleading that was submitted a 4 o'clock yesterday was the first
7 time that this series of breadcrumbs was put out in a paper.
8 But I was already there. But before that pleading, I kept all
9 the other pleadings we're talking about: the APA, and the
10 termination provision. It's not -- that's not -- it's just not
11 relevant. The APA for the purpose of what we're doing today is
12 just not relevant. It's relevant for a different reason, which
13 I'll get to, and I think you'll be equally unhappy with me at
14 that point. But since you went to the trouble of preparing --

15 MR. KURTZ: Yeah. Well, let --

16 THE COURT: -- we can go through it.

17 MR. KURTZ: Let me try, because I have a very
18 different view about what we thought we were doing. And,
19 again, the fundamental issue here is there was an agreement
20 reached on July 23rd, on -- and before with the plan support
21 agreement, APAs and the like. And that was an agreement where
22 there were obligations from LBAC running to us, and nobody
23 else. And we had our own provisions, and they had termination
24 rights.

25 THE COURT: Right.

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1 MR. KURTZ: And they were keyed to milestones. That
2 changed, the world changed, when we got the debtors on board.
3 Because at that point in time, we got an order which qualified
4 a bid that wasn't the PSA, it was a July 23rd APA. And I'll go
5 back and talk about the essential terms again.

6 THE COURT: Okay.

7 MR. KURTZ: And that became the new -- or the debtors
8 agreed, and there was dispute. So let me go back to what we
9 were doing at the time. And if could ask you to turn to slide
10 number 3.

11 THE COURT: Sure.

12 MR. KURTZ: We were submitting papers, Your Honor, on
13 behalf -- and in accordance with the PSA, frankly -- on behalf
14 of LBAC to help them get the stalking-horse protections which
15 they needed to get to stay as a party to the PSA. And we were
16 very clear in distinguishing between when they were bound to us
17 and when they became bound to the estate. So we said, because
18 the debtors were opposing us, "It appears the debtors are
19 really trying to keep the stalking-horse protections from the
20 existing stalking horse, LBAC, even though, or more accurately,
21 because LBAC can terminate its bid if it does not receive such
22 protections."

23 THE COURT: Right.

24 MR. KURTZ: Right. If you turn a page, Mr. Zelin
25 spoke to this issue. "I do know that the failure to approve

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1 the bid protections" --

2 THE COURT: Right.

3 MR. KURTZ: -- "will provide LBAC an option to
4 terminate."

5 THE COURT: Right.

6 MR. KURTZ: "So without the approval of the bid
7 protection LBAC's willingness to maintain" --

8 THE COURT: Correct.

9 MR. KURTZ: -- "its purchase price at any auction is
10 uncertain." So what we're --

11 THE COURT: Absolutely true.

12 MR. KURTZ: That's pursuant --

13 THE COURT: At that point in time -- at that point in
14 time, everyone was urging -- your group was urging we got to
15 give them the bid protections, because they're not locked it
16 until --

17 MR. KURTZ: That's right. And we were looking to
18 lock them in.

19 THE COURT: Agreed.

20 MR. KURTZ: Right. So if you turn to page 5 you see
21 LBAC's quote in the submission last night where they say, "LBAC
22 can terminate its stalking-horse bid," which is precisely what
23 Harbinger desires, "under the PSA." They argued that that's
24 what we said.

25 But if you look down to what we actually said, and you

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1 can see they simply omitted the relevant language, without
2 ellipses or other indication. We said "without the stalking-
3 horse protections, LBAC can terminate."

4 THE COURT: Right. But, again --

5 MR. KURTZ: We all understood --

6 THE COURT: -- the con -- the context there -- that
7 was pre-bid procedures order. And the --

8 MR. KURTZ: Correct. Correct.

9 THE COURT: -- context there was because I -- it was
10 anticipated that I was going to -- in other words if you
11 pretend this is a normal case, right, and one could make the
12 argument that when somebody shows up with 2.2 billion dollars
13 of cash, the classic reason for giving stalking-horse
14 protections doesn't pertain, because they were already at the
15 table, they were volunteers. So the context of these
16 particular quotes is pre-bid procedures they wanted breakup
17 fee, they wanted expense reimbursement, et cetera. And I think
18 the concern was that well, of course, Harbinger's going to
19 oppose this because if I don't approve that gating piece, LBAC
20 was going to walk.

21 MR. KURTZ: Correct.

22 THE COURT: Maybe they wouldn't, but at that point I
23 wasn't willing to blink. And there is something to the fact
24 that when somebody shows up with 2.2 billion in cash you should
25 pay attention.

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1 MR. KURTZ: And what we all said, and what we all
2 understood, and I think I just heard you say, Your Honor, is we
3 had to lock them in with bid protections to lock them in,
4 otherwise they could walk.

5 So now we're getting to the subject of how do you lock
6 them in. We were crystal clear you lock them in with bid
7 protections.

8 THE COURT: Um-hum.

9 MR. KURTZ: That results in the bid procedures order
10 the next week, the next day, in fact, after the hearing.

11 The bid procedures order, for context, is totally
12 clear that everything's irrevocable. And the reason you wanted
13 it ir -- the reason you give someone stalking-horse protections
14 is so they set a floor. I've never heard of a stalking horse
15 that could walk away the way LBAC is saying they can do now.
16 In fact, this position I think even speaks to other proceedings
17 with equitable subordination. You made a bid here.

18 THE COURT: Right. They made a bid and the --

19 MR. KURTZ: And here's how the bid procedures work.

20 THE COURT: They made a bid and -- but if you -- if
21 somebody has a draft of the bid procedures order, the draft
22 before the one that I entered --

23 MR. KURTZ: Yeah.

24 THE COURT: -- then I think that that would be
25 interesting to look at, because it doesn't have the proviso,

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1 right?

2 MR. KURTZ: Correct. And here's --

3 THE COURT: And it wouldn't have the proviso in it
4 unless I had stuck my nose into it and said what do you mean
5 they're not hanging around af -- for sixty day -- for a period
6 of time after the auction. I'm not going to pay them fifty
7 million dollars and then have the winning bidder not get FCC
8 approval and they've walked off with fifty million dollars.

9 MR. KURTZ: Correct.

10 THE COURT: So your theory breaks down --

11 MR. KURTZ: No, no, Your Honor.

12 THE COURT: No?

13 MR. KURTZ: Let me explain. Let me explain how this
14 works. And I think this is really fairly clear in context.

15 So if you can turn to page 1, this is actually the
16 Section J we're talking about.

17 THE COURT: Page 1 of your book here?

18 MR. KURTZ: Of the slides.

19 THE COURT: Okay.

20 MR. KURTZ: Here's how it works. Scenario number 1 is
21 LBAC is a successful bidder, it's the highest bidder, it is the
22 bidder that is selected under the plan. Under those
23 circumstances, consistent with the way stalking-horse
24 agreements work and bid procedures orders work, it was
25 irrevocable in accordance with the qualified bid, which was the

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1 APA that was attached.

2 THE COURT: But see, here's where we get into this
3 interesting moment that has caused me to rethink everything
4 that we do when we're approving bid procedures. Because just
5 focus on that first sentence. "The successful bid shall remain
6 irrevocable in accordance with the terms of the purchase
7 agreement executed by the successful bidder." I don't have a
8 purchase agreement executed by the successful bidder.

9 MR. KURTZ: You have what is deemed a qualified bid,
10 which is a sixty-something page APA which has all the essential
11 terms. And, Your Honor, there's two issues. And I'll put
12 you -- before we go back, I'll just give you some cases so you
13 can see them and know I'm not misstating them.

14 It's black letter law that, one, you only need
15 essential terms. We all probably remember from our genre, the
16 Pennzoil Texaco case, which was a one-page term sheet that was
17 unsigned and the subject of --

18 THE COURT: Okay, so let me agree -- so for the sake
19 of argument --

20 MR. KURTZ: Okay.

21 THE COURT: -- let me agree with you that that's true,
22 that --

23 MR. KURTZ: Okay.

24 THE COURT: -- first -- so the purchase agreement
25 executed by the successful bidder did not speak to -- did not

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1 have any terms that spoke to irrevocability, there was a blank
2 for the termination date.

3 MR. KURTZ: Exactly. In other words, it's irrevocable
4 unless you have a termination right, and they had no
5 terminat -- it would be like any -- if I had a contract and it
6 said I will buy spectrum for 2.2 billion dollars, it won't be
7 subject to regulatory approval, and it doesn't have a
8 termination right, then they don't have a termination right
9 they can rely on. This did not import the PSA termination
10 rights. That's not what the debtors would have agreed to, and
11 that's not what the Court agreed to. It's not included.

12 So we have the affirmative provisions on which we seek
13 to -- performance effectively.

14 THE COURT: Well, there's two -- I mean, there's two
15 things. One, it's not clear to me that the defined term
16 "successful bid" includes the LBAC bid, that's number one.

17 MR. KURTZ: That includes, Your Honor, whatever's
18 selected. And we are trying to get Your Honor to select that
19 at the confirmation hearing, so that that is the "successful
20 bid". But that's step one. Step one is who wins.

21 Now it can't be, Your Honor, that if LBAC comes out of
22 an auction, the debtors say you're the successful bidder, we
23 say you're the successful bid, it says it's irrevocable in
24 accordance with the bid pro --

25 THE COURT: Then the language in the -- to the extent

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1 that your position is that I should be strictly construing the
2 words in the bid procedures order, then the second phrase in
3 the proviso is completely superfluous because if the LBAC bid
4 is the successful bid, then it's irrevocable.

5 MR. KURTZ: This -- no, it's not, Your Honor. It's
6 steps. So let's -- that's the first step. First step is LBAC
7 wins. LBAC wins, they're covered under the first part of (j),
8 they're the successful bid, it's irrevocable, we're done with
9 our equity. We don't get the backup bid situations. They're
10 not a backup bid, they're a winner.

11 THE COURT: But where does it -- so if they're --
12 assuming that, for the purpose of argument, that they're the
13 successful bid --

14 MR. KURTZ: That's right.

15 THE COURT: -- what are the words "shall remain
16 irrevocable in accordance with the terms of the purchase
17 agreement" mean? What --

18 MR. KURTZ: It --

19 THE COURT: -- what do the term --

20 MR. KURTZ: -- it means that the APA that's attached
21 as the qualified bid is irrevocable in accordance with its
22 terms, and there's no terms that allow a termination because we
23 couldn't agree to those terminations, and they weren't
24 approved. And if we had put something in, somebody might have
25 objected. It -- termination isn't a --

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1 THE COURT: Well, what did you think you were doing
2 when you agreed with LBAC to insert the December 11th date in
3 that --

4 MR. KURTZ: We were protecting ourselves. This is
5 another piece of context I want to make sure Your Honor's aware
6 of. This is not a time of the essence. Spectrum is, according
7 to Mr. Ergen, is a great valuable resource that's going up in
8 value. It's going to take two --

9 THE COURT: Beachfront property according to Mr.
10 Falcone.

11 MR. KURTZ: Beachfront property, right?

12 THE COURT: Right.

13 MR. KURTZ: Two to three years to clean it up. DISH
14 needs it to compete with AT&T.

15 THE COURT: Right.

16 MR. KURTZ: This is not a time is of the essence.
17 You're not flipping the switch on December 11, February 15, or
18 any other time. So why was there provisions on milestones?
19 Were they material to DISH? Of course not. They were material
20 to us, Your Honor, because we were waiving our interest, which
21 was thirty million dollars a month to us, and because we wanted
22 to preserve, and we said this to you in court, we wanted to
23 preserve the value at the LP preferred so there was a recovery
24 below us in connection with our plan.

25 So we selected those dates. They didn't care about

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1 those dates, and that's why they didn't put it in, because it's
2 not a material term to them. And the reason we find ourselves
3 here today, has nothing to do with the lapse of time has
4 devalued it, it's their effort to get out based on due
5 diligence when they specifically agreed there'd be no due
6 diligence out. They'll agree that's why they're trying to get
7 out.

8 THE COURT: But, Mr. Kurtz, that is -- there's what
9 your argument would be as to what "really is going on" versus
10 what the plan support agreement said. And the plan support
11 agreement has milestones which reflected that the
12 counterparties, SPSO and the stalking-horse bidder, wanted and
13 bargained for rights with respect to timing.

14 MR. KURTZ: And -- but we don't --

15 THE COURT: So --

16 MR. KURTZ: -- seek to enforce the PSA or otherwise
17 rely on it anyway. We are seeking to enforce the later issued
18 court order which includes these provisions as all stalking
19 horses do.

20 So, Your Honor, so the first piece is you win. That's
21 a scenario that you had to deal with in the bid procedures.
22 What happens if they win? It's irrevocable. For them to take
23 the position it's not irrevocable because the APA had blanks --

24 THE COURT: Could we look in the -- could we take a
25 moment and look in the bid procedures order and let's look at

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1 the definition of the successful bid?

2 MR. KURTZ: Sure.

3 THE COURT: You also are going to have to address my
4 observation not to -- that I'm trying to pit you against your
5 partner, Mr. Lauria. But the fact remains that --

6 MR. KURTZ: That would not be unusual, Your Honor.

7 THE COURT: The fact remains that at hearing after
8 hearing after hearing no one representing the ad hoc group ever
9 said don't worry about what Ms. Strickland's saying about the
10 milestones because the bid's irrevocable.

11 MR. KURTZ: But, Your Honor --

12 THE COURT: No one ever -- no one ever said that. So
13 that --

14 MR. KURTZ: But I'm pretty sure that Ms. Strickland
15 kept saying the PSA was terminable, which would be right, but
16 did not say the bid was terminable and we did want this to
17 move. We stood here and said Your Honor, I want to make sure
18 there's money for the LP preferreds, and I think you said you
19 mean the very same people who came up and asked for the
20 extension. So we were pretty upfront --

21 THE COURT: Right.

22 MR. KURTZ: -- with why we were trying to maintain the
23 dates and it was to preserve value, Your Honor. But page 14 of
24 the bid procedures order --

25 THE COURT: Page 14? Okay. Let's see.

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1 MR. KURTZ: -- is it's in "Acceptance of qualified
2 bids" and that's where you -- the successful bid is defined as
3 what LightSquared picks--

4 THE COURT: Page --

5 MR. KURTZ: -- either itself or because --

6 THE COURT: -- page 14 of the order?

7 MR. KURTZ: Of the order establishing bid procedures.
8 I'm sorry; it's the attachment, Your Honor. Right above --
9 yes.

10 THE COURT: In the bid procedures, not in the order?

11 MR. KURTZ: Correct.

12 THE COURT: Okay. Sorry; give me a minute. Oh,
13 right.

14 (Pause)

15 THE COURT: So is your argument that notwith -- that,
16 in effect, that what the debtor should have done was had an
17 auction -- if the debtor had had an auction and somebody showed
18 up and bid one bit coin and said that's higher and better than
19 the LBAC bid, right --

20 MR. KURTZ: Within the bid protections.

21 THE COURT: -- and the debtor had then said -- the
22 special committee had then said that we reject that offer and
23 we declare LBAC to be the winner of the auction, right, then
24 what you're saying is that then they would then have become the
25 successful bid.

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1 MR. KURTZ: They would become the successful bid if
2 they were the highest and best bid period, whether they were
3 the only bidder or the highest bidder. That's the -- that's
4 who gets selected. That comes out -- we go through a procedure
5 that brings in qualified bids and then allows, in the context
6 of an auction, for the debtor to make a selection. And so we
7 had that. People put in whatever bids they could put in and
8 the debtors concluded they didn't have enough to pit each other
9 in a -- in an auction environment. And at that point, they
10 could have selected LBAC as the highest bidder, the successful
11 bidder, and we still get to pursue that by having Your Honor
12 accept that, which is something we've been pretty clear about
13 from the beginning that we think the debtors can select it and
14 own it, or we can have the Court select it for them and compel
15 them to sell their assets pursuant to a plan of reorganization.
16 And that gets you the successful bid. So that's the first
17 scenario. There's a winner.

18 The second scenario that's picked up --

19 THE COURT: Can you give me just one moment --

20 MR. KURTZ: Sure. Sure, Your Honor.

21 THE COURT: -- to just look at this language again?

22 MR. KURTZ: Sure.

23 (Pause)

24 THE COURT: Can you just walk me through the way
25 paragraph (j), in your mind, works?

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1 MR. KURTZ: Yes. So the first part of (j) addresses
2 what happens when you choose a successful bidder, either the
3 debtor chooses it or the Court chooses it. And in that case,
4 it's irrevocable unless you have a term that allows you to
5 terminate which doesn't apply here. And that's what we're
6 pursuing. So we don't actually need to get to the next
7 sections. In our view, it's a successful bid, and we're going
8 to pursue that at plan confirmation.

9 THE COURT: But -- all right. But then you got to go
10 into -- there's a first provi --

11 MR. KURTZ: Then --

12 THE COURT: -- there's a bunch of provisos.

13 MR. KURTZ: -- then I'm going to walk you through all
14 the provisos.

15 THE COURT: I'm sorry?

16 MR. KURTZ: I'll walk you now through all the
17 provisos.

18 THE COURT: Okay. Go ahead.

19 MR. KURTZ: So that's the first part. Now, you got a
20 proviso.

21 The first proviso, subsection (1)(i) addresses what
22 happens to the other bidders? Well, this one addresses what
23 happens to the second highest bidder. The second highest
24 bidder, which for the avoidance of a doubt, includes LBAC, then
25 is irrevocable until the earlier of sixty days after entry of

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1 the confirmation order, or some other -- or whatever they put
2 in their agreement, or the date where they receive the purchase
3 price. So what's that accomplishing?

4 In context, Your Honor, that's ensuring that if the
5 first successful bidder goes away, doesn't get FCC approval or
6 otherwise, that we're not left starting over, we have a bid.

7 THE COURT: Um-hum.

8 MR. KURTZ: So this is another way -- so this one's
9 irrevocable.

10 The second proviso, (2)(i) then confirms that LBAC may
11 have a walk at an earlier right, at an earlier time but it has
12 to remain open until February 15th. So LBAC is still there in
13 case we need LBAC to get a -- to get a deal closed if they
14 weren't the successful bidder.

15 And then if you go to the earlier section, (e)(x),
16 this deals with -- which is page 11 of the procedures -- this
17 deals with everyone else in the world. The people that weren't
18 successful and the people who weren't the second highest bids.
19 And those people have to remain irrevocable --

20 THE COURT: Where are you now, Mr. Kurtz?

21 MR. KURTZ: Page 11.

22 THE COURT: Right.

23 MR. KURTZ: Section (x), subsection (x), (e)(x).

24 THE COURT: Okay.

25 MR. KURTZ: "Qualified bids must be irrevocable until

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1 entry of the bankruptcy court of the confirmation orders and
2 recognition by the Canadian court, as defined below, of the
3 confirmation order unless they're either successful or the
4 second highest."

5 So altogether, like most of these procedures orders,
6 it ensures everyone's around. The successful one's around
7 until confirmation. The second one's around so we can get them
8 back in if we need them and everyone else is around for the
9 same reasons. Because why wouldn't they be able to go home?
10 They're not going home because we may need them and they'll be
11 declared successful or second highest.

12 So what was clear is that everybody was bound. Now,
13 why were people talking about backup bids? Because there was
14 never a question that LBAC was going to stand as a successful
15 bidder for us or for the debtor. The question was if someone
16 outbids him, is he going to sit around in the proceedings
17 anymore? And he wanted to leave, and that's what the other bid
18 procedures order showed, that he didn't have that extra
19 proviso. And nobody would agree.

20 THE COURT: But if everything that you've said is
21 true --

22 MR. KURTZ: Yes.

23 THE COURT: -- then the answer to my concern would
24 have been you don't need that because it's irrevocable. It's
25 the rest of this lan --

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1 MR. KURTZ: But the PSA --

2 THE COURT: -- or the --

3 MR. KURTZ: -- has its own obligations --

4 THE COURT: No, no, no. Not the PSA. If -- when I
5 made the inquiry, again, you have the benefit of --

6 MR. KURTZ: Sure.

7 THE COURT: -- crafting these documents and studying
8 them -- when I made the inquiry as to whether or not LBAC was
9 committing to hang around, I was told no. And that --

10 MR. KURTZ: At what point --

11 THE COURT: -- that's just completely at odds with
12 what you're saying the rest of this whole thing, how it worked.

13 MR. KURTZ: At what point are you referring to, Your
14 Honor?

15 THE COURT: When we were --

16 MR. KURTZ: Which inquiry?

17 THE COURT: -- when we were right at the point of
18 okay, I'm going to grant bid protections --

19 MR. KURTZ: Correct.

20 THE COURT: -- breakup fee, et cetera.

21 MR. KURTZ: Exactly. Okay.

22 THE COURT: And then at that moment, when it appeared
23 to me that we would be in the position of having the high class
24 problem of LBAC being topped, right, with more cash or
25 consideration, and then we pay LBAC the breakup fee, and then

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1 the winning bidder doesn't get FCC approval or just doesn't
2 succeed. And then it was clarified to me, well, don't worry
3 because they're not going to get paid the breakup fee unless
4 the -- the outbidding party actually closes. That was number
5 one.

6 And number two, I said well, what do you mean? They
7 have to hang around. And then it was agreed that they would
8 hang around for sixty days --

9 MR. KURTZ: Correct.

10 THE COURT: -- after the confirmation order with
11 respect to the winning bid.

12 MR. KURTZ: That's right.

13 THE COURT: With an outside date of February 15th.

14 MR. KURTZ: That's right.

15 THE COURT: But now, we have no other winning bid.

16 MR. KURTZ: Well, they are, in our minds, the
17 successful bidder, and that's how we're proceeding. They were
18 also required to stay around.

19 Now, if we didn't have proviso three, Your Honor, they
20 would be stuck until sixty days after entry of a confirmation
21 order. That's where they would be, because they would be -- as
22 a second highest bidder which says, "For the avoidance of
23 doubt, the stalking-horse bidders," it includes the stalking-
24 horse bidders, that's where they would have been. But they
25 negotiated a second proviso which allowed them an early out.

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1 So they're only around until February 15th unless there's --
2 unless they prevent us from consummating by then and there's
3 some basis for stopping them or enjoining it. But that's what
4 they negotiated for.

5 Everyone else, Your Honor, is around for sixty days
6 post-confirmation which is going to be well past February 15.
7 They got a little more. But one, they're the successful bidder
8 so there should be no question they have to go forward on that
9 basis. And two --

10 THE COURT: Well, can I --

11 MR. KURTZ: -- they have to sit here anyway.

12 THE COURT: -- can I -- so now, this is now turning on
13 the definition of the successful bid.

14 MR. KURTZ: There are two sections. It involves that
15 section as well as the proviso.

16 THE COURT: Right. But you still aren't providing me
17 with an explanation of the conduct that occurred time and time
18 again which was never once before LBAC terminated, never once
19 did anyone say don't worry about those milestones. They're --
20 the bid's irrevocable.

21 MR. KURTZ: But I think --

22 THE COURT: No one ever said that.

23 MR. KURTZ: -- but I think, Your Honor, what we did
24 say was that we were specific the milestones were to the PSA
25 and they would terminate the PSA which had a lot of value to

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1 us. They have to support our plan -- they're obviously not
2 doing that now -- and they have to vote in favor of the plan.
3 There's a lot of things they have to do under the PSA that they
4 don't have to do now as evidenced by the fact that we're
5 arguing about whether they even have to sit as the stalking
6 horse. It meant a lot to us to keep them locked into the PSA,
7 and we lost that subject to any defenses we have to the
8 termination.

9 It also meant a lot to us, and we said it at the time,
10 Your Honor, because every month that went by, we were losing
11 thirty million dollars in interest, and that only went through
12 year end. It only went through the -- so that meant all the
13 dollars that were burning in this estate were coming out --

14 THE COURT: All right. But that's why you care --

15 MR. KURTZ: -- of the LP preferred recoveries.

16 THE COURT: -- that's why, as you told me before,
17 that's why you cared about that timing.

18 MR. KURTZ: That's why we -- that's why we imposed it.
19 That's why we cared.

20 THE COURT: Okay.

21 MR. KURTZ: Now, the only other point I think I
22 want --

23 THE COURT: Go ahead --

24 MR. KURTZ: -- there's actually two points, Your
25 Honor, I want to make. One is, and I would just sort of direct

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1 you to a couple of the cases that I have reproduced in part on
2 the slides at page 13 and 14. But even if they were missing
3 essential terms, and they weren't, and I'll go back and just
4 note that the Texaco Pennzoil case, which must have been late
5 '80's, I -- was -- I mean it was multibillion dollar verdict
6 which at the time would be about a multitrillion dollar
7 verdict. It was sort of unheard of. It was a one-page term
8 sheet subject to board approval unsigned and it was
9 enforceable. And this is a seventy-page which is already
10 qualified by the Court, so it's absolutely enforceable.

11 But in any case, if you have to fill in the terms,
12 it's pretty easy. Most of them are schedules and
13 informational. You don't need them. But it's black letter
14 law, and there're cases that we've cited here that where the
15 parties failed to state --

16 THE COURT: But when you -- again, when you -- the
17 termination provision was blank.

18 MR. KURTZ: Correct.

19 THE COURT: It was blank.

20 MR. KURTZ: Correct.

21 THE COURT: And I think that --

22 MR. KURTZ: They had no termination right. It's as if
23 it didn't exist.

24 THE COURT: Right.

25 MR. KURTZ: There's nothing for them to -- we don't

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1 need a termination right. We need a dollar, a time to fund and
2 the assets and liabilities that are being assumed. That's what
3 we need. If they want to terminate, they have to have a
4 termination right. Contracts don't need termination rights.
5 Most contracts don't have termination rights. Those that do
6 have to be clear about them. We don't rely on the termination
7 rights. They can't impose one now.

8 What they're effectively trying to do is say let me
9 take milestones and termination rights in the PSA and impose
10 them over the bid procedures order in the APA. They're not in
11 there.

12 THE COURT: The APA for this -- purpose of this
13 discussion in my mind is completely irrelevant. It's just
14 irrelevant. It's the PSA and how it relates to the bid
15 procedures order.

16 MR. KURTZ: I think you're right except to the extent,
17 Your Honor, the APA is the qualified bid.

18 THE COURT: Agreed.

19 MR. KURTZ: That is irrevocable.

20 THE COURT: That's --

21 MR. KURTZ: So it's the irrevocable bid. That's all.

22 THE COURT: Well, but you say that, but that's the big
23 leap. Because the APA itself has a blank termination date.
24 The APA --

25 MR. KURTZ: Meaning they don't have it.

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1 THE COURT: Well, they say the exact opposite, though.
2 I mean they --

3 MR. KURTZ: But the document doesn't have it. It's a
4 blank. How could Your Honor enforce that? You'd have to make
5 an agreement, right. You can't enforce a blank. It can be
6 terminable on blank. Right? The parties can't ask the --

7 THE COURT: Are you saying that I cannot -- that a
8 Court could not approve a stalking-horse bidder who has the
9 right to withdraw its bid?

10 MR. KURTZ: Oh, of course, you could but you'd have to
11 be presented with a term, everybody would have to agree to it
12 and then it would have to be attached. You can't -- you can't
13 get an agreement, an attachment to a court order that has no
14 termination right and then later say yeah, but I'm going to
15 fill it in in a way that helps me. The debtors haven't agreed
16 to a termination.

17 THE COURT: But that's the way the events unfolded
18 with respect to the last proviso in the bid procedures order,
19 because it appeared at the time that that was actually true,
20 that LBAC was free to withdraw its bid, and that we had to take
21 the affirmative step of saying you're going to hang around if
22 you want these bid protections. If you want these bid
23 protections, this fifty million dollars in expense
24 reimbursement, you need to hang around after the auction to be
25 the backup bidder. We had no auction. We had no successful

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1 bid. We blew through the milestones. No one ever, two months
2 ago, said no worries. Sure, they can terminate the PSA, that
3 would be bad, but we're good because the bid's irrevocable.
4 See the order. That --

5 MR. KURTZ: But that's addressing, Your Honor, where
6 they're outbid. And everybody wanted to be clear that when
7 they were outbid, they still had to stick around. There was
8 never a question that they had to stick around if they were the
9 highest bid. This would have been an exercise in futility if
10 they could walk away without closing.

11 We made it very clear we were locking them in.
12 Everyone understood they were being locked in. To accept that
13 position would mean --

14 THE COURT: I think it's too strong a statement to say
15 everybody understood that they --

16 MR. KURTZ: Well, I think the debtors and the special
17 committee and the ad hocs would all confirm that.

18 THE COURT: Well, let me hear -- I know Ms. Strickland
19 is dying to speak. So why don't I give you that opportunity
20 and then I would like to hear from the debtors.

21 MR. KURTZ: Thank you, Your Honor.

22 THE COURT: Okay. Thank you, Mr. Kurtz. This was
23 very helpful.

24 MR. KURTZ: Thank you.

25 MS. STRICKLAND: I have too much paper to move, if

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1 that's all right.

2 THE COURT: That's fine. You can stay there; just
3 you've got to pull the microphone closer.

4 MS. STRICKLAND: Certainly. I'm not going to go
5 through everything that I had intended to discuss because I
6 think that --

7 THE COURT: You absolutely can.

8 MS. STRICKLAND: No, I think most of it Your Honor
9 already covered. The --

10 THE COURT: You can say whatever you want, but could
11 you zero in on the -- I think the key point that Mr. Kurtz is
12 trying to make which is the keying this off of the definition
13 of successful bid.

14 MS. STRICKLAND: Sure. So let me just -- I will
15 answer that but I just want to put a little bit of context
16 around it --

17 THE COURT: Go ahead.

18 MS. STRICKLAND: -- and explain what the PSA did and
19 what it didn't do. So one of the provisions of the plan
20 support agreement, which I wanted to point out, is the
21 provision in 3(g) of the plan support agreement.

22 THE COURT: Okay.

23 MS. STRICKLAND: What that says is --

24 THE COURT: Give me a minute to get there, if you
25 would.

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1 MS. STRICKLAND: Sure.

2 THE COURT: 3(g)?

3 MS. STRICKLAND: Um-hum.

4 THE COURT: The reps and warranties?

5 MS. STRICKLAND: 3(g) -- LBAC has no claim against
6 LightSquared; neither does DISH. So the reason why those two
7 entities are a party to the plan support agreement is to lock
8 them into the bid. There would be no other reason to have a
9 plan support agreement with a party that has no claim to vote.
10 So all of the things that Mr. Kurtz said about the reason why
11 the PSA was important to them, the limited purpose because they
12 needed the parties to the PSA to support the plan and vote for
13 the plan and do all those things, those don't apply to LBAC or
14 to DISH.

15 THE COURT: No, they don't. They apply -- but they
16 apply to SPSO.

17 MS. STRICKLAND: Right.

18 THE COURT: Right?

19 MS. STRICKLAND: But what he's talking about is the
20 importance of the PSA. He's talking about how -- why the PSA
21 was important. The PSA is the only executed contract that
22 binds LBAC and DISH to the bid. They have no other reason.

23 There is also plan support milestones that go beyond
24 the bid procedures. So if the bid procedures was the end of
25 the chapter and there was nothing after that, there would be no

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1 reason to have subsequent bid procedures. There would also be
2 no reason for Mr. Lauria, at the conclusion of the bid
3 procedures hearing, on into October, into November, into
4 December, into January to be talking about the plan milestones,
5 which he does at every turn. And I do refer to not just the
6 plan milestones but also that we are likely to exit the
7 opportunity. I'm talking about the bid in that excerpt which
8 was in our brief.

9 The thing that Mr. Kurtz is explaining, in terms of
10 the way that it would work, if the plan support agreement
11 wasn't terminated, they were going to propose a plan. They
12 were entitled to do so after the termination of exclusivity.
13 They were going to say our plan is confirmable. This is the
14 contract that we would like to put forward. We solicited. We
15 got votes. Please confirm it.

16 THE COURT: Right.

17 MS. STRICKLAND: That was a separate process which the
18 plan support agreement, had it not been terminated, would have
19 enabled them to do because all of the relevant parties would
20 have remained locked in.

21 THE COURT: Right.

22 MS. STRICKLAND: They would have been able to come to
23 Your Honor and ask you that question in connection with
24 confirmation of their plan. But what the bid procedures talks
25 about, and it's very clear throughout all of the defined terms

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1 that you were discussing with Mr. Kurtz, it wasn't about, oh,
2 well, forget the words on this paper, words like auction and
3 LightSquared, in LightSquared's discretion and words like
4 second highest bidder. This is what's happening in the
5 auction, the rules of the action.

6 THE COURT: Right.

7 MS. STRICKLAND: So the auction never occurred. So
8 when you look at the defined term "successful bid", it says,
9 "The successful bid shall be the bids made in accord" -- I'm
10 sorry, I need to start earlier -- "Subject to the terms of the
11 approval order, at the conclusion of the auction" --

12 THE COURT: Right.

13 MS. STRICKLAND: -- "the successful bidder shall be
14 the bids made in accordance with the order of the Court that
15 represent, in LightSquared's discretion, after consultation
16 with the stakeholder parties, the highest and otherwise best
17 offer for the applicable assets."

18 You don't get to this definition without auction and
19 LightSquared's discretion. You also, if you go into (j), all
20 of that lead-in also talks about -- there are words like
21 "executed by the successful bidder" , referring to their
22 purchase agreement, the last bid at the auction. And then it
23 also talks about LightSquared's discretion.

24 So, you know, throughout this whole auction bid
25 process, it contemplates an auction. It contemplates bidding.

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1 So I just don't think that these defined terms work the way
2 that Mr. Kurtz thinks that they work. It's a separate process
3 from what, if we were all still linked arm and arm, marching
4 with the plan support agreement not terminated, he may have
5 asked you in connection with a confirmation hearing, but that's
6 not what these defined terms and it's not what these procedures
7 are about. These procedures, as every lead-in suggests,
8 relates to an auction occurring, bids being submitted, the
9 debtor picking winners and second winners, because those --
10 that LightSquared discretion is not just in the successful bid
11 but also in the second highest bid.

12 These defined terms just don't mean what he says, and
13 there's a lot of context in here and you know, people cannot
14 possibly say that this was a hidden issue. I think I --

15 THE COURT: Well, I think that that -- I mean, you
16 have to understand that kind of the irony of talking about
17 words in context is pretty acute here, but context -- the
18 context is very significant. It speaks to what everybody, in
19 this common endeavor we thought we were doing, and not until
20 there was the termination of the APA, pursuant to the January
21 7th letter, did anything like this come up. And I think it's
22 very clever and I think that if you didn't have the context,
23 you maybe would get there. I think the most that can be said
24 is that despite teams of very talented people's best efforts,
25 you can always find an argument over the words in an order.

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1 But I think that the bid procedures, the whole point
2 of them was that the ad hoc secured group wanted to proceed
3 with the LBAC bid; no doubt about it. It was a cash bid. It
4 had other aspects of it. That's what they wanted to do. And
5 when the special committee came into being and we established
6 this other process, the bid procedures order was designed, in
7 my mind, to accomplish two things; was to enable us to have a
8 "real auction" to see if somebody else was willing to outbid
9 Mr. Ergen and LBAC, and at the same time, to keep LBAC as --
10 Mr. Kurtz, you're absolutely right; we wanted them to be a
11 floor. We absolutely wanted them to be a floor. They said
12 fine, we'll be the floor; we want breakup fees and we want
13 expense reimbursement. And then there was the concern that
14 they get outbid by a dollar and they take the breakup fee and
15 walk away, or after the successful bid, then they walk away.
16 And that was not part of the bundle of things that was
17 appropriate to -- it wasn't appropriate to give them those bid
18 protections without having the estate be assured that if we're
19 going to pay them out that money, they need to -- I think Ms.
20 Strickland's words were hang around the hoop. But we were only
21 going to get them to hang around the hoop if they were going to
22 serve as a backup bidder. Backup bidder implies that they're
23 backing up another bid.

24 I don't think Mr. Kurtz -- I hear you, your argument
25 is forget about backup bidder; just look at successful bid.

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1 But successful bid implies that there was an auction in which
2 the debtor picked someone. And now Mr. Lauria is shaking his
3 head.

4 MS. STRICKLAND: Just two other points, and I'm going
5 to --

6 THE COURT: And -- --there's the context that no one
7 ever stood up and said don't worry about everything that they
8 keep saying about milestones because it doesn't matter; we're
9 good. The bid is irrevocable. No one ever said that. And I
10 think that's probative of what everybody thought what was going
11 on until the unthinkable happened, which was that despite the
12 day-to-day extension of the milestones, LBAC pulled the bid,
13 which I think because of certain of the embedded economics and
14 the relationship between the -- Mr. Ergen's interests, both in
15 LBAC and in SPSO, I think that that was a surprise and I think
16 that's just the way it is.

17 Can I hear from --

18 MS. STRICKLAND: The only other thing I was going to
19 say --

20 THE COURT: -- I'd love to hear from Mr. Basta.

21 MS. STRICKLAND: Okay.

22 THE COURT: Ms. Strickland, if you have more you
23 wanted to say, we'll go back to you.

24 MR. BASTA: Mr. Barr is going to follow up on a couple
25 of points. Your Honor, I think that when you asked the

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1 question as what were people thinking, you have to look at it
2 from the perspective of when --

3 THE COURT: Absolutely.

4 MR. BASTA: -- when, because you're looking at a
5 several month period of time --

6 THE COURT: Right.

7 MR. BASTA: So you know, the special committee gets
8 appointed in September --

9 THE COURT: Um-hum.

10 MR. BASTA: -- and quickly finds itself in the bidding
11 procedures.

12 THE COURT: Right.

13 MR. BASTA: And the first time I sat up here and I
14 looked at the Court and I looked at Your Honor and Your Honor
15 said, it basically was, we're locking in LBAC. We were looking
16 to try to get more time, more time on the bidding procedures.

17 THE COURT: Right.

18 MR. BASTA: We wanted to figure out the situation, and
19 Your Honor said, we're locking in LBAC. And Mr. Lauria said,
20 we've negotiated this recovery for ourselves.

21 And so at the bidding procedures hearing, at September
22 30th --

23 THE COURT: Right.

24 MR. BASTA: -- if Your Honor asked us what we thought
25 we were doing, we thought the deal that we cut was to give the

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1 breakup fee and the stalking-horse protections to lock in LBAC.

2 Okay?

3 The bidding procedure language that people are relying
4 on and the proviso is the embodiment of that discussion. The
5 language in the order is -- perhaps --makes LBAC less able to
6 get out of the bid than maybe what the discussion was when Your
7 Honor said, wow, I want to make sure that they're a backup
8 bidder if they're getting breakup protection. But the order is
9 broader than that context.

10 Now what happens? Now we're starting the marketing
11 process.

12 THE COURT: So wait. So drill down farther.

13 MR. BASTA: Yes.

14 THE COURT: So when we entered the bid procedures
15 order --

16 MR. BASTA: Right.

17 THE COURT: -- how irrevocable is the bid, in your
18 mind?

19 MR. BASTA: At that point, Your Honor, we had not
20 dived into the detailed and language between the LBAC
21 arrangement with the LP lenders. We got in. We knew they had
22 a deal.

23 THE COURT: Right.

24 MR. BASTA: And it was our job to see whether to
25 recommend to the Court to do that deal or to recommend to the

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1 Court something else. So then what happened?

2 THE COURT: Right. I mean, they were going to be paid
3 in full in full --

4 MR. BASTA: And that --

5 THE COURT: -- as I always said.

6 MR. BASTA: -- and we knew that was --

7 THE COURT: And they were happy campers, right?

8 MR. BASTA: And we knew it was --

9 THE COURT: And your task was to find more money
10 because there were others in the capital structure who were not
11 getting paid in full.

12 MR. BASTA: But not jeopardize --

13 THE COURT: Correct.

14 MR. BASTA: -- them, if possible.

15 THE COURT: Exactly.

16 MR. BASTA: Okay. That was the job. Now what
17 happened? While the marketing is happening, Your Honor hears
18 Harbinger's complaint on SPSO. And the company, I think, had
19 joined one count of it, and Your Honor --

20 THE COURT: This is the motions to dismiss.

21 MR. BASTA: Motion to dismiss.

22 THE COURT: Right?

23 MR. BASTA: And Your Honor looks at it and says, you
24 know, I don't know why this is a --

25 THE COURT: If you're going to turn this into this all

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1 my fault, I'm not going to be happy.

2 MR. BASTA: No, it's all my fault. Okay. Okay. I'll
3 take responsibility, Your Honor. So if you're --

4 THE COURT: Okay. So we're in the --

5 MR. BASTA: -- so you go to the motion --

6 THE COURT: -- we're on the motions to dismiss.

7 MR. BASTA: -- to dismiss, and at the motion to
8 dismiss Your Honor basically says, I don't think the right
9 plaintiff is here. This isn't Harbinger. This is like
10 LightSquared.

11 THE COURT: Right.

12 MR. BASTA: And I think it's something that the
13 special committee should look at.

14 THE COURT: Right.

15 MR. BASTA: And so the special committee looks at it
16 and they were given access to some -- it had been represented
17 that SPSO was completely separately from DISH. And in that
18 time period, e-mails came out and documents came out that
19 showed maybe that wasn't exactly the case.

20 And we, after looking at it, the special committee
21 spent a lot of time with the company, and after a lot of
22 consideration, authorized the company to commence the SPSO
23 litigation. And we did it knowing that it wasn't an easy
24 decision because --

25 THE COURT: Because you're going to start taking

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1 target practice at the --

2 MR. BASTA: At, potentially, the bid.

3 THE COURT: -- at the bidder; right.

4 MR. BASTA: At the bid. But at the same time, we're,
5 like, we can't turn our heads from something that could be
6 significant. So we authorized the commencement of the lawsuit,
7 and it's more like the more you keep digging on that, the more
8 it doesn't look so good.

9 THE COURT: Okay. Well, we can't --

10 MR. BASTA: So let me --

11 THE COURT: At that point, let's --

12 MR. BASTA: So then --

13 THE COURT: -- stay away from the --

14 MR. BASTA: -- we get --

15 THE COURT: But let's stay away from the record of the
16 trial.

17 MR. BASTA: No, but it gets to the auction.

18 THE COURT: Okay.

19 MR. BASTA: Because now you're going into the auction
20 and it's up to the special committee to decide whether to
21 conduct the auction and to designate the winning bidder at the
22 auction, a bid that releases the conduct that is the topic of
23 the complaint that the special committee has authorized.

24 So the special committee felt that what it needed to
25 do is to say we got to get to the bottom of the conduct and we

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1 have to develop alternatives for this company, because if there
2 are no alternatives for this company, and this transaction
3 doesn't go forward, there has to be an alternative for the
4 company that maximizes value.

5 And so there was a statement filed by the special
6 committee in November, when it authorized the commencement of
7 the lawsuit, and there's a footnote in that statement that says
8 that we're not so sure that LBAC is bound to the LP lenders.

9 Until we had filed that statement, when we were
10 considering, at that point in time, whether to commence the
11 lawsuit, and we were in consultation with all of the other
12 parties, parties were, like, you know, they may not be totally
13 bound; if you file the lawsuit, they --

14 THE COURT: What was the intent of your -- so that's
15 when the anxiety first surfaced.

16 MR. BASTA: That's the anxiety in which we said --

17 THE COURT: And --

18 MR. BASTA: -- it's not a free option in the sense
19 that if we go -- even though SPSO is separate from LBAC,
20 according to the statement, the more we pick at this thing, the
21 more it could be that we run the risk of them terminating it.

22 THE COURT: Is that what the statement meant, that
23 they weren't really bound? What was behind the initial anxiety
24 over --

25 MR. BASTA: Yeah, the way it was described is that

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1 there were, like, a couple of -- the way that I understood
2 it -- and Mr. Barr and Mr. Sussberg should jump up if they
3 don't -- is that there were, like, a couple of little open
4 things on the contract that needed to be squared away. That
5 was our understanding, but --

6 THE COURT: But there's a difference -- but this goes
7 back to what I was saying to you, kind of philosophically,
8 about an hour ago, which was that what does it mean to
9 designate something as a stalking-horse bid pursuant to a draft
10 APA, right, as opposed to a fully executed APA that's subject
11 only to the Court's approval, right? That APA was really a
12 draft, and if you had any doubts about that, all you have to do
13 is look at the subsequent version of the APA to see how much
14 farther it got developed before it was sent out for
15 solicitation. So I don't know what it means to say, well, they
16 were still talking. Of course they were still talking --

17 MR. BASTA: Right.

18 THE COURT: -- because it was a draft APA that was
19 presented to the Court as the basis of the stalking-horse bid.
20 So the mere fact that they were continuing to negotiate terms,
21 that --

22 MR. BASTA: It --

23 THE COURT: -- in and of itself, wouldn't give a
24 suggestion or a concern of uh-oh, they're not really bound.

25 MR. BASTA: Right. And the footnote didn't say

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1 they're not really bound. The footnote said we're not sure
2 that they're bound. Okay? And even in the latest statement by
3 us, by the special committee it said, "It isn't clear to us
4 that LBAC is bound," and when Your Honor started the next
5 hearing you said was --

6 THE COURT: I said, what does that mean?

7 MR. BASTA: -- something --

8 THE COURT: Right.

9 MR. BASTA: -- you said, what does that mean? And you
10 asked the parties as to whether they'd been bound.

11 But why it's relevant to us -- I don't know how to try
12 to articulate this. It was as if there was intentionally a
13 foot kept behind the line, and you went to the special
14 committee and said you've got to turn your back on the topic of
15 the lawsuit. You have to turn your back on what your concerns
16 are with this bid or we have the right to pull.

17 In other words, you don't have the option of keeping
18 the bid and digging on the litigation. And if you asked the
19 special committee at the time it faced the decision, and if you
20 ask the committee today, we think that 2.2 billion in cash,
21 that boat load of money that everybody talks about, that's
22 really important, but we don't think it's appropriate to put a
23 string on that that you can't look at the things in the bid
24 that give you the problem.

25 And so Mr. Lauria looks at this and Mr. Kurtz -- I

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1 don't mean to offend Mr. Kurtz -- but they are looking at this
2 as an offer and acceptance case.

3 THE COURT: And it's not.

4 MR. BASTA: And the problem for the special committee
5 is that if the acceptance means you can't look at the topic of
6 the adversary proceeding, that's not something we want to
7 accept, nor do we think it's appropriate for the judicial
8 process for the Court to accept.

9 But does this relate to the adversary proceeding? And
10 I know you don't want me to talk about that, but that's the way
11 we look at it. We would look at it more in that light.

12 But to get back to the specific thing that the Court
13 asked, which is, so these topics -- like, when Your Honor asked
14 Mr. Kurtz or Mr. Lauria, you never got up and said that they
15 were bound, I don't know how relevant that really is, just to
16 be fair about it, because nobody had terminated yet. When
17 somebody terminates --

18 THE COURT: No, but Mr. --

19 MR. BASTA: -- you go back and you look at the bidding
20 procedures and you go back and you look at the order and you go
21 back and you look at everything as to what was done in the
22 record.

23 THE COURT: But I have to disagree with you because
24 when the special committee was appointed, not surprisingly, you
25 said, we've got to slow this down.

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1 MR. BASTA: Right.

2 THE COURT: We've been given a job to do and we need
3 to figure out what's going on --

4 MR. BASTA: Right.

5 THE COURT: -- and how to do our job.

6 MR. BASTA: Right.

7 THE COURT: And the response to that by the ad hoc
8 secured group was this is a problem. And the reason this was a
9 problem is because that bid was going to go away. I think it's
10 creative recreation of history to say that no, what we really
11 meant was the support for the plan was going to go away.

12 MR. BASTA: Um-hum.

13 THE COURT: Because you can -- if the bid was good --

14 MR. BASTA: Um-hum.

15 THE COURT: -- and the special committee came up with
16 nothing else --

17 MR. BASTA: Right.

18 THE COURT: And this is not intended as a commentary
19 on --

20 MR. BASTA: Right.

21 THE COURT: -- what's before me now --

22 MR. BASTA: Right.

23 THE COURT: -- then that would have been a confirmable
24 plan. That might have been -- might have been -- a confirmable
25 plan.

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1 MR. BASTA: Um-hum.

2 THE COURT: It's 2.2 billion in cash.

3 MR. BASTA: Um-hum.

4 THE COURT: So the sense that pervaded the months and
5 months and months was you've got to hurry up.

6 MR. BASTA: Um-hum.

7 THE COURT: You can't give them more time.

8 MR. BASTA: Right.

9 THE COURT: That's Harbinger's game.

10 MR. BASTA: Right.

11 THE COURT: They want to run out the clock.

12 MR. BASTA: Right.

13 THE COURT: You've got to keep going because LBAC's
14 going to walk away. And I think it's just a creative
15 retrospective look to say that that was all about the plan
16 support agreement and not about the bid.

17 Now, I mean there's ironies and ironies here because
18 what you appear to be saying is that you think that perhaps the
19 right view is that they in fact were locked in and yet that was
20 a plan that the special committee didn't want to support.

21 MR. BASTA: It's an ironic view because -- and I want
22 to explain the irony. You're just asking me what I think or
23 what the special committee was thinking at the time. At the
24 time in which the bidding procedures order was entered, we
25 thought we were locking in LBAC. Exclusivity had been

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1 terminated.

2 THE COURT: Correct.

3 MR. BASTA: Exclusivity had been terminated. The
4 secured creditors had reached an agreement which basically pays
5 their constituency.

6 THE COURT: Right.

7 MR. BASTA: Okay? And the job of the special
8 committee is to come in and see is there an alternative? We
9 thought we were paying the breakup fee to lock in that
10 constituency and to develop other alternatives that we could
11 compare. After that occurred, we ran into the -- we evaluated
12 certain problems with the LBAC bid and we evaluated the
13 litigation.

14 THE COURT: So are you saying that there's almost a
15 kind of a force majeure event or an impossibility event that
16 because of the special committee's obligation to look at the
17 litigation relating to the SPSO debt purchases and because of
18 the relationship of that set of facts and circumstances to the
19 bid and the bidder, that's what prevented the special committee
20 from proceeding with the auction.

21 MR. BASTA: There are three --

22 THE COURT: Is that kind of what -- like there's a
23 failure of a --

24 MR. BASTA: When we --

25 THE COURT: -- there's a failure of a premise here?

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1 MR. BASTA: When we were talking about schedule
2 earlier in this case, I said, Your Honor, it would be better if
3 we dealt with the adversary before we have to select the
4 bidder. And Your Honor said, no, we're not going to do that.
5 The special --

6 THE COURT: Well, because you know why?

7 MR. BASTA: Right, right.

8 THE COURT: Because you know why?

9 MR. BASTA: Right.

10 THE COURT: Because I thought the bid was going to
11 terminate.

12 MR. BASTA: Right.

13 THE COURT: So we didn't have the luxury of waiting.

14 MR. BASTA: So we didn't have the luxury.

15 THE COURT: And then because of what -- and I might
16 have been on a different page from the rest of you on a lot of
17 things, but then it was clearly conveyed to me that we had to
18 resolve the adversary in order to be able to tee up
19 confirmation --

20 MR. BASTA: Of --

21 THE COURT: -- of the plan and the bid because we had
22 to deal with the release. So in a case where no one can agree
23 on anything --

24 MR. BASTA: Right.

25 THE COURT: -- everybody --

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1 MR. BASTA: Right.

2 THE COURT: -- seemed to agree that we had to deal
3 with the SPSO --

4 MR. BASTA: Right.

5 THE COURT: -- litigation first.

6 MR. BASTA: Right. But to answer your question, it
7 would be misleading for me to tell the Court that the only
8 factor that resulted in the termination of the auction was the
9 litigation.

10 THE COURT: Okay.

11 MR. BASTA: It was a very big factor. The two other
12 factors, and we've identified them in our papers and they're no
13 news to anybody in this room because we've been perfectly clear
14 about it, is that we didn't feel like the bid provided any
15 affirmative recovery for the GPS litigation held by the LP
16 estate, okay? And we wanted some consideration --

17 THE COURT: Well, just to drill down on that, the GPS
18 litigation -- the claims were held by not just the LP estates;
19 right?

20 MR. BASTA: There's two issues with the GPS
21 litigation. And Your Honor --

22 THE COURT: Yes.

23 MR. BASTA: -- it's very important that we keep them
24 separate. LP has an affirmative claim against --

25 THE COURT: Correct.

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1 MR. BASTA: -- the GPS industry.

2 THE COURT: Right.

3 MR. BASTA: That could result in affirmative dollars
4 to LP.

5 THE COURT: Yup, right.

6 MR. BASTA: A bidder wants to pay so that those claims
7 do not interfere with their getting clear.

8 THE COURT: Right, agreed.

9 MR. BASTA: That doesn't mean that the bid shouldn't
10 compensate the estate for the value of those litigation claims
11 to the estate --

12 THE COURT: The estate, but the --

13 MR. BASTA: -- being LP.

14 THE COURT: -- the LP estate, but then you have to
15 talk about the other estates, too.

16 MR. BASTA: Now the second piece of it on the GPS
17 litigation was it looked like the LP plan was seeking to cause
18 Inc. to release Inc.'s claims --

19 THE COURT: Right.

20 MR. BASTA: -- against the GPS industry. So when we
21 determined to let the LP -- the LP lenders, because
22 exclusivity had terminated, had the ability to present their
23 own plan. When the special committee determined not to endorse
24 that plan, it was for those package -- it was because of those
25 package of considerations.

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1 THE COURT: All right. Thank you.

2 MS. STRICKLAND: Your Honor, I just want to address
3 one thing while we have Mr. Basta.

4 THE COURT: Sure.

5 MS. STRICKLAND: Your Honor and Mr. Basta had this
6 conversation once before. You had it on 11/25. And there was
7 a discussion where again there was a request to delay, and Mr.
8 Lauria said, well, I can't agree to a date past the 12th
9 without breaching the PSA. We're way past the bid procedures
10 hearing.

11 And then Your Honor --

12 THE COURT: But now Mr. Lauria, just to keep up with
13 you -- but now Mr. Lauria and Mr. Kurtz are saying, you see,
14 they said PSA; they didn't say bid. That's what he is going to
15 say."

16 MS. STRICKLAND: I heard it. I agree.

17 THE COURT: Okay.

18 MS. STRICKLAND: He's going to say all kinds of
19 things.

20 MR. LAURIA: You just read the words.

21 MS. STRICKLAND: Yes, those were the words.

22 THE COURT: Okay.

23 MS. STRICKLAND: I don't want to mis --

24 MR. LAURIA: So it's not what I'm saying today.

25 THE COURT: Hold --

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1 MS. STRICKLAND: I don't want to mis-cite anyone.

2 MR. LAURIA: It's what I said then.

3 THE COURT: Hold on. Hold on.

4 MS. STRICKLAND: So then Your Honor said, "There's a
5 risk for the special committee to evaluate." I mean, we're
6 back to the same issue. I'm not cutting out anything that's
7 pertinent. But then that's a risk the special committee to be
8 evaluating, which is a risk that we've always been concerned
9 about, and that's keeping LBAC bounded at the table. So that
10 has nothing to do with anything other than the bid.

11 And Mr. Basta gets up and says right now the LBAC bid
12 requires that -- the PSA between Mr. Lauria's client and LBAC
13 requires that a plan of reorganization be consummated by the
14 end of this year. And then he goes on to say he doesn't view
15 it as a bird in the hand anyway, because of the HSR timing.

16 So he's not coming in and giving, you know, the
17 machinations of the --

18 THE COURT: Well, what he was saying at that point
19 was -- and this gets into --

20 MS. STRICKLAND: We don't think we can make it by the
21 deadline anyway.

22 THE COURT: Exactly.

23 MS. STRICKLAND: Yes, that's what he says.

24 THE COURT: That's exactly right. That's exactly
25 right. But now we're going to get into a whole different

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1 layer.

2 MS. STRICKLAND: Right. And whether or not -- look,
3 there are various timetables that moved throughout this whole
4 thing. So we started out with dates that were not met from the
5 get-go: the bid procedures --

6 THE COURT: Well, but be careful -- be careful here,
7 because --

8 MS. STRICKLAND: But we made a written -- we made a
9 written amendment in accordance with the plan support
10 agreement.

11 THE COURT: That's true.

12 MS. STRICKLAND: So it was not, eh, dates don't
13 matter, we'll just --

14 THE COURT: Well, it wasn't that the date --

15 MS. STRICKLAND: -- we'll just ride along. There's no
16 waiver and estoppel.

17 THE COURT: It wasn't -- and here --

18 MR. LAURIA: Your Honor --

19 THE COURT: Hold on.

20 MR. LAURIA: -- I've got to -- I've just got to
21 clarify something. Unilaterally, we got e-mails from counsel
22 repeatedly purporting to extend deadlines. Deadlines don't get
23 extended unilaterally; you get it extended, under the PSA, by
24 agreement. And counsel will be unable to show you a single
25 time that we agreed to a single one of those --

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1 THE COURT: But this gets --

2 MR. LAURIA: -- purported extensions.

3 MS. STRICKLAND: Well --

4 THE COURT: You know, I've got -- there's --

5 MS. STRICKLAND: -- that is untrue.

6 THE COURT: Okay. Hold on. But this --

7 MS. STRICKLAND: But it doesn't matter.

8 MR. LAURIA: Just one.

9 THE COURT: Mr. Lauria --

10 MS. STRICKLAND: Please, just one.

11 THE COURT: Mr. Lauria, Mr. Lauria, please. Look.

12 Look. You know, it's always easier in retrospect to do the,
13 you know, "woulda, shoulda, coulda" thing. And now there're
14 going to be two sides to the story of whether or not there were
15 agreed extensions. And I think Ms. Strickland or someone on
16 behalf of LBAC has argued that the failure to acknowledge those
17 in writing was to preserve optionality on the other side.

18 This is about as complicated -- this is like a three-
19 dimensional chess game. I get it. And I'm trying my best to
20 keep up with all of the moves. I don't -- I will tell you, in
21 all honesty, I'm not sure I fully understand what's behind all
22 the moves. But what emerges from the fog of all this, on this
23 narrow point, is that when you combine the bid procedures order
24 with the plan support agreement, the LBAC bid was only going to
25 stay in place if those milestones were met. That was the way

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1 that it was.

2 And whether or not there is some other level of
3 argument that LBAC really was never bound, never intended to be
4 bound, somehow didn't act in bad faith with respect to the
5 progress of getting to a deal, that's not what we're talking
6 about today. We're just talking simply about whether or not
7 they've withdrawn the bid and whether in essence we're going to
8 give effect to that in the context of the ad hoc secured
9 group's right -- desire and right to proceed with confirmation
10 of its plan, which -- and I can't believe we're going to run
11 out of time but we are, because that's a whole separate layer
12 of complexity that we're going to have to deal with.

13 If I tell you -- and procedurally, I think the way
14 that we have to do this is -- and I'll hear you on this too --
15 is that the way this issue is before me, despite your efforts
16 to make it neater, is really messy and sloppy. This is not a
17 criticism; it's just an observation, okay? There was a notice
18 of an intent to proceed to confirmation. That provoked a
19 response and a motion for a declaratory judgment. Then we
20 agreed on kind of an agreed set of issues, and that's what
21 we're talking about here today. But it's still very squirrely
22 in terms of somebody not in this room looking at, well, what
23 exactly are they doing there today?

24 And I think the way to go, I would suggest to you, is
25 that when we're done, for me to give you a tentative ruling

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1 that I would then tell you that, to the extent that we are
2 going to formally have a confirmation hearing on the ad hoc
3 secured group plan, would be the first thing that we do, would
4 be then that -- and I'm a little bit making this up, because
5 this is not in any of the books, this situation that we're
6 in -- is that Mr. Lauria, hypothetically -- although we've got
7 to get through a lot more before we would even get to this
8 point -- would stand up and say, Your Honor, I present the ad
9 hoc secured group's plan for confirmation, based on the LBAC
10 bid. And then we would make part of the record of the
11 confirmation hearing the determination, which is where I think
12 I'm headed to at this moment, that the LBAC bid has been
13 withdrawn. So therefore, to the extent that the plan is
14 premised on the LBAC bid, confirmation of that plan cannot
15 occur, because the bid has been withdrawn.

16 So, procedurally what I'm trying to do is to preserve
17 everybody's appeal rights, because I don't know what this is
18 today in terms of preserving your rights to appeal and any
19 rights that you think you have with respect to claims and
20 specific performance and the like. I mean, I will tell you now
21 just to -- I'm going to get ahead of myself a little bit. We
22 also have to talk about -- maybe we could take a little break
23 after Mr. Barr speaks. We also have to talk about the ability
24 of the ad hoc secured group to proceed with the alternative
25 transaction, about which I have a lot of questions. That's

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1 number one.

2 And number two, even if I were to go the other way and
3 say, okay, proceed to confirmation on the LBAC plan, this side
4 of the room's going to stand up and say, we're not performing,
5 we withdrew that bid, we're not performing. Then there could
6 be no showing of feasibility with respect to that toggle of the
7 ad hoc secured group plan. And then we'd have to get to a
8 hypothetical confirmation hearing on the LBAC plan, I'll call
9 it. I'd have to hypothetically go through what that
10 confirmation hearing would look like, and explore all the
11 issues that I may have had with respect to confirmation of the
12 LBAC plan. And trust me, there were going to be issues.

13 Did you just follow what I said?

14 MR. BARR: I did.

15 THE COURT: So I kind of don't know what the next step
16 is, so maybe Mr. Barr's going to tell me what the answer is.

17 MR. BARR: Well, Your Honor, I -- and I apologize,
18 because you did go through some of your thinking here. But I
19 actually was going to help and answer a question that you asked
20 before, which was, context.

21 THE COURT: Right.

22 MR. BARR: And I apologize for going back a little
23 bit. And then you actually asked a question that we thought
24 about, which was, the blackline of the prior order.

25 THE COURT: Right. In other words, the -- but Mr.

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1 Kurtz's argument today was -- forget about the proviso.

2 Everything we need is in the two words "successful bid".

3 MR. BARR: But it works together.

4 If I can walk up --

5 THE COURT: Okay.

6 MR. BARR: -- with the blackline, Your Honor. Thank
7 you. May I approach?

8 THE COURT: Yes.

9 MR. BARR: Thank you. And we're going to put irony
10 aside as well, if that's okay, Your Honor --

11 THE COURT: Sure.

12 MR. BARR: -- and just try to provide to you, at least
13 from the company's perspective, and management -- Mr. Basta
14 already told you the special committee -- what the context was
15 that they believed was going on.

16 So if you turn to page 14, paragraph J, that's the --
17 of the attachment to the bidding procedures, so the bid
18 order -- the bidding procedures themselves -- this is
19 irrevocability of certain bids. Your Honor is exactly correct
20 that there was a back-and-forth where I highlighted the fact
21 that LBAC would not act as a backup bidder if we held an
22 auction. And you were very concerned with that, as we were
23 You asked why, and I said we couldn't negotiate it, we tried
24 really hard, and we had our break.

25 If you go back and look at the blackline, the original

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1 bidding procedures provided, in the proviso that we've been
2 focused on today, that "LBAC shall have no obligation to serve
3 as the backup bidder and its bid shall not be irrevocable under
4 this paragraph J. But LBAC may serve as the second highest
5 bid, at its option."

6 So we went in the back and we talked about what's
7 going to happen next. But if you read this language, it says
8 that LBAC was not revocable, before we made these changes.

9 THE COURT: No, "shall not" -- "its bid shall not be
10 irrevocable".

11 MR. BARR: Right. So they can't terminate the bid --

12 THE COURT: Wait, wait, wait. Wait, wait, wait, wait.

13 MR. BARR: -- subject to this paragraph J.

14 THE COURT: Whoa, whoa, whoa. It says that LBAC --

15 MR. BARR: Shall not --

16 THE COURT: -- shall not -- "have no obligation to
17 serve as the second highest bidder" --

18 MR. BARR: And its bid is irrevocable.

19 UNIDENTIFIED SPEAKER: Is not.

20 THE COURT: Is not irrevocable.

21 MR. BARR: Is not -- I'm sorry; is not irrevocable.

22 They took it out.

23 THE COURT: Hold on.

24 MR. BARR: The point here, Your Honor, is -- and let
25 me make a point; then we could read the language. The point is

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1 that the whole purpose of negotiating the bidding procedures
2 was Your Honor was saying, estate, estate, protect downside,
3 protect downside, protect downside. We were trying to do that.
4 We talked to the special committee. Special committee said,
5 protect downside. We negotiated these provisions. They said
6 they would not act as the backup bid. We said, but your bid is
7 there, because we're trying to protect downside. Then we had
8 this back-and-forth. Ms. Strickland said, I'm not acting as
9 the backup bid. We went into the back room; we negotiated.

10 What I thought the context was, was that she
11 negotiated to be a backup bidder if there was an auction --

12 THE COURT: Right.

13 MR. BARR: -- and that her bid was still out there
14 until February 15th, because before this language was changed,
15 she couldn't revoke her bid.

16 UNIDENTIFIED SPEAKER: She could.

17 UNIDENTIFIED SPEAKER: No.

18 THE COURT: No, she could. It's the opp --

19 MR. BARR: I'm sorry. I'm sorry. I'm sorry.

20 THE COURT: It's the --

21 MR. BARR: You're right. She could. She could --

22 THE COURT: It's the opposite.

23 MR. BARR: -- revoke her bid. I'm sorry.

24 THE COURT: She --

25 MR. BARR: You're right.

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1 THE COURT: Right.

2 MR. BARR: She could --

3 THE COURT: When --

4 MR. BARR: -- revoke her bid.

5 THE COURT: Before we came into the hearing, the deal
6 was LBAC is going to serve as the stalking-horse bidder --

7 MR. BARR: Yes.

8 THE COURT: -- but it's got no obligation to serve as
9 the second highest bidder and its bid is not irrevocable under
10 this section J --

11 MR. BARR: Correct.

12 THE COURT: -- meaning that that first sentence that
13 says the successful bid shall remain irrevocable, her bid is
14 not the LBAC bid -- I'm sorry -- is not irrevocable. So
15 then --

16 MR. BARR: Right. Correct.

17 THE COURT: Right?

18 MR. LAURIA: She took it out.

19 THE COURT: So, meaning you agree with LBAC?

20 MR. BARR: Before this was renegotiated.

21 MR. LAURIA: She took it out.

22 UNIDENTIFIED SPEAKER: That's the old version, Your
23 Honor.

24 THE COURT: But --

25 MR. LAURIA: She took the language out.

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1 THE COURT: Hold on. Hold on.

2 MR. BARR: So I apologize. I was getting confused
3 when we were talking about with the "not", okay?

4 THE COURT: With the "not".

5 MR. BARR: Before --

6 THE COURT: Right.

7 MR. BARR: -- this was negotiated --

8 THE COURT: Yes?

9 MR. BARR: -- we were trying to get her to be bound
10 for the -- what we call the safety net, right? We were trying
11 to protect the estates. Okay? She had the right to walk. She
12 would not act as the backup bidder and she had the right to
13 walk. Your Honor was very concerned with that --

14 THE COURT: Let's not say "she".

15 MR. BARR: -- as were we. I'm sorry. LBAC had the
16 right to walk. We were concerned with that, as were you.

17 This is renegotiated language after we had a
18 conversation after a break, when Your Honor expressed concern
19 about a fifty-one million dollar breakup fee going to LBAC.
20 You wanted to make sure that they were, as did we all. This is
21 renegotiated language that says what I thought, that they're
22 out there until February 15th and that they would act as a
23 backup bid until February 15th as well. And again, the irony
24 aside, we were trying to protect the downside, because if Your
25 Honor was going to confirm their plan, we wanted to make sure

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1 that the estates were protected.

2 Your Honor, I'd also add that, just to remind you, the
3 breakup fee was not only paid if there was an auction; it was
4 payable if we confirmed a Chapter 11 plan. So we could have
5 entered into a Chapter 11 plan, we could have had it confirmed,
6 and we still had to pay the breakup fee, irrespective of an
7 auction or no auction.

8 THE COURT: So if I had said nothing about this issue
9 of hanging around, this order would have gone in the way it is
10 and LBAC's bid -- this section J would not have had the effect
11 of making LBAC's bid irrevocable, right?

12 MR. BARR: Correct.

13 THE COURT: Right? Just your view, Ms. Strickland, on
14 what the order meant, what the blackline language here, the
15 draft before --

16 MS. STRICKLAND: Sure.

17 THE COURT: -- the draft, meant.

18 MS. STRICKLAND: This proviso at all times relates to
19 what other people are going to do under the procedures that
20 LBAC is not going to do. The entire proviso relates to being
21 the -- serving as the second highest bidder, and what that
22 means. And when we came in, we said what that meant, which
23 was, we're not going to be a backup bidder. And Your Honor had
24 trouble with that, and I don't know that you requested us to
25 reconsider, but indicated that you were going to have

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1 difficulty approving the buyer protections with that status
2 quo, and sent us into the hallway and back we came.

3 But it's all in the context of this section J. It's
4 all in the context of this language relating to the second
5 highest bidder -- serving as the second highest bidder, in the
6 context of this paragraph, which implies an auction, somebody
7 wins, somebody is the second runner-up. That's the entire
8 context for this.

9 THE COURT: And when you --

10 MS. STRICKLAND: And the record on that day --

11 THE COURT: Right.

12 MS. STRICKLAND: -- is very, very --

13 THE COURT: When you add that with -- when you add
14 that together with -- I think it was Mr. Sussberg who came back
15 to report on what had occurred, that what the language should
16 have said was that LBAC has agreed to serve as the second
17 highest bidder and, in that capacity, the LBAC bid will remain
18 the bid.

19 MS. STRICKLAND: Exactly, Your Honor.

20 THE COURT: That's what the lawyers should have
21 drafted.

22 MS. STRICKLAND: Well, there's a lead-in here --

23 THE COURT: And -- no, I know.

24 MS. STRICKLAND: -- that refers to --

25 THE COURT: Mr. Lauria, I know your --

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1 MS. STRICKLAND: -- the second highest bidder.

2 THE COURT: -- I know your frustration is great, and I
3 know that -- but if you ultimately -- if you disagree with what
4 I'll say about this, at the end of the day I'm going to try my
5 best to preserve your appeal rights. But you have to -- and
6 again, this side of the room may regret this at some later
7 point -- but you cannot just look at the words without looking
8 at the context.

9 MS. STRICKLAND: Judge --

10 THE COURT: You just --

11 MR. BARR: Right.

12 THE COURT: You just can't.

13 MR. BARR: But the lead-in --

14 THE COURT: Hold on.

15 MS. STRICKLAND: But, Judge, the lead-in says --

16 THE COURT: Hold on. Let Ms. Strickland --

17 MS. STRICKLAND: -- the second highest bidder.

18 UNIDENTIFIED SPEAKER: No.

19 MR. BARR: No, no, no.

20 UNIDENTIFIED SPEAKER: It says "the successful bid".

21 MR. BARR: The lead-in says, Your Honor -- and this is
22 important at least -- again, context from --

23 MS. STRICKLAND: I'm talking about the lead-in --

24 THE COURT: Hold on.

25 MS. STRICKLAND: -- to the proviso.

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1 MR. BARR: -- our --

2 THE COURT: Too many people standing up.

3 Mr. Kurtz, you're on the double -- you're on double-
4 deck, so sit, please.

5 MR. KURTZ: Okay.

6 THE COURT: Please. Thank you.

7 Go ahead.

8 MR. BARR: So again, from context of the company and
9 the debtors -- and what we were trying to do was to preserve
10 their bid -- the lead-in language -- and I'm not going to
11 regurgitate what Mr. Kurtz is saying -- it says, "The
12 successful bid shall remain irrevocable in accordance with the
13 terms of the purchase agreement executed by the successful
14 bidder." All we knew at that point in time was that they were
15 binding them to a deal so that they can get to confirmation
16 with LBAC's deal in the context of their plan. Right? So when
17 this all started to become an issue because we said they would
18 not agree to be the backup bidder, we wanted to make sure that
19 they were the backup bidder and that their bid was there.

20 MS. STRICKLAND: And it would have been there as the
21 backup bidder, but there wasn't an auction and there wasn't a
22 successful bid. And if you go to the transcript of that
23 hearing, it's not just Mr. Sussberg. Mr. Basta, on page 57,
24 says, "I think this is" -- "it would be better for the estate
25 if they were locked in as the backup." Then Mr. Lauria says on

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1 page 97, "I just wanted to confirm -- I'm sure the Court is
2 interested to know -- that the milestone in our plan support
3 agreement is being satisfied by the approval of these bid
4 procedures, as discussed on the record. So we're hanging
5 onto -- all this effort is to hang onto the proposal and keep
6 it open, and we're doing that."

7 Then he goes on, not about the bid procedures; and in
8 his mind he's all done, right? On page 98, Mr. Lauria says, "I
9 think I can represent that the bid procedures satisfy the
10 milestone, subject to the Court entering the order." I say,
11 "Yes." Then Mr. Lauria says, "Good. And we have one other
12 thing we have to do. We had a date for finalizing the form of
13 the agreement for the purposes of our separate deal." Your
14 Honor says, "Right." Mr. Lauria: "And we're going to have to
15 kick that out a little bit, because the schedules are being
16 delivered over the next few days." He's going to the next
17 milestone in the PSA. The Court says, "Right." And he says,
18 "We have every understanding that we'll get that worked out."
19 He wants me to confirm on the record that I'm -- that we're
20 going to be -- the bid is still going to be live under the plan
21 support agreement, under the milestones. All of this stuff
22 with respect to paragraph J already happened.

23 So he's talking about the deal. He's not talking
24 about support of a plan. He uses the words "implement the
25 deal". That's what we were doing. This entire paragraph J and

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1 all the back-and-forth about J was backup, backup, backup,
2 backup. Everybody said it --

3 THE COURT: But here's another interesting --

4 MS. STRICKLAND: -- on all fronts.

5 THE COURT: -- little thing about the language in the
6 penultimate draft is that if, by its terms, "successful bid"
7 did not include LBAC as a backup bidder, the language -- the
8 stricken language, "and its bid shall not be irrevocable under
9 this section J", you could make the argument that that was
10 completely superfluous, that you didn't need that, because why
11 did you put that in when by its terms the LBAC bid was never
12 going to be the successful bid? And if irrevocability, as
13 you're saying, was only addressed by the plan support
14 agreement, why did that need to address the irrevocability of
15 the LBAC bid?

16 MS. STRICKLAND: Because the entire proviso was
17 intended to say -- we've got a general statement in here about
18 bidders serving as a backup bidder and pursuant to these
19 procedures; it's a cross-reference. It says, you know,
20 everybody's -- the rules for everybody in this game are,
21 provided, however, please be reminded, LBAC doesn't do that
22 rule.

23 So that's the reason it's here. It's here for the
24 avoidance of doubt, because the general rule of what bidders
25 are agreeing to do as a backup did not apply to us. And the

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1 only reason we made a change to this language is because Your
2 Honor said, I don't want you to not be a backup. Mr. Basta
3 stood up and said, it'd be great if they were a backup. Mr.
4 Sussberg said it. We went into the hallway.

5 And in fact, when you look at how he memorializes the
6 agreement, which Mr. Sussberg --

7 THE COURT: On the record?

8 MS. STRICKLAND: -- says -- on the record, he says
9 they were still not comfortable with the sixty days, they
10 wanted an outside date for when they would have to serve as the
11 backup bidder. That was the entire thing.

12 So this is --

13 THE COURT: Right. It was an outside date --

14 MS. STRICKLAND: -- really revisionist history.

15 THE COURT: It was an outside date, because you had to
16 have -- because the sixty days keyed off of the entry of the
17 confirmation order, and that was open-ended; that didn't have
18 an ultimate outside date.

19 MS. STRICKLAND: And what Your Honor awarded was not
20 illusory. LBAC as the bidder, DISH as the credit support, was
21 bound, through the plan support agreement, from a date in July
22 through a date in January. They were locked up contractually
23 for that entire period of time. This was not a game.

24 And because we didn't want anyone to be confused about
25 exactly what our contract says, we stood, at every point in

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1 time when the time was shifting on, and said, we have a
2 contract, we have a contract, we have a contract, here are our
3 milestones, and so did Mr. Lauria.

4 MR. BARR: Let me just add to that, Your Honor. As
5 you know, we're not a party to the PSA. And what I believe --

6 THE COURT: Right.

7 MR. BARR: -- the company and the estates thought they
8 were doing, when they agreed to a fifty-one million dollar
9 breakup fee, was locking in the downside protection in a bid.

10 THE COURT: Thank you.

11 Could we keep going just a little bit more? I want to
12 ask about the -- can you go back to the version of the APA
13 that -- the 7/23 version? Which I think everyone agrees is the
14 one that was the reference version for the purposes of the bid
15 procedures order, right? Is that right --

16 UNIDENTIFIED SPEAKER: Yeah.

17 THE COURT: -- everyone?

18 MR. BARR: Yes, it's right.

19 THE COURT: Yes. Okay. So can we go to that version?
20 And can someone show me in that version what it says about the
21 alternative transaction?

22 MS. STRICKLAND: Your Honor, alternative transaction,
23 in this document, is not a -- I do not believe is relevant
24 to --

25 THE COURT: It's not relevant to determination. I --

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1 MS. STRICKLAND: Right, but even to the plan that the
2 ad hoc --

3 THE COURT: Well, can you --

4 MS. STRICKLAND: -- committee is proposing --

5 THE COURT: -- can you just --

6 MS. STRICKLAND: -- they have an alternative --

7 THE COURT: Can I ask you to stop?

8 MS. STRICKLAND: Sure.

9 THE COURT: Can you just answer my question first and
10 then I'll get to where -- what -- I just want --

11 MS. STRICKLAND: What the alternative sale is?

12 THE COURT: Yeah. Just --

13 MS. STRICKLAND: Yeah.

14 THE COURT: There's --

15 MS. STRICKLAND: So --

16 THE COURT: There's a footnote in that draft, I think,
17 that says, we're going to talk about this later. Right?

18 MS. STRICKLAND: Right. So the alternative-sale
19 construct is in 3.5, which is on page 12 --

20 THE COURT: Okay.

21 MS. STRICKLAND: -- of the form of asset purchase
22 agreement, and it's premised, and the lead-on is "if the
23 funding shall have occurred".

24 THE COURT: Right, "if the funding shall have
25 occurred".

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1 MS. STRICKLAND: So --

2 THE COURT: Right.

3 MS. STRICKLAND: -- what proceeds this paragraph
4 kicking in is Your Honor has approved the plan and the --

5 THE COURT: Okay.

6 MS. STRICKLAND: -- sale, and the early funding has
7 occurred.

8 THE COURT: Right.

9 MS. STRICKLAND: So the LightSquared estates have
10 received the 2.22 billion dollars and are free to distribute it
11 however they're going to distribute it. And then because the
12 bid was not conditioned on FCC approval, the notion was, well,
13 if there's an issue with regulatory approval or it takes too
14 long or something else, as the economic beneficiaries of the
15 spectrum at that point, in the event that the regulatory
16 approval doesn't work out -- I'm using shorthand; there's a lot
17 of bells and whistles to this -- it can effectively be done as
18 a designation sale where LBAC can say, hey, Verizon, would you
19 like to purchase this spectrum. Verizon gets its FCC approval,
20 because obviously nothing can be done without the regulatory
21 approval, which is a gating item for any change of control.
22 They would get that approval. If Verizon said, you know, too
23 bad, so sad, I'm only paying a billion, then that billion
24 dollars would go to LBAC, and LBAC would be out a billion-22.
25 If Verizon said, you know, gee, a lot has changed, I'll pay

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1 three billion, all three billion would have gone to the bidder.
2 And that's a construct that was contemplated here, and that's a
3 construct that was also in another transaction that DISH
4 Network did with TerreStar where that similar situation was
5 employed.

6 THE COURT: Okay. That's helpful. Thank you.

7 All right, is there anything else that anyone wants to
8 say on the issue of the termination and the withdrawal of the
9 bid?

10 MR. LAURIA: Your Honor, Tom Lauria with White & Case,
11 for the ad hoc group of LP secured lenders.

12 I thought that because of the history here, it was
13 best for Mr. Kurtz to lead the argument; he's kind of a little
14 bit more removed from it than I am, and he's a better arguer
15 than I am, also. But there're a couple of points that I think
16 are somehow just not getting made clearly here. And the first
17 thing I wanted to address is the Court's concern about the
18 statements that I made along the way, or didn't make along the
19 way --

20 THE COURT: I mean, I hope you folks know that it's
21 not personal. I mean, it just -- you know, I rely on you to
22 tell me what your positions are. So it's not personal, and I
23 hope you're not taking my observations that way.

24 MR. LAURIA: Not at all, Your Honor. I appreciate the
25 Court's comment in that regard.

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1 But what I do want to say is that we tried to be very
2 clear and careful with our words -- I tried to be very clear
3 and careful with my words, that I was focusing on the plan
4 support agreement. And the plan support agreement has been
5 very important to us all along the way, among other things.
6 Although counsel for LBAC and/or SPSO pointed out that we
7 didn't need LBAC's support for the plan, we did need SPSO's
8 support. They're more than half of our debt. And if they're
9 not voting to accept our plan, we have a fundamental threshold
10 issue that we can't get over to confirm our plan, unless we
11 initiate litigation to designate their vote, and all of that
12 kind of thing.

13 THE COURT: But let's stop with that one. So --

14 MR. LAURIA: Right.

15 THE COURT: -- so suppose that LBAC had never
16 withdrawn the bid, right? It's irrevocable, hypothetically.
17 They still had the right to terminate the PSA, and they did.
18 So then if you get -- follow me down the rabbit hole here,
19 right -- then you stand up for confirmation of a plan; they're
20 going to vote no.

21 MR. LAURIA: Well, Your Honor, they already -- the
22 point is --

23 THE COURT: They already voted, and they can't change
24 it?

25 MR. LAURIA: Your Honor, they point is, we've tried to

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1 hold this together to get their yes vote --

2 THE COURT: Right.

3 MR. LAURIA: -- okay, so they would then be required
4 to come in and move for permission to change their vote to a
5 no. And if their reason for changing -- SPSO's reason for
6 changing its vote to a no is that LBAC no longer wanted to go
7 forward with the deal, I think that we would have some issues
8 that would go to whether or not that motion would be granted.

9 Now, I'm being forced to bare my legal strategy in
10 this courtroom to defend the outcome that I, in my heart,
11 believe is the correct answer. And it's not with any great
12 pleasure or comfort that I do that. But I've got to do that to
13 try to help get to the truth, to the right answer here. We
14 were -- we recognized that we were in a difficult spot. And we
15 were trying to hold that PSA together to make sure that we had
16 the things we needed in the first instance and that it would
17 very difficult for SPSO to try to change its vote based on LBAC
18 pulling its bid or trying to pull its bid or saying it didn't
19 like --

20 THE COURT: But that doesn't --

21 MR. LAURIA: -- the transaction.

22 THE COURT: -- that doesn't address the entirety of
23 the record in which their -- the focus clearly seemed to be
24 that LBAC was going to walk.

25 MR. LAURIA: May I try to address that?

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1 THE COURT: Yeah, um-hum.

2 MR. LAURIA: We didn't feel that we needed to address
3 that. And these issues, as the Court can tell, are very
4 complicated issues. And we didn't want to start playing our
5 litigation card on the record before we had to. I felt that it
6 would put us at a great disadvantage to do so. So we said what
7 we said to protect what we needed to protect and to keep the
8 process moving forward. But I didn't feel that it was my duty
9 to say, now Your Honor, I want to tell you that if they, at
10 some point in time, decide they're going to try to walk away
11 from the bid, here's going to be our legal argument as to why
12 they can't.

13 THE COURT: Well you had the -- so what you're saying
14 is you were in the same difficult bind that the special
15 committee was in, in needing to preserve potential litigation
16 positions but also keep them at the table.

17 MR. LAURIA: Right.

18 THE COURT: So let me ask you the next series of
19 questions, which is that if I were to agree with your position,
20 that the bid has not been properly withdrawn, or terminated,
21 however you want to say that, and you say -- and I say, okay,
22 we're good to go to confirmation, at confirmation, LBAC, and/or
23 SPSO, are going to maintain their position that you can do
24 whatever you want, we've terminated; we're not performing.
25 That 2.2 billion dollars of cash is no longer available, okay?

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1 And then, I can't find that the plan -- that that
2 aspect of the plan -- is feasible, because they're not going to
3 perform. And then you'd have to tell -- you'd have to then
4 convince me that you're going to -- that you're right; I'm
5 wrong; they're wrong. You're going to be able to convince an
6 appellate court, or do it in some separate lawsuit, that you
7 could force the LBAC bid to fund, or you could get an
8 injunction. I don't think you'll get -- I mean I'm getting
9 into advisory stuff here, but it's -- after all, it's just
10 about money, okay?

11 So putting to one side what the litigators could do
12 with the whole specific performance thing, where do I go with
13 that? If nothing is clear but this, it is that right now the
14 bid is gone; they're not going to perform. And I reserve my
15 rights to come back to that point, because right now, at 12:03,
16 on January 22nd, the bid is terminated; it's no longer
17 available. That seems clear. So if we go to confirmation,
18 right, it's almost -- it's an academic point at one level,
19 because they're not going to perform. I'm not going to be able
20 to make a finding that that plan is feasible.

21 MR. LAURIA: Your Honor, if the ruling is there's --
22 that they had the right to terminate, I don't know exactly what
23 I'd do other than seek relief from that ruling at some point in
24 time.

25 THE COURT: Well, that's why I'm trying to preserve

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1 your rights by saying to you that the way that I think the best
2 way to do that is to have you stand up -- and I'm not there yet
3 at all -- but one possibility is for you to stand up at the
4 confirmation hearing on the ad hoc secured group plan and say
5 you present it for confirmation. And then we import this
6 record. And then you have an appeal right. If I'm wrong,
7 right, then -- I won't say if I'm wrong -- if a district
8 court -- if a higher court wants to reverse me, then --

9 MR. LAURIA: Well, what's --

10 THE COURT: -- I want to preserve your right to get
11 that court to say that.

12 MR. LAURIA: Let's start at the point where I thought
13 you said, which was hypothetically speaking you agreed with me.

14 THE COURT: Yes, okay.

15 MR. LAURIA: Okay. You turned it around, but you did
16 start out saying, hypothetically you agree with me.

17 THE COURT: Okay. Hypothetically, if I were to agree
18 with you --

19 MR. LAURIA: Okay --

20 THE COURT: -- okay?

21 MR. LAURIA: -- you agree with me that the bid is --

22 THE COURT: The bid is alive.

23 MR. LAURIA: -- is alive.

24 THE COURT: Right.

25 MR. LAURIA: It's irrevocable. What we would attempt

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1 to do --

2 THE COURT: Well --

3 MR. LAURIA: -- at --

4 THE COURT: -- the bid is alive at the moment.

5 MR. LAURIA: Okay. At confirmation --

6 THE COURT: Right.

7 MR. LAURIA: -- we would ask the Court for a ruling
8 that confirmation of our plan constitutes acceptance of the
9 bid, and that pursuant to 1142(b) -- before we get to specific
10 performance or anything like that, this Court has the power to
11 order the parties to do everything that they have to do to
12 consummate the plan, okay, which includes ordering LBAC to
13 complete its obligations under the APA, as approved in
14 connection with confirmation.

15 THE COURT: Okay.

16 MR. LAURIA: It would be -- and to order the debtor to
17 sign the APA.

18 THE COURT: Okay, and --

19 MR. LAURIA: Okay, the Court has all the power to do
20 that. And so we're not talking about a specific performance
21 case; we're talking about the Court enforcing its powers under
22 1142(b) --

23 THE COURT: Okay.

24 MR. LAURIA: -- to make the parties do what they have
25 to do. And I think if LBAC doesn't perform, having been

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1 ordered by this Court to do so, I think there are an array of
2 remedies that are available to this Court to cause the plan to
3 be consummated. And if LBAC wants to get relief from that
4 order, it's on them to seek appellate relief and/or an
5 injunction and provide a bond to protect parties from the
6 damage that may befall from the delay or the failure of the
7 plan to consummate.

8 THE COURT: So that's your -- okay, so that's the
9 theory of if I hypothetically agree with you.

10 MR. LAURIA: And here I am --

11 THE COURT: Okay, so then --

12 MR. LAURIA: -- talking about --

13 THE COURT: -- so now --

14 MR. LAURIA: -- my litigation two weeks from now --

15 THE COURT: I understand --

16 MR. LAURIA: You understand the disadvantage this puts
17 me at, Your Honor?

18 THE COURT: -- I understand. But then, so if you --
19 hypothetically, if I agreed with you that the bid was alive
20 today, and then we get to this hypothetical confirmation
21 hearing, and I hypothetically don't agree with the way you've
22 just articulated a path to force them to perform, then you say,
23 I'd like to present my alternative for confirmation. Now --

24 MR. LAURIA: Maybe, maybe.

25 THE COURT: Well, hold --

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1 MR. LAURIA: You may find that our plan's not
2 feasible --

3 THE COURT: Hold on, okay.

4 MR. LAURIA: -- because you don't buy that they can
5 be --

6 THE COURT: Exactly --

7 MR. LAURIA: -- forced to perform --

8 THE COURT: -- okay. But in your statement, I think
9 that in the first go-around, you said that you wanted to
10 proceed with an alternative.

11 MR. LAURIA: Yes.

12 THE COURT: And you, when I asked you about that, you
13 said, oh, our plan has always provided for an alternative.

14 MR. LAURIA: Yes, Your Honor.

15 THE COURT: And I see the alternative provisions in
16 the asset purchase agreement, but where are they in the plan?

17 MR. LAURIA: The plan specifically provides for the
18 acceptance of an alternative bid.

19 THE COURT: Could you show me?

20 MR. LAURIA: Yes, if you'd give me just a moment.

21 THE COURT: I have -- I'll tell you what --

22 MR. LAURIA: I didn't come here prepared to --

23 THE COURT: I'm sorry.

24 MR. LAURIA: -- on this --

25 THE COURT: I have a --

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1 MR. LAURIA: -- on this --

2 THE COURT: Okay, but we have to get to -- we have to
3 get to a conclusion today, by hook or by crook.

4 MR. LAURIA: Your Honor, I -- I mean, I don't -- I
5 didn't come --

6 THE COURT: Okay, you know what --

7 MR. LAURIA: -- prepared today to litigate my
8 alternative bid.

9 THE COURT: No, I just want -- again, as I said to Ms.
10 Strickland --

11 MR. LAURIA: I don't even --

12 THE COURT: -- I'm not asking you --

13 MR. LAURIA: -- I can't even find my plan.

14 THE COURT: -- to comment. I just want someone to
15 show me, in the plan --

16 MR. LAURIA: Just the plan.

17 THE COURT: -- and I'll give you -- let me do this,
18 okay, let me not put you on the spot, because it's not fair. I
19 don't do things by ambush. You can take a moment to look at
20 it. But --

21 MR. LAURIA: I would like to make two points before we
22 take that break.

23 THE COURT: Short.

24 MR. LAURIA: Short ones. Number one, prior to the
25 Court's approval of the bidding procedures and the entry of the

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1 bid procedures order, there was one deal that held LBAC and
2 DISH to a proposal, and that was the plan support agreement
3 that they entered into with our clients --

4 THE COURT: Right.

5 MR. LAURIA: -- on July 23rd. At the bid procedures
6 hearing and as reflected in the order, a second deal was made
7 between the debtors and LBAC and DISH, and it was approved by
8 the Court. And that second deal was paid for by the debtors
9 with good consideration. I didn't pay for that deal; the
10 debtors committed consideration for that deal. They gave a
11 commitment to pay fifty-odd million dollars to LBAC if a
12 different plan was confirmed or if they were topped at an
13 auction.

14 THE COURT: Right, they paid for the opportunity to go
15 out -- for Mr. Basta to go out and find someone who would pay
16 more so that constituents other than yours could get money,
17 because at that point you were done; you were paid off and you
18 had no incentive to do anything else.

19 MR. LAURIA: But, Your Honor --

20 THE COURT: And before that the argument was, look, we
21 only have a batter-up who's swinging for the fences, because
22 the only way -- right? -- that the debtor was going to
23 relinquish control, the debtor as controlled by Mr. Falcone, in
24 your view of the world, was if there was enough money to get
25 down to him. And what the special committee -- why I was so

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1 concerned with the special committee coming in was because
2 there was a huge range of value between the equity that
3 Harbinger and --

4 MR. LAURIA: But LBAC --

5 THE COURT: -- others held.

6 MR. LAURIA: -- got some -- got consideration at that
7 hearing.

8 THE COURT: Yes, it did.

9 MR. LAURIA: It got a commitment from the estate to
10 get a breakup-fee protection.

11 THE COURT: Right.

12 MR. LAURIA: And LBAC gave something, when that trade
13 was made, to the debtors, not to me or my clients but to the
14 debtors. A new deal was made for consideration. And you've
15 been told by both counsel, for the special committee and the
16 debtors, that that deal was to lock in the LBAC offer. And
17 that lock-in has nothing to do with my PSA, to which neither
18 the debtor nor the special committee are party to. They're not
19 bound by those milestones. Their deal is what the bid
20 procedures order says. And that bid procedures --

21 THE COURT: But --

22 MR. LAURIA: -- order --

23 THE COURT: Right, but --

24 MR. LAURIA: That bid procedures order --

25 THE COURT: But the -- but --

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1 MR. LAURIA: -- refers to an APA dated July 23rd.

2 THE COURT: Right.

3 MR. LAURIA: And that's the bid that they locked in
4 and gave consideration to lock it in.

5 So that has -- the PSA, I would submit, Your Honor, is
6 completely irrelevant to the question of whether or not the bid
7 that was locked in by the bid procedures order is irrevocable.

8 THE COURT: Okay.

9 MR. LAURIA: Okay? Completely separate deal.

10 Point number two; very short point: What LBAC and
11 DISH are arguing is incomprehensible to me. They are saying
12 that if they're the winning bid, they can walk, they're not --
13 their bid is irrevocable, they can walk based on their
14 agreement with me. But if they're the second-place bid, they
15 can't walk. If they lose the auction, they can't walk. But if
16 they win the auction, they can walk. I've never heard of
17 anything like this.

18 Now, the only possible way -- and this is not what the
19 parties intended when they negotiated this language, but the
20 only possible way that it could make any sense is if they were
21 then locked in like every other qualified bidder, through
22 confirmation. And they made a separate agreement that they
23 would stick around beyond confirmation if they came in second
24 place. But to suggest that they can walk away, not being able
25 to point to a termination right in their bid, if they win, but

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1 they can't walk away if they lose, I mean, you talk about
2 standing things on their head. That is as upside-down as it
3 gets.

4 THE COURT: We only had been concerned with locking
5 them in as the backup bidder. Remember, there was -- and this
6 might sound like nickels and dimes in the larger context, but
7 there was the breakup fee, right? But there was also an
8 expense reimbursement. And had we not kept them around -- then
9 there was an auction. And irrespective of whether or not there
10 was an earned breakup fee because of a subsequent closing, we
11 were in a position of agreeing to pay the expense reimbursement
12 for nothing, because then whether or not the winning bidder
13 closed, there was expense reimbursement. Why would we do that?

14 MR. LAURIA: We didn't do that.

15 THE COURT: Right, but what we did --

16 MR. LAURIA: We didn't do that.

17 THE COURT: But what we did -- and maybe there was
18 just a cosmic failure of --

19 MR. LAURIA: There was a lot of trading going on.

20 THE COURT: -- the meeting of the minds. Lot of
21 trading going on --

22 MR. LAURIA: You know, Your Honor --

23 THE COURT: -- right.

24 MR. LAURIA: -- this was not a single-issue hearing.

25 I mean, there was a -- this whole bid procedures --

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1 THE COURT: So, Mr. Lauria --

2 MR. LAURIA: -- was heavily negotiated.

3 THE COURT: -- what you're telling me now is you never
4 said out loud the words "LBAC's going to walk" because you
5 wanted to keep your cards close to the vest?

6 MR. LAURIA: I certainly didn't want to concede what
7 our position was going to be when and if they took that
8 position. I mean, and it would be incredibly prejudicial to
9 have done so.

10 THE COURT: Okay. I think we ought to talk about some
11 scheduling things and some discovery issues that I think might
12 result from today. So what I'd like to do is take a break till
13 12:25 and then we're going to resume in this room, but without
14 the feed, for an informal conference off the record, but just
15 with the parties, off the record, to deal with some scheduling
16 matters. All right?

17 So you folks take a break. We'll do what we have to,
18 to cut the feed. And then I'm going to ask that you only
19 invite back into the courtroom the parties that we would
20 usually have in that kind of a session.

21 MR. LAURIA: All right.

22 THE COURT: Okay? Is everyone clear on that? 12:25.

23 (Recess from 12:14 p.m. until 2:50 p.m.)

24 THE COURT: All right, we're going to go back on the
25 record now to conclude the hearing today on the issues that

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1 have been outlined in the statement of the ad hoc secured
2 group, which was filed at docket 1220, the reply in further
3 support of the objection of L-Band to the statement of the ad
4 hoc group, which was filed at docket 1246. And then there were
5 two subsequent pleadings that were filed on January 20th by the
6 ad hoc secured group. In addition, there was an objection of
7 L-Band that was filed with respect to the same issues.

8 I appreciated the arguments that the parties made this
9 morning. And I think, procedurally, the way this is best
10 approached, notwithstanding the parties' good attempts to tee
11 this up in a procedurally correct fashion, and I'm not
12 suggesting that it hasn't been, but I think what makes the most
13 sense is to give you a tentative view or ruling with respect to
14 the termination of the plan support agreement by LBAC. And I
15 say "by LBAC" and not the other plan sponsors, because the
16 letter dated January 7th, which notified the other parties to
17 the plan support agreement that there was a termination, was
18 sent by L-Band Acquisition and not by SPSO.

19 So that the issues that we're dealing with are the
20 termination of the plan support agreement by LBAC, effective at
21 11:59 on January 10th, and the withdrawal of the LBAC bid,
22 which I believe, based on what the parties have indicated here
23 today, LBAC's position was that that was effectuated by that
24 same notice term in the plan support agreement. The Court
25 expressed some confusion with respect to the provisions of the

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1 plan support agreement and how the withdrawal of the bid had
2 been affected. And Ms. Strickland, on the record here today,
3 confirmed and made, I think, absolutely clear that LBAC
4 believed it had previously withdrawn the bid, and clarified
5 that in fact the bid has been withdrawn.

6 So as things stand now, the LBAC bid was withdrawn.
7 The ad hoc secured group's position is that the language in the
8 bid procedures superseded, if you will, the operation of the
9 milestones in the plan support agreement. And there was a lot
10 of argument back and forth today, including over how the
11 drafting of the order on bid procedures evolved.

12 It's my tentative view, which I will indicate to the
13 parties that I will be prepared to reflect onto the record of
14 the confirmation hearing of the ad hoc secured group's plan,
15 it's my tentative view that in fact the PSA was appropriately
16 and lawfully terminated as a result of the failures to achieve
17 the milestones that were set forth in the plan and that were
18 continued from time to time and that, as a result of that,
19 because the plan support agreement was terminated by LBAC, it
20 was permissible for LBAC to withdraw its bid, notwithstanding
21 what the ad hoc group has pointed out, which in its view was
22 contrary language in the bid procedures order.

23 I think it can be acknowledged that, taken literally
24 and out of context, the words in the bid procedures order in
25 fact say that the bid would be irrevocable through February

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1 15th, 2014. But as I've stated before in the context of the
2 adversary proceeding, for example, I think it's incumbent on
3 the Court to view the language of agreements in the context --
4 and in this case the context certainly is well known to the
5 Court, although based on the arguments of the parties it seems
6 that people may have taken away different things from the
7 various proceedings that occurred. Be that as it may, as a
8 tentative matter, it's the Court's determination that the LBAC
9 bid has in fact been withdrawn.

10 The ad hoc secured group, at some point as we continue
11 on, will be free to present its plan for confirmation, and at
12 that time this ruling -- the Court's prepared to, at the
13 parties' request, reflect this ruling into the record of that
14 proceeding, to ensure that anybody's appeal with respect to
15 this particular determination is preserved.

16 And I think that that covers what we need to
17 accomplish today.

18 In terms of the ongoing schedule of what we're doing,
19 Mr. Barr, could you just very quickly recite the coming
20 attractions?

21 MR. BARR: Yes, Your Honor. Your Honor, putting aside
22 any conferences that may be necessary off the record regarding
23 discovery disputes go (sic) forward, I believe what we have
24 currently scheduled will be -- the next day in court is
25 December 31st, which is the --

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1 THE COURT: Not December.

2 MR. BARR: I'm sorry; January 31st, which is the
3 hearing in connection with the debtor-in-possession financing
4 motion that we filed last week.

5 As I mentioned last time, we also do have an agreement
6 in principle with MAST on an extension of the maturity of the
7 DIP. We will be filing a notice pursuant to that DIP order and
8 agreement. If there are any objections to that, which we don't
9 anticipate, we can have those heard on the 31st as well; we'll
10 notice it in that fashion.

11 Then, Your Honor --

12 THE COURT: Is the hearing on the DIP going to be an
13 evidentiary hearing?

14 MR. BARR: To the extent we have objections or to the
15 extent that Your Honor would like a record, we will have --

16 THE COURT: Well --

17 MR. BARR: -- a declarant who we can proffer his
18 testimony, and he'll be here subject to cross-examination.

19 THE COURT: Okay. Thank you.

20 MR. BARR: On Monday, February 3rd, Your Honor, we
21 will then commence the confirmation hearing with respect to the
22 U.S. Bank-MAST Chapter 11 plan. We're anticipating that that
23 would be probably a two-day hearing; may slip into the 5th,
24 but -- so we've scheduled the 3rd and 4th for the MAST plan.

25 And then the 5th and 6th of that week, Your Honor, we

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1 would have those days scheduled for continuation of the
2 adversary proceeding that was commenced by the company against
3 SPSO, Mr. Ergen, LBAC, DISH -- I'm sorry; not LBAC -- DISH and
4 EchoStar.

5 THE COURT: Okay. And then to the extent that that's
6 not completed, we will continue with that on February 11th?

7 MR. BARR: Correct, Your Honor.

8 THE COURT: And to the extent that it is completed,
9 then we will proceed to the confirmation of one of the other
10 plans?

11 MR. BARR: Correct, Your Honor.

12 THE COURT: Okay. Is there anything that anybody
13 wishes to add? Is there anyone -- any further clarification or
14 bells or whistles that anyone would like, surrounding the issue
15 of the termination of the PSA and the withdrawal of the LBAC
16 bid?

17 Okay. Thank you all very much for sticking with it
18 without a lunch break. And we'll wait to hear from you.

19 MR. BARR: Thank you, Your Honor.

20 THE COURT: Thanks.

21 Thanks, Karen.

22 (Whereupon these proceedings were concluded at 3:00 PM)

23

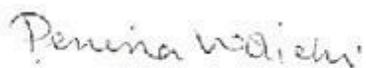
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C E R T I F I C A T I O N

I, Penina Wolicki, certify that the foregoing transcript is a true and accurate record of the proceedings.



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UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form 10-K/A

(Amendment No. 1)

(Mark One)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 FOR THE FISCAL YEAR ENDED DECEMBER 31, 2013

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 FOR THE TRANSITION PERIOD FROM _____ TO _____.

Commission file number: 0-26176

DISH Network Corporation

(Exact name of registrant as specified in its charter)

Nevada

(State or other jurisdiction of incorporation or organization)

88-0336997

(I.R.S. Employer Identification No.)

9601 South Meridian Boulevard

Englewood, Colorado

(Address of principal executive offices)

80112

(Zip Code)

Registrant's telephone number, including area code: (303) 723-1000

Securities registered pursuant to Section 12(b) of the Act:

Title of each class

Class A common stock, \$0.01 par value

Name of each exchange on which registered

The Nasdaq Stock Market L.L.C.

Securities registered pursuant to Section 12(g) of the Act: **None**

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes T No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No T

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Accelerated filer

Non-accelerated filer

(Do not check if a smaller reporting company)

Smaller reporting company

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Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes No

As of June 30, 2013, the aggregate market value of Class A common stock held by non-affiliates of the registrant was \$9.0 billion based upon the closing price of the Class A common stock as reported on the Nasdaq Global Select Market as of the close of business on the last trading day of the month.

As of February 14, 2014, the registrant's outstanding common stock consisted of 219,907,827 shares of Class A common stock and 238,435,208 shares of Class B common stock, each \$0.01 par value.

DOCUMENTS INCORPORATED BY REFERENCE

The following documents are incorporated into this Form 10-K by reference:

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EXPLANATORY NOTE

This Amendment No. 1 on Form 10-K/A (this "10-K/A") is being filed with respect to the Annual Report of DISH Network Corporation ("DISH Network" or the "Corporation") on Form 10-K for the fiscal year ended December 31, 2013 filed with the Securities and Exchange Commission ("SEC") on February 21, 2014 (the "10-K"). The 10-K omitted the information required by Part III (Items 10 through 14), which had been contemplated to be incorporated by reference from DISH Network's definitive Proxy Statement for its 2014 annual meeting of shareholders, in reliance on General Instruction G(3) of Form 10-K. As DISH Network's definitive Proxy Statement for its 2014 annual meeting of shareholders is not expected to be filed within 120 days after the end of DISH Network's 2013 fiscal year, DISH Network is filing the 10-K/A to provide the disclosures required by Part III pursuant to General Instruction G(3) of Form 10-K.

In accordance with Rule 12b-15 under the Exchange Act, Part III, Items 10 through 14 of the 10-K, which were originally omitted and incorporated by reference to the Proxy Statement, have been amended to include this information, and Part IV, Item 15 of the 10-K has been amended solely to include as exhibits the new certifications required by Rule 13a-14(a) under the Exchange Act. This 10-K/A does not amend or otherwise update any other information in the 10-K. Accordingly, this 10-K/A should be read in conjunction with the 10-K and with DISH Network's other filings with the SEC subsequent to the filing of the 10-K.

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PART III

Item 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

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Directors

The names of the members of our board of directors (the “Board” or “Board of Directors”) and certain biographical information concerning each of them are set forth below:

<u>Name</u>	<u>Age</u>	<u>First Became Director</u>	<u>Position with DISH Network</u>
George R. Brokaw (1)	46	2013	Director
Joseph P. Clayton	64	2011	Director, President and Chief Executive Officer
James DeFranco	61	1980	Director and Executive Vice President
Cantey M. Ergen	59	2001	Director and Senior Advisor
Charles W. Ergen	61	1980	Chairman
Steven R. Goodbarn (1)	56	2002	Director
Charles M. Lillis (1)	72	2013	Director
David K. Moskowitz	56	1998	Director and Senior Advisor
Tom A. Ortolf (1)	63	2005	Director
Carl E. Vogel	56	2005	Director and Senior Advisor

- (1) Member of the Audit Committee, the Executive Compensation Committee (the “Compensation Committee”) and the Nominating Committee.

George R. Brokaw. Mr. Brokaw joined the Board in October 2013 and is a member of our Audit Committee, Compensation Committee, and Nominating Committee. Mr. Brokaw is currently a Managing Partner of the investment firm Trafelet Brokaw & Co., LLC. Until September 30, 2013, Mr. Brokaw served as Managing Director of the Highbridge Growth Equity Fund at Highbridge Principal Strategies, LLC (“Highbridge”). Prior to joining Highbridge in 2012, Mr. Brokaw was a Managing Partner and Head of Private Equity at Perry Capital, L.L.C. (“Perry”). Prior to joining Perry, Mr. Brokaw was Managing Director (Mergers & Acquisitions) of Lazard Frères & Co. LLC (“Lazard”) from 2003 to 2005. Mr. Brokaw joined the board of directors of Alico, Inc. in November 2013 and continues to serve in that role. Mr. Brokaw previously served on the board of directors of North American Energy Partners Inc. from 2006 to 2013. The Board has determined that Mr. Brokaw meets the independence requirements of NASDAQ and SEC rules and regulations. The Board concluded that Mr. Brokaw should serve as a member of the Board due, among other things, to his financial experience, acquired, in part, during his tenure with Highbridge, Perry and Lazard. Mr. Brokaw received a B.A. from Yale University and a J.D. and M.B.A. from the University of Virginia. Mr. Brokaw is a member of the New York Bar.

Joseph P. Clayton. Mr. Clayton has served on the Board since June 2011, and currently serves as our President and Chief Executive Officer. Mr. Clayton served as Chairman of Sirius Satellite Radio Inc. (“Sirius”) from November 2004 to July 2008 and served as Chief Executive Officer of Sirius from November 2001 to November 2004. Prior to joining Sirius, Mr. Clayton served as President of Global Crossing North America from 1999 to 2001, as President and Chief Executive Officer of Frontier Corporation (“Frontier”) from 1997 to 1999 and as Executive Vice President, Marketing and Sales - Americas and Asia, of Thomson S.A prior to Frontier. Mr. Clayton previously served on the Board of Directors of Transcend Services, Inc. from 2001 to April 2012 and on the Board of Directors of EchoStar Corporation (“EchoStar”) from October 2008 to June 2011. The Board concluded that Mr. Clayton should serve on the Board due, among other things, to his experience in the radio broadcast and telecommunications industries, including his prior service with Sirius and Frontier.

James DeFranco. Mr. DeFranco is one of our Executive Vice Presidents and has been one of our vice presidents and a member of the Board since our formation. During the past five years he has held various executive officer and director positions with DISH Network and our subsidiaries. During 1980, Mr. DeFranco co-founded DISH Network with Charles W. Ergen and Cantey M. Ergen. The Board concluded that Mr. DeFranco should serve on the Board due, among other things, to his knowledge of DISH Network since its formation, particularly in sales and marketing.

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Cantey M. Ergen. Mrs. Ergen has served on the Board since May 2001, is currently a Senior Advisor to us and has had a variety of operational responsibilities with us since our formation. Mrs. Ergen served as a member of the board of directors of Children’s Hospital Colorado from 2001 to 2012, and is now an honorary lifetime member. Mrs. Ergen also served on the board of trustees of Children’s Hospital Colorado Foundation from 2000 to 2001. During 1980, Mrs. Ergen co-founded DISH Network with her future spouse, Charles W. Ergen, and James DeFranco. The Board concluded that Mrs. Ergen should serve on the Board due, among other things, to her knowledge of DISH Network since its formation and her service to us in a multitude of roles over the years.

Charles W. Ergen. Mr. Ergen serves as our executive Chairman and has been Chairman of the Board of Directors of DISH Network since its formation. During the past five years, Mr. Ergen has held various executive officer and director positions with DISH Network and our subsidiaries including the position of President and Chief Executive Officer from time to time. During 1980, Mr. Ergen co-founded DISH Network with his future spouse, Cantey M. Ergen, and James DeFranco. Mr. Ergen also serves as executive Chairman and Chairman of the Board of Directors of EchoStar and served as Chief Executive Officer of EchoStar from its formation in October 2007 until November 2009. Mr. Ergen also served as EchoStar's President from June 2008 to November 2009. The Board concluded that Mr. Ergen should serve on the Board due, among other things, to his role as our co-founder and controlling shareholder and the expertise, leadership and strategic direction that he has contributed to us since our formation.

Steven R. Goodbarn. Mr. Goodbarn joined the Board in December 2002 and is a member of our Audit Committee, where he serves as our "audit committee financial expert," Compensation Committee, and Nominating Committee. Since July 2002, Mr. Goodbarn has served as director, President and Chief Executive Officer of Secure64 Software Corporation, a company he co-founded. Mr. Goodbarn was Chief Financial Officer of Janus Capital Corporation ("Janus") from 1992 to 2000, where he was a member of the executive committee and served on the board of directors of many Janus corporate and investment entities. Mr. Goodbarn is a CPA and spent 12 years at Price Waterhouse prior to joining Janus. The Board has determined that Mr. Goodbarn meets the independence and "audit committee financial expert" requirements of NASDAQ and SEC rules and regulations. Mr. Goodbarn served as a member of the board of directors of EchoStar from its formation in October 2007 until November 2008. The Board concluded that Mr. Goodbarn should serve on the Board due, among other things, to his knowledge of DISH Network from his service as a director since 2002 and his expertise in accounting, auditing, finance and risk management that he brings to the Board, in particular in light of his background as a CPA and his prior experience serving as Chief Financial Officer of Janus.

Charles M. Lillis. Mr. Lillis joined the Board in November 2013 and is a member of our Audit Committee, Compensation Committee, and Nominating Committee. Since 2011, Mr. Lillis has served as an advisor to Wells Fargo Bank, N.A. ("Wells Fargo"). Previously, Mr. Lillis was a co-founder and managing partner of Castle Pines Capital LLC ("Castle Pines Capital") from 2004 to 2011, a private equity concern and a financial services entity. Castle Pines Capital was acquired by Wells Fargo in 2011. Mr. Lillis was also previously a co-founder and principal of LoneTree Capital Management LLC ("LoneTree Capital Management"), a private equity investing group formed in 2000. Prior to LoneTree Capital Management, Mr. Lillis served as Chairman of the board of directors and Chief Executive Officer of MediaOne Group, Inc. from its inception in 1995 through its acquisition by AT&T Corp. in 2000. Mr. Lillis also has served on the boards of the following public companies: Medco Health Solutions, Inc. from 2005 to 2012; SUPERVALU Inc. from 1995 to 2011; The Williams Companies Inc. from 2000 to 2009; and Washington Mutual, Inc. from 2005 to 2009. The Board has determined that Mr. Lillis meets the independence requirements of NASDAQ and SEC rules and regulations. The Board concluded that Mr. Lillis should serve as a member of the Board due, among other things, to his financial and managerial experience.

David K. Moskowitz. Mr. Moskowitz is one of our Senior Advisors and was an Executive Vice President as well as our Secretary and General Counsel until 2007. Mr. Moskowitz joined us in March 1990. He was elected to the Board in 1998. Mr. Moskowitz performs certain business functions for us and our subsidiaries from time to time. Mr. Moskowitz served as a member of the board of directors of EchoStar from its formation in October 2007 until May 2012. The Board concluded that Mr. Moskowitz should serve on the Board due, among other things, to his knowledge of DISH Network from his service as a director since 1998 and his business and legal expertise that he brings to the Board, in particular in light of his service as our General Counsel for 17 years.

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Tom A. Ortolf. Mr. Ortolf joined the Board in May 2005 and is a member of our Audit Committee, Compensation Committee, and Nominating Committee. Mr. Ortolf has been the President of CMC, a privately held investment management firm, for over twenty years. The Board has determined that Mr. Ortolf meets the independence requirements of NASDAQ and SEC rules and regulations. Mr. Ortolf has also served as a member of the board of directors of EchoStar since its formation in October 2007. The Board concluded that Mr. Ortolf should serve on the Board due, among other things, to his knowledge of DISH Network from his service as a director since 2005 and his expertise in finance, business and risk management, in particular in light of his experience as an executive with CMC.

Carl E. Vogel. Mr. Vogel has served on the Board since May 2005 and is currently a Senior Advisor to us. He served as our President from September 2006 to February 2008 and served as our Vice Chairman from June 2005 to March 2009. From October 2007 to March 2009, Mr. Vogel served as the Vice Chairman of the board of directors of, and as a Senior Advisor to, EchoStar. From 2001 to 2005, Mr. Vogel served as the President and CEO of Charter Communications Inc. ("Charter"), a publicly-traded company providing cable television and broadband services to approximately six million customers. Prior to joining Charter, Mr. Vogel worked as an executive officer in various capacities for companies affiliated with Liberty Media Corporation from 1998 to 2001. Mr. Vogel was one of our executive officers from 1994 to 1997, including serving as our President from 1995 to 1997. Mr. Vogel is also currently serving on the boards of directors of Shaw Communications, Inc. (which he joined in 2006), Universal Electronics, Inc. (which he joined in 2009), Ascent Capital Group, Inc. (f/k/a Ascent Media Corporation, which he joined in 2009), Sirius (which he joined in 2011) and AMC Networks Inc. (which he joined in 2013). The Board concluded that Mr. Vogel should serve on

the Board due, among other things, to his knowledge of DISH Network from his service as a director and officer and his experience in the telecommunications and related industries from his service over the years as a director or officer with a number of different companies in those industries.

Executive Officers

Information regarding our executive officers is contained in Part I of the 10-K filed with the SEC on February 21, 2014 under the caption “Item 1. Business — Executive Officers of the Registrant.”

Section 16(a) Beneficial Ownership Reporting Compliance

Section 16(a) of the Exchange Act requires our directors, executive officers and holders of more than 10% of our common stock to file reports with the SEC regarding their ownership and changes in ownership of our equity securities. We believe that during 2013, our directors, executive officers and 10% shareholders complied with all Section 16(a) filing requirements, with the exception of the inadvertent late filing of one Form 4 by Mr. Roger Lynch, our Executive Vice President, Advanced Technologies, which related to a single transaction. In making these statements, we have relied upon examination of copies of Forms 3, 4 and 5 provided to us and the written representations of our directors and officers.

Code of Ethics

Information regarding our code of ethics is contained in Part I of the 10-K filed with the SEC on February 21, 2014 under the caption “Item 1. Business — Website Access.”

Audit Committee

Our Board has established a standing Audit Committee in accordance with NASDAQ rules and Section 10A of the Securities Exchange Act of 1934 (the “Exchange Act”) and related SEC rules and regulations. The current members of the Audit Committee are Mr. Brokaw, Mr. Goodbarn, Mr. Lillis and Mr. Ortolf, with Mr. Ortolf serving as Chairman of the Audit Committee and Mr. Goodbarn serving as our “audit committee financial expert”. The Board has determined that each of these individuals meets the independence requirements of NASDAQ and SEC rules and regulations. The Board has also determined that each member of our Audit Committee is financially literate and that Mr. Goodbarn qualifies as an “audit committee financial expert” as defined by applicable SEC rules and regulations. Our Audit Committee Charter is published in the corporate governance section of our investor relations website at <http://www.dish.com>.

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Item 11. EXECUTIVE COMPENSATION

COMPENSATION DISCUSSION AND ANALYSIS

This Compensation Discussion and Analysis addresses our compensation objectives and policies for our Chief Executive Officer, Chief Financial Officer and three other most highly compensated persons acting as one of our executive officers in 2013 (collectively, the “Named Executive Officers”), or NEOs, the elements of NEO compensation and the application of those objectives and policies to each element of fiscal 2013 compensation for our NEOs.

This Compensation Discussion and Analysis contains information regarding company performance targets and goals for our executive compensation program. These targets and goals were disclosed to provide information on how executive compensation was determined in 2013 but are not intended to be estimates of future results or other forward-looking guidance. We caution investors against using these targets and goals outside of the context of their use in our executive compensation program as described herein.

Overall Compensation Program Objectives and Policies

Compensation Philosophy

DISH Network’s executive compensation program is guided by the following key principles:

- Attraction, retention and motivation of executive officers over the long-term;
- Recognition of individual performance;
- Recognition of the achievement of company-wide performance goals; and

- Creation of shareholder value by aligning the interests of management and DISH Network's shareholders through equity incentives.

General Compensation Levels

The total direct compensation opportunities, both base salaries and long-term incentives, offered to DISH Network's NEOs have been designed to ensure that they are competitive with market practice, support DISH Network's executive recruitment and retention objectives, reward individual and company-wide performance and contribute to DISH Network's long-term success by aligning the interests of its executive officers and shareholders.

The Compensation Committee, without Mr. Ergen present, determines Mr. Ergen's compensation. Mr. Ergen recommends to the Board of Directors, but the Board of Directors ultimately approves, the base compensation of DISH Network's other NEOs. The Compensation Committee has made and approved grants of options and other equity-based compensation to DISH Network's NEOs, and established in writing performance goals for any performance-based compensation that together with other compensation to any of DISH Network's NEOs could exceed \$1 million annually. The Compensation Committee has also certified achievement of those performance goals prior to payment of performance-based compensation.

In determining the actual amount of each NEO's compensation, the Compensation Committee reviews the information described in "Compilation of Certain Proxy Data" below, the Compensation Committee's subjective performance evaluation of the individual's performance (after reviewing Mr. Ergen's recommendations with respect to the NEOs other than himself), the individual's success in achieving individual and company-wide goals, whether the performance goals of any short-term or long-term incentive plans were met and the payouts that would become payable upon achievement of those performance goals, equity awards previously granted to the individual, and equity awards that would be normally granted upon a promotion in accordance with DISH Network's policies for promotions. The Compensation Committee and the Board of Directors have also considered the extent to which individual extraordinary efforts of each of DISH Network's NEOs resulted in tangible increases in corporate, division or department success when setting base cash salaries and short term incentive compensation.

Furthermore, the Compensation Committee also makes a subjective determination as to whether an increase should be made to Mr. Ergen's compensation based on its evaluation of Mr. Ergen's contribution to the success of DISH Network, whether the performance goals of any short-term or long-term incentive plans were met, the respective payouts that would become payable to Mr. Ergen upon achievement of those performance goals, the respective

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options and other stock awards currently held by Mr. Ergen and whether such awards are sufficient to retain Mr. Ergen.

This approach to general compensation levels is not formulaic and the weight given to any particular factor in determining a particular NEO's compensation depends on the subjective consideration of all factors described above in the aggregate.

With respect to incentive compensation, DISH Network attempts to ensure that each NEO has equity incentives at any given time that are significant in relation to such individual's annual cash compensation to ensure that each of DISH Network's NEOs has appropriate incentives tied to the performance of DISH Network's Class A Common Stock (the "Class A Shares"). Therefore, DISH Network may grant more equity incentives to one particular NEO in a given year if a substantial portion of the NEO's equity incentives are vested and the underlying stock is capable of being sold. In addition, if an NEO recently received a substantial amount of equity incentives, DISH Network may not grant any equity incentives to that particular NEO.

Compilation of Certain Proxy Data

In connection with the approval process for DISH Network's executive officer compensation, the Board of Directors and the Compensation Committee had management prepare a compilation of the compensation components for the NEOs of companies selected by the Compensation Committee, as disclosed in their respective publicly-filed proxy statements (the "Proxy Data"). These surveyed companies included: DirecTV; Comcast Corporation; Time Warner Cable Inc.; Charter Communications, Inc.; Liberty Global, Inc.; Verizon Communications, Inc.; CenturyLink, Inc.; and Level 3 Communications, Inc. The Proxy Data, along with other information obtained by members of the Compensation Committee from media reports, such as newspaper or magazine articles or other generally available sources related to executive compensation, and from corporate director events attended by members of the Compensation Committee, is used solely as a subjective frame of reference, rather than a basis for benchmarking compensation for DISH Network's NEOs. The Compensation Committee and Board of Directors do not utilize a formulaic or standard, formalized benchmarking level or element in tying or otherwise setting DISH Network's executive compensation to that of other companies. Generally, DISH Network's overall compensation lags behind competitors in the area of base pay, severance packages, and

short-term incentives and may be competitive over time in equity compensation. If DISH Network's stock performance substantially outperforms similar companies, executive compensation at DISH Network could exceed that at similar companies. Barring significant increases in the stock price, however, DISH Network's compensation levels generally lag its peers.

Deductibility of Compensation

Section 162(m) of the U.S. Internal Revenue Code (the "Code") places a limit on the tax deductibility of compensation in excess of \$1 million paid to certain "covered employees" of a publicly held corporation (generally, the corporation's chief executive officer and its next three most highly compensated executive officers (other than the chief financial officer) in the year that the compensation is paid). This limitation applies only to compensation that is not considered performance-based under the Section 162(m) rules. The Compensation Committee conducts an ongoing review of DISH Network's compensation practices for purposes of obtaining the maximum continued deductibility of compensation paid consistent with DISH Network's existing commitments and ongoing competitive needs. However, nondeductible compensation in excess of this limitation may be paid.

Use of Compensation Consultants

No compensation consultants were retained by the Corporation, the Board of Directors or the Compensation Committee to either evaluate or recommend the setting of executive compensation during the past fiscal year.

Implementation of Executive Compensation Program Objectives and Policies

Weighting and Selection of Elements of Compensation

As described in "General Compensation Levels" above, neither the Board of Directors nor the Compensation Committee has in the past assigned specific weights to any factors considered in determining compensation, and none of the factors are more dispositive than others.

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Elements of Executive Compensation

The primary components of DISH Network's executive compensation program have included:

- base cash salary;
- short-term incentive compensation, including conditional and/or performance-based cash incentive compensation and discretionary bonuses;
- long-term equity incentive compensation in the form of stock options and restricted stock units offered under DISH Network's stock incentive plans;
- 401(k) plan; and
- other compensation, including perquisites and personal benefits and post-termination compensation.

These elements combine to promote the objectives and policies described above. Base salary, 401(k) benefits and other benefits and perquisites provided generally to DISH Network employees provide a minimum level of compensation for our NEOs. Short-term incentives reward individual performance and achievement of annual goals important to DISH Network. Long-term equity-incentive compensation aligns NEO compensation directly with the creation of long-term shareholder value and promotes retention.

DISH Network has not required that a certain percentage of an executive's compensation be provided in one form versus another. However, the Compensation Committee's goal is to award compensation that is reasonable in relation to DISH Network's compensation program and objectives when all elements of potential compensation are considered. Each element of DISH Network's historical executive compensation and the rationale for each element is described below.

Base Cash Salary

DISH Network has traditionally included salary in its executive compensation package under the belief that it is appropriate that some portion of the compensation paid to its executives be provided in a form that is fixed and liquid occurring over regular intervals. Generally, for the reasons discussed in "Long-Term Equity Incentive Compensation," DISH Network has weighted overall compensation towards equity components as opposed to base salaries. The Compensation Committee and the Board of Directors have traditionally been free to set base salary at any level deemed appropriate and typically review base salaries once annually. Any increases or decreases in base salary on a year-over-year basis have

usually been dependent on a combination of the following factors:

- the Compensation Committee's and the Board of Directors' respective assessment of DISH Network's overall financial and business performance;
- the performance of the NEO's business unit;
- the NEO's individual contributions to DISH Network; and
- the rate of DISH Network's standard annual merit increase for employees who are performing at a satisfactory level.

Short-Term Incentive Compensation

This compensation program, if implemented for a particular year, generally provides for a bonus that is linked to annual performance as determined by the Compensation Committee at the beginning of each fiscal year when it establishes the short-term incentive plan for that year. The objective of the short-term incentive plan is to compensate NEOs in significant part based on the achievement of specific annual goals that the Compensation Committee believes will create an incentive to maximize long-term shareholder value. This compensation program also permits short-term incentive compensation to be awarded in the form of discretionary cash bonuses based on individual performance during the year.

During 2013, the Board of Directors and the Compensation Committee elected not to implement a short-term incentive program. The decision not to implement a short-term incentive program during 2013 was made based upon, among other things, the adoption of the 2013 Long Term Incentive Plan, or 2013 LTIP, discussed below.

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Long-Term Equity Incentive Compensation

DISH Network has traditionally operated under the belief that executive officers will be better able to contribute to its long-term success and help build incremental shareholder value if they have a stake in that future success and value. DISH Network has stated it believes this stake focuses the executive officers' attention on managing DISH Network as owners with equity positions in DISH Network and aligns their interests with the long-term interests of DISH Network's shareholders. Equity awards therefore have represented an important and significant component of DISH Network's compensation program for executive officers. DISH Network has attempted to create general incentives with its standard stock option grants and conditional incentives through conditional awards that may include payouts in cash or equity.

General Equity Incentives

With respect to equity incentive compensation, DISH Network attempts to ensure that each NEO has equity incentives at any given time that are significant in relation to such individual's annual cash compensation to ensure that each of DISH Network's NEOs has appropriate incentives tied to the performance of DISH Network's Class A Shares. Therefore, DISH Network may grant more equity incentives to one particular NEO in a given year if a substantial portion of the NEO's equity incentives are vested and the underlying stock is capable of being sold. In addition, if an NEO recently received a substantial amount of equity incentives, DISH Network may not grant any equity incentives to that particular NEO. In particular, in granting awards for 2013, the Compensation Committee took into account, among other things, the amount necessary to retain our executive officers and that our executive officers had been granted equity incentives under the 2013 LTIP.

In granting equity incentive compensation, the Compensation Committee also takes into account whether the NEO has been promoted in determining whether to award equity awards to that individual. Finally, from time to time, the Compensation Committee may award one-time equity awards based on a number of subjective criteria, including the NEO's position and role in DISH Network's success and whether the NEO made any exceptional contributions to DISH Network's success.

To aid in our retention of employees, options granted under DISH Network's stock incentive plans generally vest at the rate of 20% per year and have exercise prices not less than the fair market value of DISH Network's Class A Shares on the date of grant or the last trading day prior to the date of grant (if the date of grant is not a trading day). Other than performance-based awards such as those granted under the 2005 LTIP, 2008 LTIP, 2013 LTIP or those granted to Messrs. Ergen, Clayton and Han, DISH Network's standard form of option agreement given to executive officers has included acceleration of vesting upon a change in control of DISH Network for those executive officers that are terminated by DISH Network or the surviving entity, as applicable, for any reason other than for cause during the twenty-four month period following such change in control.

The principal provisions of our equity incentive plans, and certain material equity incentive grants under such plans, are summarized below. This summary and the features of these equity incentive plans and grants set forth below, do not purport to be complete and are qualified in their entirety by reference to the provisions of the specific equity incentive plan or grant.

Practices Regarding Grant of Equity Incentives

Prior to 2013, DISH Network generally awarded equity incentives as of the last day of each calendar quarter and set exercise prices at not less than the fair market value of Class A Shares on the date of grant or the last trading day prior to the date of grant (if the last day of the calendar quarter was not a trading day). Beginning April 1, 2013, DISH Network generally awards equity incentives as of the first day of each calendar quarter and will set exercise prices at not less than the fair market value of Class A Shares on the date of grant or the last trading day prior to the date of grant (if the date of grant is not a trading day).

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2009 Stock Incentive Plan

We have adopted an employee stock incentive plan, which we refer to as the 2009 Stock Incentive Plan. The purpose of the 2009 Stock Incentive Plan is to provide incentives to attract and retain executive officers and other key employees. Awards available to be granted under the 2009 Stock Incentive Plan include: (i) stock options; (ii) stock appreciation rights; (iii) restricted stock and restricted stock units; (iv) performance awards; (v) dividend equivalents; and (vi) other stock-based awards.

Class B Chairman Stock Option Plan

We have adopted a Class B Chairman stock option plan, which we refer to as the 2002 Class B Chairman Stock Option Plan. The purpose of the 2002 Class B Chairman Stock Option Plan is to promote the interests of DISH Network and its subsidiaries by aiding in the retention of Charles W. Ergen, the Chairman of DISH Network, who our Board of Directors believes is crucial to assuring our future success, to offer Mr. Ergen incentives to put forth maximum efforts for our future success and to afford Mr. Ergen an opportunity to acquire additional proprietary interests in DISH Network. Mr. Ergen abstained from our Board of Directors' vote on this matter. Awards available to be granted under the 2002 Class B Chairman Stock Option Plan include nonqualified stock options and dividend equivalent rights with respect to DISH Network's Class B Common Stock (the "Class B Shares").

Employee Stock Purchase Plan

We have adopted an employee stock purchase plan, which we refer to as our ESPP. The purpose of the ESPP is to provide our eligible employees with an opportunity to acquire a proprietary interest in us by the purchase of our Class A Shares. All full-time employees who are employed by DISH Network for at least one calendar quarter are eligible to participate in the ESPP. Employee stock purchases are made through payroll deductions. Under the terms of the ESPP, employees are not permitted to deduct an amount that would permit such employee to purchase our capital stock in an amount that exceeds \$25,000 in fair market value of capital stock in any one year. The ESPP is intended to qualify under Section 423 of the Code and thereby provide participating employees with an opportunity to receive certain favorable income tax consequences as to stock purchased under the ESPP. On February 11, 2013, our Board adopted an amendment and restatement of the ESPP, which was approved by our shareholders at the 2013 Annual Meeting. The amendment and restatement of the ESPP increased the number of Class A Shares that may be purchased under the ESPP from 1,800,000 to 2,800,000.

2005 Long-Term Incentive Plan

During January 2005, DISH Network adopted the 2005 Long-Term Incentive Plan, or 2005 LTIP, within the terms of DISH Network's 1999 Stock Incentive Plan. The purpose of the 2005 LTIP is to promote DISH Network's interests and the interests of its shareholders by providing key employees with financial rewards through equity participation upon achievement of DISH Network reaching the milestone of 15 million direct broadcast satellite ("DBS") subscribers. The employees eligible to participate in the 2005 LTIP include DISH Network's executive officers, vice presidents, directors and certain other key employees designated by the Compensation Committee. Awards under the 2005 LTIP consist of a one-time grant of: (a) an option to acquire a specified number of shares priced at the market value as of the last day of the calendar quarter in which the option was granted or the last trading day prior to the date of grant (if the last day of the calendar quarter is not a trading day); (b) rights to acquire for no additional consideration a specified smaller number of DISH Network's Class A Shares; or (c) in some cases, a corresponding combination of a lesser number of option shares and such rights to acquire DISH Network's Class A Shares. The options and rights vest in 10% increments on each of the first four anniversaries of the date of grant and then at the rate of 20% per year thereafter; provided, however, that none of the options or rights shall be exercisable until DISH Network reaches the milestone of 15 million DBS subscribers. The performance goal under the 2005 LTIP was not achieved in 2013, and none of the awards have vested. Mr. Ergen has 900,000 stock options under the 2005 LTIP that were granted on September 30, 2005. Mr. Shull has 30,000 stock options under the 2005 LTIP that were granted on March 31, 2005. Mr. Han has 90,000 stock options and 30,000 restricted stock units under the 2005 LTIP that were granted on September 30, 2006. Mr. Clayton and Mr. Olson do not have any awards under the 2005 LTIP.

[Table of Contents](#)**2008 Long-Term Incentive Plan**

During December 2008, DISH Network adopted the 2008 LTIP, within the terms of our 1999 Stock Incentive Plan. After the expiration of the 1999 Stock Incentive Plan on April 16, 2009, awards under the 2008 LTIP to new employee hires or employees who were promoted were granted pursuant to the 2009 Stock Incentive Plan. The purpose of the 2008 LTIP was to promote DISH Network's interests and the interests of its shareholders by providing key employees with financial rewards through equity participation upon achievement of a specified long-term cumulative free cash flow goal while maintaining a specified long-term DBS subscriber threshold. The employees eligible to participate in the 2008 LTIP included DISH Network's executive officers, vice presidents, directors and certain other key employees designated by the Compensation Committee. Awards under the 2008 LTIP consisted of a one-time grant of: (a) an option to acquire a specified number of shares priced at the market value as of the last day of the calendar quarter in which the option was granted or the last trading day prior to the date of grant (if the last day of the calendar quarter was not a trading day); (b) rights to acquire for no additional consideration a specified smaller number of DISH Network's Class A Shares; or (c) in some cases, a corresponding combination of a lesser number of option shares and such rights to acquire DISH Network's Class A Shares. Under the 2008 LTIP, the cumulative free cash flow goals and the total net DBS subscriber threshold were measured on the last day of each calendar quarter commencing on March 31, 2009 and continuing through and including December 31, 2015. As of July 1, 2012, we no longer granted awards under the 2008 LTIP.

In the event that a cumulative free cash flow goal was achieved and the total net DBS subscriber threshold was met as of the last day of any such calendar quarter: (i) the applicable cumulative free cash flow goal was retired; and (ii) the corresponding increment of the option/restricted stock unit vested and became exercisable contemporaneously with the filing of the Corporation's financial results for that quarter or year, as applicable, with the SEC, in accordance with the following schedule (for those employees that received equity awards under the 2008 LTIP before April 1, 2009):

Cumulative Free Cash Flow Goal	Total Net DBS Subscriber Threshold	Cumulative Vesting Schedule
\$1 billion	13 million	10%
\$2 billion	13 million	25%
\$3 billion	13 million	45%
\$4 billion	13 million	70%
\$5 billion	13 million	100%

Employees who were granted equity awards after April 1, 2009 under the 2008 LTIP received a reduced number of options to acquire DISH Network's Class A Shares relative to the amounts that were granted to employees at the same level prior to April 1, 2009; such shares were subject to a vesting schedule that varied based upon the date on which such awards were granted.

Mr. Ergen was granted 900,000 stock options under the 2008 LTIP on December 31, 2008. Messrs. Han and Shull were granted 300,000 and 75,000 stock options, respectively, under the 2008 LTIP on December 31, 2008. Mr. Olson was granted 240,000 stock options under the 2008 LTIP on June 30, 2009 in connection with the commencement of his employment. Mr. Clayton did not have any awards under the 2008 LTIP. During 2009, we generated cumulative free cash flow in excess of \$1 billion while also maintaining 13 million DBS subscribers which resulted in the vesting of approximately 10% of the 2008 LTIP stock awards. Accordingly, the \$1 billion cumulative free cash flow goal under the 2008 LTIP was retired. During 2011, we generated cumulative free cash flow in excess of \$3 billion while also maintaining 13 million DBS subscribers, which resulted in the cumulative vesting of approximately 45% of the 2008 LTIP stock awards during 2011. Accordingly, the \$2 billion and \$3 billion cumulative free cash flow goals under the 2008 LTIP were retired. During 2012, we generated cumulative free cash flow in excess of \$4 billion while also maintaining 13 million DBS subscribers, which resulted in the cumulative vesting of approximately 70% of the 2008 LTIP stock awards during 2012. Accordingly, the \$4 billion cumulative free cash flow goal under the 2008 LTIP was retired. During 2013, we generated cumulative free cash flow in excess of \$5 billion while also maintaining 13 million DBS subscribers, which resulted in the cumulative vesting of 100% of the 2008 LTIP stock awards during 2013. Accordingly, the \$5 billion cumulative free cash flow goal under the 2008 LTIP was retired.

[Table of Contents](#)**2010 Equity Incentives to Mr. Han**

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During 2010, based on Mr. Ergen's subjective evaluation of Mr. Han's contributions to the Corporation's performance and to align his interests with the long-term interests of DISH Network's shareholders, Mr. Ergen recommended, and the Compensation Committee agreed, to grant Mr. Han 200,000 restricted stock units (RSUs) and an option to purchase 600,000 shares of Class A Shares, with such awards vesting incrementally before June 30, 2020 according to the following vesting schedules. Although they are not NEOs for the year ended December 31, 2013, Thomas A. Cullen, our Executive Vice President, Corporate Development, and R. Stanton Dodge, our Executive Vice President, General Counsel and Secretary, each also received the same grant of options and RSUs as Mr. Han. None of the goals under this grant have been met, and none of the awards have vested.

Fifty percent (50%) of the option and RSU awards granted to Mr. Han vest based upon achieving the following specified cumulative free cash flow goals while achieving and maintaining a minimum threshold of 15,250,000 total net subscribers:

Cumulative Free Cash Flow Goal	Options Vesting Schedule	RSUs Vesting Schedule
\$250 million	15,000	5,000
\$500 million	15,000	5,000
\$750 million	15,000	5,000
\$1 billion	15,000	5,000
\$1.25 billion	15,000	5,000
\$1.5 billion	15,000	5,000
\$1.75 billion	15,000	5,000
\$2 billion	15,000	5,000
\$2.25 billion	15,000	5,000
\$2.5 billion	15,000	5,000
\$2.75 billion	15,000	5,000
\$3 billion	15,000	5,000
\$3.25 billion	15,000	5,000
\$3.5 billion	15,000	5,000
\$3.75 billion	15,000	5,000
\$4 billion	15,000	5,000
\$4.25 billion	15,000	5,000
\$4.5 billion	15,000	5,000
\$4.75 billion	15,000	5,000
\$5 billion	15,000	5,000

In the event that the total net subscriber threshold is met and a cumulative free cash flow goal is achieved as of the last day of a given calendar quarter: (i) the applicable cumulative free cash flow goal(s) will be retired; and (ii) the corresponding increment(s) of the option or RSU awards will vest and shall become exercisable contemporaneously with the filing of the Corporation's financial results for that quarter or year, as applicable, with the SEC.

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The other fifty percent (50%) of the option and RSU awards granted to Mr. Han vest based upon achieving the following specified total net subscriber goals while achieving and maintaining the specified cumulative free cash flow goal:

Cumulative Free Cash Flow Goal	Total Net Subscriber Goal	Options Vesting Schedule	RSUs Vesting Schedule
\$250 million	15,250,000	15,000	5,000
\$500 million	15,500,000	15,000	5,000
\$750 million	15,750,000	15,000	5,000
\$1 billion	16,000,000	15,000	5,000
\$1.25 billion	16,250,000	15,000	5,000
\$1.5 billion	16,500,000	15,000	5,000
\$1.75 billion	16,750,000	15,000	5,000
\$2 billion	17,000,000	15,000	5,000
\$2.25 billion	17,250,000	15,000	5,000
\$2.5 billion	17,500,000	15,000	5,000
\$2.75 billion	17,750,000	15,000	5,000
\$3 billion	18,000,000	15,000	5,000

\$3.25 billion	18,250,000	15,000	5,000
\$3.5 billion	18,500,000	15,000	5,000
\$3.75 billion	18,750,000	15,000	5,000
\$4 billion	19,000,000	15,000	5,000
\$4.25 billion	19,250,000	15,000	5,000
\$4.5 billion	19,500,000	15,000	5,000
\$4.75 billion	19,750,000	15,000	5,000
\$5 billion	20,000,000	15,000	5,000

In the event that the cumulative free cash flow goal is met (or has already been retired and continues to be met) and a total net subscriber goal is achieved as of the last day of any such calendar quarter: (i) the applicable total net subscriber goal(s) will be retired; and (ii) the corresponding increment of the option or RSU awards will vest and shall become exercisable contemporaneously with the filing of the Corporation's financial results for that quarter or year, as applicable, with the SEC.

For purposes of the total net subscriber goal and total net subscriber threshold under these equity incentive awards, the calculation of "subscribers" is a formula that takes into account, among other things, Pay-TV subscribers and broadband subscribers. In addition, for purposes of the cumulative free cash flow goals under these equity incentive awards, the calculation of "cumulative free cash flow" is a formula that takes into account, among other things, free cash flow as set forth in the Corporation's financial results for that quarter or year, as applicable, filed with the SEC. The Compensation Committee has final authority to, among other things, interpret and calculate any and all aspects of these equity incentive awards, including vesting and all other aspects of calculating the achievement of the goals under these equity incentive awards.

2011 Equity Incentives to Mr. Ergen

During 2011, the Compensation Committee determined that Mr. Ergen should receive a grant of options to purchase 1,200,000 of the Corporation's Class A Shares, with such award vesting incrementally before June 30, 2021 according to the following vesting schedules.

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Fifty percent (50%) of the option awards granted to Mr. Ergen vest based upon achieving the following specified cumulative free cash flow goals while achieving and maintaining a minimum threshold of 14,250,000 total net subscribers:

Cumulative Free Cash Flow Goal	Vesting Schedule
\$250 million	30,000
\$500 million	30,000
\$750 million	30,000
\$1 billion	30,000
\$1.25 billion	30,000
\$1.5 billion	30,000
\$1.75 billion	30,000
\$2 billion	30,000
\$2.25 billion	30,000
\$2.5 billion	30,000
\$2.75 billion	30,000
\$3 billion	30,000
\$3.25 billion	30,000
\$3.5 billion	30,000
\$3.75 billion	30,000
\$4 billion	30,000
\$4.25 billion	30,000
\$4.5 billion	30,000
\$4.75 billion	30,000
\$5 billion	30,000

In the event that the total net subscriber threshold is met and a cumulative free cash flow goal is achieved as of the last day of a given calendar quarter: (i) the applicable cumulative free cash flow goal(s) will be retired; and (ii) the corresponding increment of the option will vest and shall become exercisable contemporaneously with the filing of the Corporation's financial results for that quarter or year, as applicable, with the SEC. During 2013, we generated cumulative free cash flow in excess of \$2.5 billion while achieving and maintaining a minimum threshold of

14,250,000 total net subscribers, resulting in the vesting of 300,000 stock options during 2013. Accordingly, the \$250 million, \$500 million, \$750 million, \$1 billion, \$1.25 billion, \$1.5 billion, \$1.75 billion, \$2 billion, \$2.25 billion and \$2.5 billion cumulative free cash flow goals under the grant were retired.

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The other fifty percent (50%) of the option awards granted to Mr. Ergen vest based upon achieving the following specified total net subscriber goals while achieving and maintaining the specified cumulative free cash flow goal:

Cumulative Free Cash Flow Goal	Total Net Subscriber Goal	Vesting Schedule
\$250 million	14,250,000	30,000
\$500 million	14,500,000	30,000
\$750 million	14,750,000	30,000
\$1 billion	15,000,000	30,000
\$1.25 billion	15,250,000	30,000
\$1.5 billion	15,500,000	30,000
\$1.75 billion	15,750,000	30,000
\$2 billion	16,000,000	30,000
\$2.25 billion	16,250,000	30,000
\$2.5 billion	16,500,000	30,000
\$2.75 billion	16,750,000	30,000
\$3 billion	17,000,000	30,000
\$3.25 billion	17,250,000	30,000
\$3.5 billion	17,500,000	30,000
\$3.75 billion	17,750,000	30,000
\$4 billion	18,000,000	30,000
\$4.25 billion	18,250,000	30,000
\$4.5 billion	18,500,000	30,000
\$4.75 billion	18,750,000	30,000
\$5 billion	19,000,000	30,000

In the event that the cumulative free cash flow goal is met (or has already been retired and continues to be met) and a total net subscriber goal is achieved as of the last day of any such calendar quarter: (i) the applicable total net subscriber goal(s) will be retired; and (ii) the corresponding increment of the option will vest and shall become exercisable contemporaneously with the filing of the Corporation’s financial results for that quarter or year, as applicable, with the SEC. During 2013, we achieved the total net subscriber goal of 14,250,000 while achieving and maintaining the cumulative free cash flow goal of at least \$250 million, resulting in the vesting of 30,000 stock options during 2013. Accordingly, the total net subscriber goal of 14,250,000 under the grant was retired.

For purposes of the total net subscriber goal and total net subscriber threshold under this equity incentive award, the calculation of “subscribers” is a formula that takes into account, among other things, Pay-TV subscribers and broadband subscribers. In addition, for purposes of the cumulative free cash flow goals under this equity incentive award, the calculation of “cumulative free cash flow” is a formula that takes into account, among other things, free cash flow as set forth in the Corporation’s financial results for that quarter or year, as applicable, filed with the SEC. The Compensation Committee has final authority to, among other things, interpret and calculate any and all aspects of this equity incentive award, including vesting and all other aspects of calculating the achievement of the goals under this equity incentive award.

2011 Equity Incentives to Mr. Clayton

During 2011, the Compensation Committee determined that in connection with the commencement of Mr. Clayton’s employment as President and Chief Executive Officer of DISH Network in June 2011, he should receive a grant of options to purchase 750,000 of the Corporation’s Class A Shares, with such options vesting at the rate of one-third per year commencing December 31, 2011, and a grant of 300,000 restricted stock units (RSUs), with such awards vesting incrementally before December 31, 2013 according to the following vesting schedules.

One hundred thousand (100,000) of the RSU awards granted to Mr. Clayton vested based upon achieving the following specified cumulative free cash flow goals while achieving and maintaining a minimum threshold of 14,250,000 total net subscribers:

Cumulative Free Cash Flow Goal	Vesting Schedule
\$250 million	10,000
\$500 million	10,000
\$750 million	10,000
\$1 billion	10,000
\$1.25 billion	10,000
\$1.5 billion	10,000
\$1.75 billion	10,000
\$2 billion	10,000
\$2.25 billion	10,000
\$2.5 billion	10,000

In the event that the total net subscriber threshold was met and a cumulative free cash flow goal was achieved as of the last day of a given calendar quarter: (i) the applicable cumulative free cash flow goal(s) were retired; and (ii) the corresponding increment(s) of the RSU awards vested contemporaneously with the filing of the Corporation's financial results for that quarter or year, as applicable, with the SEC. During 2013, we generated cumulative free cash flow in excess of \$2.5 billion while achieving and maintaining a minimum threshold of 14,250,000 total net subscribers, resulting in the vesting of 100,000 RSUs during 2013. Accordingly, the \$250 million, \$500 million, \$750 million, \$1 billion, \$1.25 billion, \$1.5 billion, \$1.75 billion, \$2 billion, \$2.25 billion and \$2.5 billion cumulative free cash flow goals under the grant were retired.

One hundred thousand (100,000) of the RSU awards granted to Mr. Clayton vested based upon achieving the following specified total net subscriber goals while achieving and maintaining the specified cumulative free cash flow goal:

Cumulative Free Cash Flow Goal	Total Net Subscriber Goal	Vesting Schedule
\$250 million	14,250,000	10,000
\$500 million	14,500,000	10,000
\$750 million	14,750,000	10,000
\$1 billion	15,000,000	10,000
\$1.25 billion	15,250,000	10,000
\$1.5 billion	15,500,000	10,000
\$1.75 billion	15,750,000	10,000
\$2 billion	16,000,000	10,000
\$2.25 billion	16,250,000	10,000
\$2.5 billion	16,500,000	10,000

In the event that the cumulative free cash flow goal was met (or was already retired and continued to be met) and a total net subscriber goal was achieved as of the last day of any such calendar quarter: (i) the applicable total net subscriber goal(s) were retired; and (ii) the corresponding increment of the RSU awards vested contemporaneously with the filing of the Corporation's financial results for that quarter or year, as applicable, with the SEC. During 2013, we achieved the total net subscriber goal of 14,250,000 while achieving and maintaining the cumulative free cash flow goal of at least \$250 million, resulting in the vesting of 10,000 RSUs during 2013. Accordingly, the total net subscriber goal of 14,250,000 under the grant was retired.

For purposes of the total net subscriber goal and total net subscriber threshold under this equity incentive award, the calculation of "subscribers" was a formula that takes into account, among other things, Pay-TV subscribers and broadband subscribers. In addition, for purposes of the cumulative free cash flow goals under this equity incentive award, the calculation of "cumulative free cash flow" was a formula that takes into account, among other things, free cash flow as set forth in the Corporation's financial results for that quarter or year, as applicable, filed with the SEC.

Fifty thousand (50,000) of the RSU awards granted to Mr. Clayton vested at the rate of 5,000 RSUs per quarter when, in any such quarter, (i) the quarterly net U.S. DBS subscriber additions of the Corporation were greater than the quarterly net U.S. DBS subscriber additions of DirecTV, as measured by net U.S. DBS subscriber additions based on the announced U.S. DBS subscriber counts in each company's respective Form 10-Q or 10-K for that quarter or year, as applicable, filed with the SEC; and (ii) the quarterly net U.S. DBS subscriber additions of the Corporation were greater than zero. In 2013, Mr. Clayton achieved the above criteria for the first quarter 2013, resulting in the vesting of five thousand (5,000) RSUs during 2013.

The remaining fifty thousand (50,000) of the RSU awards granted to Mr. Clayton vested at the rate of 10,000 RSUs for each of the below criteria met in a given year, contemporaneous with the release of the National Quarterly American Customer Satisfaction Index (the "ACSI") scores in May 2012 and May 2013. The criteria were as follow:

1. The ACSI score of the Corporation was greater than or equal to a specified figure;
2. The ACSI score of the Corporation was greater than or equal to certain of the Corporation's competitors; or
3. The ACSI score of the Corporation was greater than or equal to all companies in the Corporation's industry

However, in no event could more than a total of fifty thousand (50,000) RSUs have vested under the ACSI criteria above. In 2013, Mr. Clayton achieved one out of the three criteria set forth above, resulting in the vesting of ten thousand (10,000) RSUs during 2013.

As of March 31, 2014, the unvested portion of Mr. Clayton's RSU award expired, and no further vesting was possible.

2013 Long-Term Incentive Plan

On November 30, 2012, the Board of Directors and the Compensation Committee approved a long-term, performance-based stock incentive plan, the 2013 Long Term Incentive Plan, or 2013 LTIP, within the terms of DISH Network's 2009 Stock Incentive Plan. The purpose of the 2013 LTIP is to promote DISH Network's interests and the interests of its shareholders by providing key employees with financial rewards through equity participation upon achievement of specified long-term cumulative free cash flow goals while maintaining a specified long-term subscriber threshold and total net subscriber goals. The employees eligible to participate in the 2013 LTIP generally include DISH Network's executive officers, senior vice presidents, vice presidents and director-level employees. Employees participating in the 2013 LTIP receive a one-time award of: (i) an option to acquire a specified number of shares priced at the market value as of the first day of the calendar quarter in which the option was granted or the last trading day prior to the date of grant (if the first day of the calendar quarter is not a trading day) and (ii) rights to acquire for no additional consideration a specified smaller number of Class A Shares. Initial awards granted under the 2013 LTIP were made as of January 1, 2013. Under the 2013 LTIP, the cumulative free cash flow goals and the total net subscriber threshold are measured on the last day of each calendar quarter. The cumulative free cash flow goals commenced April 1, 2013. The total net subscriber goals are measured on the last day of each calendar quarter commencing on January 1, 2013. However, regardless of when achieved, no vesting could occur or payment could be made under the 2013 LTIP for any cumulative free cash flow goals or total net subscriber goals until the end of the first calendar quarter following the quarter in which the final cumulative free cash flow goal under the 2008 LTIP was achieved and in no event prior to March 31, 2014. For purposes of the total net subscriber goal and total net subscriber threshold under the 2013 LTIP, the calculation of "subscribers" is a formula that takes into account, among other things, Pay-TV subscribers and broadband subscribers. In addition, for purposes of the cumulative free cash flow goals under the 2013 LTIP, the calculation of "cumulative free cash flow" is a formula that takes into account, among other things, free cash flow as set forth in the Corporation's financial results for that quarter or year, as applicable, filed with the SEC, but excluding free cash flows from the wireless line of business. The Compensation Committee has final authority to, among other things, interpret and calculate any and all aspects of the 2013 LTIP, including vesting and all other aspects of calculating the achievement of the goals under the 2013 LTIP.

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In the event that a cumulative free cash flow goal and/or total net subscriber goal is achieved, and the total net subscriber threshold is met, as of the last day of any such calendar quarter: (i) the applicable cumulative free cash flow goal and/or total net subscriber goal will be retired; and (ii) the corresponding increment of the option/restricted stock unit will vest and shall become exercisable contemporaneously with filing of the Corporation's financial results for that quarter or year, as applicable, with the SEC, in accordance with the following vesting schedules:

Cumulative Free Cash Flow Goal	Total Net Subscriber Threshold	Vesting Schedule
\$1 billion	14.5 million	10%
\$2 billion	14.5 million	10%
\$3 billion	14.5 million	10%
\$4 billion	14.5 million	10%
\$5 billion	14.5 million	10%

Total Net Subscriber Goal	Vesting Schedule
14.5 million	10%
14.75 million	10%
15 million	10%
15.25 million	10%
15.5 million	10%

Messrs. Ergen, Clayton, Han and Olson were each granted an option to purchase 60,000 Class A Shares and 30,000 RSUs under the 2013 LTIP on January 1, 2013. Mr. Shull was granted an option to purchase 30,000 Class A Shares and 15,000 RSUs under the 2013 LTIP on January 1, 2013. Mr. Shull was granted an additional option to purchase 30,000 Class A Shares and 15,000 RSUs under the 2013 LTIP on April 1, 2013 as a result of his promotion to Executive Vice President and Chief Commercial Officer on March 7, 2013. During 2013, none of the goals under the 2013 LTIP were achieved.

2014 Equity Incentives to Mr. Clayton

The Compensation Committee determined that, on April 1, 2014, Mr. Clayton should receive a grant of 200,000 RSUs, with such awards vesting incrementally according to the following vesting schedules.

One hundred thousand (100,000) of the RSU awards granted to Mr. Clayton vest based upon achieving certain quarterly earnings goals during 2014, using a formula that takes into account, among other things, adjusted earnings before interest, tax, depreciation and amortization (“EBITDA”) as set forth in the Corporation’s financial results for that quarter or year, as applicable, filed with the SEC (each a “Quarterly Earnings Goal”), vesting in increments of twenty five thousand (25,000) RSUs in each calendar quarter. The Quarterly Earnings Goals for 2014 are as follows: (i) \$700 million in the first quarter 2014; (ii) \$815 million in the second quarter 2014; (iii) \$715 million in the third quarter 2014; and (iv) \$815 million in the fourth quarter 2014.

In the event that a Quarterly Earnings Goal is achieved as of the last day of a given calendar quarter, the corresponding increment(s) of the RSU awards will vest contemporaneously with the filing of the Corporation’s financial results for that quarter or year, as applicable, with the SEC. Furthermore, in the event that the Corporation achieves an aggregate amount of earnings for 2014 that is greater than or equal to \$3.045 billion (the sum of the above Quarterly Earnings Goals), any unvested increment of the one hundred thousand (100,000) RSUs will vest contemporaneously with the filing of the Corporation’s financial results for the year ended December 31, 2014, with the SEC.

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One hundred thousand (100,000) of the RSU awards granted to Mr. Clayton vest based upon achieving a positive number of net subscriber additions in each calendar quarter during 2014 (each “Quarterly Net Subscriber Additions Goal”), vesting in increments of twenty five thousand (25,000) RSUs in each calendar quarter.

In the event that a Quarterly Net Subscriber Additions Goal is achieved as of the last day of a given calendar quarter, the corresponding increment of the RSU awards will vest contemporaneously with the filing of the Corporation’s financial results for that quarter or year, as applicable, with the SEC. Furthermore, in the event that the Corporation’s aggregate number of net subscriber additions for 2014 is positive, any unvested increment of the one hundred thousand (100,000) RSUs will vest contemporaneously with the filing of the Corporation’s financial results for the year ended December 31, 2014, with the SEC.

For purposes of the Quarterly Net Subscriber Additions Goals under this equity incentive award, the calculation of “subscribers” is a formula that takes into account, among other things, Pay-TV subscribers and broadband subscribers. In addition, for purposes of the Quarterly Earnings Goals under this equity incentive award, the calculation of “earnings” is a formula that takes into account, among other things, EBITDA as set forth in the Corporation’s financial results for that quarter or year, as applicable, filed with the SEC. The Compensation Committee has final authority to, among other things, interpret and calculate any and all aspects of this equity incentive award, including vesting and all other aspects of calculating the achievement of the goals under this equity incentive award.

401(k) Plan

DISH Network has adopted the 401(k) Employee Savings Plan (the “401(k) Plan”), a defined-contribution tax-qualified 401(k) plan, for its employees, including its executives, to encourage its employees to save some percentage of their cash compensation for their eventual retirement. DISH Network’s executives have participated in the 401(k) Plan on the same terms as DISH Network’s other employees. Under the 401(k) Plan, employees generally become eligible for participation in the 401(k) Plan upon completing ninety days of service with DISH Network and reaching

age 19. 401(k) Plan participants are able to contribute up to 50% of their compensation in each contribution period, subject to the maximum deductible limit provided by the Code. DISH Network may also make a 50% matching employer contribution up to a maximum of \$2,500 per participant per calendar year. In addition, DISH Network may also make an annual discretionary profit sharing contribution to the 401(k) Plan with the approval of its Compensation Committee and Board of Directors. 401(k) Plan participants are immediately vested in their voluntary contributions and earnings on voluntary contributions. DISH Network's employer contributions to 401(k) Plan participants' accounts vest 20% per year commencing one year from the employee's date of employment.

Perquisites and Personal Benefits, Post-Termination Compensation and Other Compensation

DISH Network has traditionally offered numerous plans and other benefits to its executive officers on the same terms as other employees. These plans and benefits have generally included medical, vision, and dental insurance, life insurance, and the employee stock purchase plan as well as discounts on DISH Network's services. Relocation benefits may also be reimbursed, but are individually negotiated when they occur. DISH Network has also permitted certain NEOs and their family members and guests to use its corporate aircraft for personal use. DISH Network has also paid for annual tax preparation costs for certain NEOs.

DISH Network has not traditionally had any plans in place to provide severance benefits to employees. However, certain non-performance based stock options and restricted stock units have been granted to its executive officers subject to accelerated vesting upon a change in control.

Shareholder Advisory Vote on Executive Compensation

DISH Network provided its shareholders with the opportunity to cast an advisory vote on executive compensation at the annual meeting of shareholders held in May 2011. Over 99% of the voting power represented at the meeting and entitled to vote on that matter voted in favor of the executive compensation proposal. The Compensation Committee reviewed these voting results. Since the voting results affirmed shareholders' support of DISH Network's approach to executive compensation, DISH Network did not change its approach in 2013 as a direct result of the vote. As set forth at the annual meeting of shareholders held in May 2011, DISH Network intends to

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continue to seek a shareholder advisory vote on executive compensation once every three years and will seek such vote at the 2014 annual meeting of shareholders.

2013 Executive Compensation

Generally, DISH Network has historically made decisions with respect to executive compensation for a particular compensation year in December of the preceding compensation year or the first quarter of the applicable compensation year. With respect to the executive compensation of each NEO for 2013, the Compensation Committee (along with Mr. Ergen, for each of the NEOs other than himself) reviewed total compensation of each NEO and the value of (a) historic and current components of each NEO's compensation, including the annual base salary and bonus paid to the NEO in the prior year, and (b) equity incentives held by each NEO in DISH Network's stock incentive plans. The Compensation Committee (along with Mr. Ergen, for each of the NEOs other than himself) also reviewed the Proxy Data prepared for 2013 and other information described in "Compilation of Certain Proxy Data" above. As described in "General Compensation Levels" above, DISH Network aims to provide annual base salaries and long-term incentives that are competitive with market practice with an emphasis on providing a substantial portion of overall compensation in the form of equity incentives. In addition, the Compensation Committee has discretion to award performance based compensation that is based on performance goals different from those that were previously set or that is higher or lower than the anticipated compensation that would be awarded under DISH Network's incentive plans if particular performance goals were met. The Compensation Committee did not exercise this discretion in 2013.

Compensation of our Chairman and our President and Chief Executive Officer

2013 Base Salary of Chairman. Mr. Ergen's annual base salary for 2013 was determined based on a review by the Compensation Committee of the expected annual base salaries in 2013 of each of DISH Network's other NEOs. Mr. Ergen's annual base salary was increased to \$900,000, effective July 1, 2011. The Compensation Committee determined that Mr. Ergen's existing base compensation was already within the range of market compensation indicated in the Proxy Data in light of DISH Network's practices with respect to annual base salaries and that therefore an increase over Mr. Ergen's 2012 annual base salary was not necessary.

2013 Base Salary of President and Chief Executive Officer. In determining Mr. Clayton's 2013 annual base salary, Mr. Ergen subjectively determined that Mr. Clayton's performance met expectations for 2012 and that Mr. Clayton was therefore eligible for our standard merit increase. In addition, Mr. Ergen determined that Mr. Clayton should receive an additional increase in base salary based on Mr. Ergen's subjective

determination of the amount required to maintain Mr. Clayton's base salary within the range of market compensation indicated in the Proxy Data and taking into consideration our practices with respect to base salaries.

2013 Cash Bonus. No cash bonus was paid to Mr. Ergen or to Mr. Clayton in 2013.

2013 Equity Incentives. With respect to equity incentives, DISH Network attempts to ensure that the Chairman and the President and Chief Executive Officer have equity awards at any given time that are significant in relation to their annual cash compensation to ensure that they have appropriate incentives tied to the performance of DISH Network's Class A Shares. As discussed above, Mr. Ergen and Mr. Clayton each received awards under the 2013 LTIP on January 1, 2013. In addition, as previously discussed, Mr. Clayton received certain equity incentive plan awards on April 1, 2014.

Compensation of Other Named Executive Officers

2013 Base Salary

Base salaries for each of the other NEOs are determined annually by the Board of Directors primarily based on Mr. Ergen's recommendations. The Board of Directors places substantial weight on Mr. Ergen's recommendations in light of his role as Chairman and as co-founder and controlling shareholder of DISH Network. Mr. Ergen made recommendations to the Board of Directors with respect to the 2013 annual base salary of each of the other NEOs after considering: (a) the NEO's annual base salary in 2012, (b) the range of the percentage increases in annual base salary for NEOs of the companies contained in the Proxy Data, (c) whether the NEO's annual base salary was appropriate in light of DISH Network's goals, including retention of the NEO, (d) the expected compensation to be

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paid to other NEOs in 2013 in relation to a particular NEO in 2013, (e) whether the NEO was promoted or newly hired in 2013, and (f) whether in Mr. Ergen's subjective determination, the NEO's performance in 2012 warranted an increase in the NEO's annual base salary in 2013. Placing primary weight on: (i) the NEO's annual base salary in 2012 and (ii) whether, in Mr. Ergen's subjective view, an increase in 2013 annual base salary was warranted based on performance and/or necessary to retain the NEO, Mr. Ergen recommended the annual base salary amounts indicated in "Executive Compensation and Other Information - Summary Compensation Table" below. The basis for Mr. Ergen's recommendation with respect to each of the other NEOs is discussed below. The Board of Directors accepted each of Mr. Ergen's recommendations on annual base salaries for each of the other NEOs.

Mr. Han. In determining Mr. Han's 2013 annual base salary, Mr. Ergen subjectively determined that Mr. Han's performance met expectations for 2012 and that Mr. Han was therefore eligible for our standard merit increase. In addition, Mr. Ergen determined that Mr. Han should receive an additional increase in annual base salary based on Mr. Ergen's subjective determination of the amount required to maintain Mr. Han's annual base salary within the range of market compensation indicated in the Proxy Data and taking into consideration our practices with respect to annual base salaries.

Mr. Olson. In determining Mr. Olson's 2013 annual base salary, Mr. Ergen subjectively determined that Mr. Olson's performance met expectations for 2012 and that Mr. Olson was therefore eligible for our standard merit increase.

Mr. Shull. Mr. Shull's 2013 annual base salary was increased as a result of his promotion to Executive Vice President and Chief Commercial Officer on March 7, 2013.

2013 Cash Bonus.

Consistent with prior years, Mr. Ergen generally recommended that other NEOs receive cash bonuses only to the extent that such amounts would be payable pursuant to the existing short-term incentive plan, if any. As discussed above, in light of prior grants of equity incentives, among other things, the Board of Directors and the Compensation Committee elected not to implement a short-term incentive program for 2013. No cash bonus was paid to Messrs. Han, Olson or Shull during 2013.

2013 Equity Incentives

With respect to equity incentives, DISH Network primarily evaluates the position of each NEO to ensure that each individual has equity incentives at any given time that are significant in relation to the NEO's annual cash compensation to ensure that the NEO has appropriate incentives tied to the performance of DISH Network's Class A Shares. This determination is made by the Compensation Committee primarily on the basis of Mr. Ergen's recommendation. As discussed above, in granting awards to the other NEOs for 2013, Mr. Ergen based his recommendation on, and

the Compensation Committee took into account, among other things, what was necessary to retain our executive officers. In particular, in granting awards for 2013, the Compensation Committee took into account, among other things, the amount necessary to retain our executive officers. As discussed above, Messrs. Ergen, Clayton, Han, Olson and Shull each received awards under the 2013 LTIP. Also, during 2013, the Compensation Committee determined that Mr. Shull should receive an option to purchase 50,000 Class A Shares under the 2009 Stock Incentive Plan in connection with his promotion to Executive Vice President and Chief Commercial Officer on March 7, 2013.

During 2013, we generated cumulative free cash flow in excess of \$5 billion while also maintaining 13 million DBS subscribers, which resulted in the cumulative vesting of 100% of the 2008 LTIP stock awards during 2013, and accordingly: (i) 270,000 Class A Shares of the stock option granted to Mr. Ergen under the 2008 LTIP vested and became exercisable; (ii) 90,000 Class A Shares of the stock option granted to Mr. Han under the 2008 LTIP vested and became exercisable; (iii) 72,000 Class A Shares of the stock option granted to Mr. Olson under the 2008 LTIP vested and became exercisable; and (iv) 22,500 Class A Shares of the stock option granted to Mr. Shull under the 2008 LTIP vested and became exercisable.

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Compensation Committee Interlocks and Insider Participation. The Compensation Committee is comprised solely of independent directors. The Compensation Committee members are Mr. Brokaw, Mr. Goodbarn, Mr. Lillis and Mr. Ortolf. None of these individuals was an officer or employee of DISH Network at any time during the 2013 fiscal year. With the exception of those executive officers and directors who are also executive officers or directors of EchoStar, no executive officer or director of DISH Network served on the board of directors or compensation committee of any other entity that had one or more executive officers who served as a member of DISH Network's Board of Directors or its Compensation Committee during the 2013 fiscal year.

COMPENSATION COMMITTEE REPORT

The Compensation Committee is appointed by the Board of Directors of DISH Network to discharge certain of the Board's responsibilities relating to compensation of DISH Network's executive officers.

The Compensation Committee, to the extent the Board deems necessary or appropriate, will:

- Make and approve all option grants and other issuances of DISH Network's equity securities to DISH Network's executive officers and Board members other than nonemployee directors;
- Approve all other option grants and issuances of DISH Network's equity securities, and recommend that the full Board make and approve such grants and issuances;
- Establish in writing all performance goals for performance-based compensation that together with other compensation to senior executive officers could exceed \$1 million annually, other than standard Stock Incentive Plan options that may be paid to DISH Network's executive officers, and certify achievement of such goals prior to payment; and
- Set the compensation of the Chairman.

Based on the review of the Compensation Discussion and Analysis and discussions with management, we recommended to the Board of Directors that the Compensation Discussion and Analysis be included in the Corporation's annual report on Form 10-K and Proxy Statement.

Respectfully submitted,

The DISH Network Executive Compensation Committee

Steven R. Goodbarn (Chairman)
George R. Brokaw
Charles M. Lillis
Tom A. Ortolf

The report of the Compensation Committee and the information contained therein shall not be deemed to be "soliciting material" or "filed" or incorporated by reference in any filing we make under the Securities Act of 1933 (the "Securities Act") or under the Exchange Act, irrespective of any general statement incorporating by reference this information into any such filing, or subject to the liabilities of Section 18 of the Exchange Act, except to the extent that we specifically incorporate this information by reference into a document we file under the Securities Act or the Exchange Act.

EXECUTIVE COMPENSATION AND OTHER INFORMATION

Compensation Program Risk Assessment

Annually, management reviews the components of our compensation for each employee other than our executive officers. Base salaries for each of our executive officers (other than Mr. Ergen) are determined annually by our Board of Directors primarily based on Mr. Ergen's recommendations. The Board of Directors places substantial weight on Mr. Ergen's recommendations in light of his role as Chairman and as co-founder and controlling shareholder of DISH Network. The Board of Directors ultimately approved base cash salaries for 2013 for each of these executive officers other than Mr. Ergen.

Our Compensation Committee, without Mr. Ergen present, sets Mr. Ergen's base cash salary. Our Compensation Committee makes and approves grants of options and other equity-based compensation to all of our executive officers.

The primary components of our executive compensation have historically included:

- base cash salary;
- long-term equity incentive compensation in the form of stock options and restricted stock units offered under DISH Network's stock incentive plans;
- 401(k) plan; and
- other compensation, including perquisites and personal benefits and post-termination compensation.

DISH Network's executive compensation program may also include short-term incentive compensation, including conditional and/or performance-based cash incentive compensation and discretionary bonuses. We design corporate performance metrics that determine payouts for certain business segment leaders in part on the achievement of longer-term company-wide goals. This is based on our belief that applying company-wide metrics encourages decision-making that is in the best long-term interests of DISH Network and our shareholders as a whole. However, during 2013, we elected not to implement a short-term incentive program.

Base salary, 401(k) benefits and other benefits and perquisites provided generally to DISH Network employees provide a minimum level of compensation for our executive officers. DISH Network has included base salary as a component of its executive compensation package because we believe it is appropriate that some portion of the compensation paid to executives be provided in a form that is fixed and liquid occurring over regular intervals. Generally, however, DISH Network has weighted overall compensation towards incentives, particularly equity components, as opposed to base salaries.

With respect to other compensation, including perquisites and personal benefits and post-termination compensation, DISH Network has traditionally offered benefits to its executive officers on substantially the same terms as offered to other employees. These benefits generally have included medical, vision, and dental insurance, life insurance, and the employee stock purchase plan as well as discounts on DISH Network's products and services. DISH Network has not traditionally provided severance benefits to employees. However, certain non-performance based stock options and restricted stock units have been granted to its executive officers subject to acceleration of vesting upon a change in control of DISH Network for those executive officers who are terminated by us or the surviving entity, as applicable, for any reason other than for cause during the twenty-four month period following such change in control.

Generally, DISH Network's overall executive compensation trails that of its competitors in the areas of base pay, severance packages, and short-term incentives and may be competitive over time in equity compensation. With respect to equity incentive compensation, DISH Network attempts to ensure that each executive officer retains equity awards that at any given time are significant in relation to such individual's annual cash compensation to ensure that each of its executive officers has appropriate incentives tied to the value realized by our shareholders.

DISH Network generally grants equity incentives only to a limited number of employees at certain levels. The awards generally vest annually at the rate of 20% per year. We believe that the multi-year vesting of our equity awards properly account for the time horizon of risk. DISH Network has operated under the belief that executive officers will be better able to contribute to its long-term success and help build incremental shareholder value prudently if they have a stake in that future success and value over a long period. DISH Network believes this stake focuses the executive officers' attention on managing DISH Network as owners with equity positions in DISH Network and aligns their interests with the

long-term interests of DISH Network's shareholders. Equity awards therefore have represented an important and significant component of DISH Network's compensation program for executive officers. These awards, coupled with the relatively longer time frame during which these awards vest, mitigate the effect of short-term variations in our operating and financial performance, and we believe focus management goals appropriately on longer-term value creation for shareholders rather than rewarding short-term gains. In light of our approach towards compensation as set forth above, we believe that our process assists us in our efforts to mitigate excessive risk-taking.

Summary Compensation Table

Our executive officers are compensated by certain of our subsidiaries. The following table sets forth the cash and noncash compensation for the fiscal year ended December 31, 2013 for the NEOs.

Name and Principal Position	Year	Salary (\$)	Bonus (\$)	Stock Awards (\$)	Option Awards (1) (\$)	Non-Equity Incentive Plan Compensation (\$)	Change in Pension Value and Nonqualified Deferred Compensation Earnings (\$)	All Other Compensation (2) (\$)	Total (\$)
Charles W. Ergen (3) <i>Chairman</i>	2013	\$ 900,000	\$ —	\$ 196,488	\$ 218,400	\$ —	\$ —	\$ 952,478	\$ 2,267,366
	2012	\$ 900,000	\$ —	\$ —	\$ —	\$ —	\$ —	\$ 400,186	\$ 1,300,186
	2011	\$ 750,000	\$ —	\$ —	\$ —	\$ —	\$ —	\$ 208,441	\$ 958,441
David M. Shull (4) <i>Executive Vice President and Chief Commercial Officer</i>	2013	\$ 295,193	\$ —	\$ 199,344	\$ 947,575	\$ —	\$ —	\$ 8,954	\$ 1,451,066
Joseph P. Clayton (5) <i>President and Chief Executive Officer</i>	2013	\$ 980,769	\$ —	\$ 196,488	\$ 218,400	\$ —	\$ —	\$ 6,500	\$ 1,402,157
	2012	\$ 900,000	\$ —	\$ —	\$ —	\$ —	\$ —	\$ 7,000	\$ 907,000
	2011	\$ 467,307	\$ —	\$ 306,700	\$ 9,071,625	\$ —	\$ —	\$ —	\$ 9,845,632
Bernard L. Han (6) <i>Executive Vice President and Chief Operating Officer</i>	2013	\$ 495,193	\$ —	\$ 196,488	\$ 218,400	\$ —	\$ —	\$ 6,500	\$ 916,581
	2012	\$ 475,000	\$ —	\$ —	\$ —	\$ —	\$ —	\$ 5,500	\$ 480,500
	2011	\$ 470,192	\$ 50,000	\$ —	\$ 981,070	\$ —	\$ —	\$ 5,500	\$ 1,506,762
Robert E. Olson (6) <i>Executive Vice President and Chief Financial Officer</i>	2013	\$ 358,078	\$ —	\$ 196,488	\$ 218,400	\$ —	\$ —	\$ 6,500	\$ 779,466
	2012	\$ 350,001	\$ —	\$ —	\$ —	\$ —	\$ —	\$ 5,500	\$ 355,501
	2011	\$ 346,154	\$ —	\$ —	\$ —	\$ —	\$ —	\$ 5,500	\$ 351,654

- (1) The amounts reported in the "Option Awards" column reflect grant date fair values. These amounts include both performance and non-performance based awards. The grant date fair values for performance awards are based on the probable outcome of the performance conditions under the awards and do not necessarily reflect the amount of compensation actually realized or that may be realized.

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Assuming achievement of all performance conditions underlying the performance awards included in this column, the total grant date fair values would be as follows:

	Aggregate Grant Date Fair Value of 2013 Performance Awards	Incremental Grant Date Fair Value of Previous Performance Awards
Charles W. Ergen	\$ 2,074,440	\$ 613,292
David M. Shull	\$ 2,113,320	\$ 16,979
Joseph P. Clayton	\$ 2,074,440	\$ —
Bernard L. Han	\$ 2,074,440	\$ 480,612
Robert E. Olson	\$ 2,074,440	\$ 69,797

Assumptions used in the calculation of grant date fair values are included in Note 15 to the Corporation's audited financial statements for the fiscal year ended December 31, 2013, included in the Corporation's Annual Report on Form 10-K filed with the SEC on February 21, 2014. Amounts included in "Incremental Grant Date Fair Value of Previous Performance Awards" resulted from adjustment of the price of certain stock options during January 2013 related to the Corporation's 2012 cash dividend.

- (2) "All Other Compensation" for all of the NEOs includes amounts contributed pursuant to our 401(k) matching program and our profit sharing program.
- (3) Mr. Ergen's annual base salary was increased to \$900,000, effective July 1, 2011. Mr. Ergen's "All Other Compensation" also includes a tax preparation payment. In addition, Mr. Ergen's, "All Other Compensation" includes \$902,413 for Mr. Ergen's personal use (and on certain occasions for the personal use by members of his family and other guests) of corporate aircraft during the year ended December 31, 2013. Of the \$902,413 attributed to personal use of corporate aircraft, \$156,438 was attributed to tax gross-up payments that related to personal use of corporate aircraft by Mr. Ergen and his family members and guests. We calculated the value of personal use of corporate aircraft based upon the incremental cost of such usage to DISH Network. Since both the Corporation and EchoStar use the corporate aircraft and Mr. Ergen is an employee of both the Corporation and EchoStar, certain incremental costs related to personal use of corporate aircraft by Mr. Ergen and his family members and guests are allocated between the Corporation and EchoStar.
- (4) Mr. Shull was promoted to Executive Vice President and Chief Commercial Officer of the Corporation on March 7, 2013 and his annual base salary was increased to \$300,000 effective March 7, 2013. As announced by DISH Network on April 28, 2014, Mr. Shull will begin a six-month leave of absence on May 31, 2014.
- (5) Mr. Clayton replaced Mr. Ergen as President and Chief Executive Officer of the Corporation on June 20, 2011. Mr. Clayton's annual base salary was increased to \$1 million effective March 2, 2013.
- (6) The annual base salaries for Mr. Han and Mr. Olson were increased to \$500,000 and \$360,000, respectively, effective March 2, 2013.

[Table of Contents](#)**Grant of Plan-Based Awards**

The following table provides information on equity awards in 2013 for the Named Executive Officers.

Name	Grant Date	Date of Compensation Committee Approval	Estimated Future Payouts Under Non-Equity Incentive Plan Awards			Estimated Future Payouts Under Equity Incentive Plan Awards			All Other Stock Awards: Number of Shares of Stock or Units (1)	All Other Option Awards: Number of Securities Underlying Options (#)	Exercise or Base Price of Option Awards (\$/sh)	Grant Date Fair Value of Stock and Option Awards (2)
			Threshold (\$)	Target (\$)	Maximum (\$)	Threshold (#)	Target (#)	Maximum (#)				
Charles W. Ergen	01/01/2013	11/30/2012	\$ —	\$ —	\$ —	—	—	30,000	—	—	\$ —	\$ 196,488
	01/01/2013	11/30/2012	\$ —	\$ —	\$ —	—	—	60,000	—	—	\$ 36.40	\$ 218,400
	04/01/2013	11/30/2012	\$ —	\$ —	\$ —	—	—	—	110	—	\$ —	\$ —
David M. Shull	01/01/2013	11/30/2012	\$ —	\$ —	\$ —	—	—	15,000	—	—	\$ —	\$ 109,200
	01/01/2013	11/30/2012	\$ —	\$ —	\$ —	—	—	30,000	—	—	\$ 36.40	\$ 98,244
	04/01/2013	03/07/2013	\$ —	\$ —	\$ —	—	—	15,000	—	—	\$ —	\$ 114,120
	04/01/2013	03/07/2013	\$ —	\$ —	\$ —	—	—	30,000	—	—	\$ 38.04	\$ 101,100
	04/01/2013	03/07/2013	\$ —	\$ —	\$ —	—	—	—	—	50,000	\$ 38.04	\$ 724,255
	04/01/2013	11/30/2012	\$ —	\$ —	\$ —	—	—	—	110	—	\$ —	\$ —
Joseph P. Clayton	01/01/2013	11/30/2012	\$ —	\$ —	\$ —	—	—	30,000	—	—	\$ —	\$ 196,488
	01/01/2013	11/30/2012	\$ —	\$ —	\$ —	—	—	60,000	—	—	\$ 36.40	\$ 218,400
	04/01/2013	11/30/2012	\$ —	\$ —	\$ —	—	—	—	110	—	\$ —	\$ —
Bernard L. Han	01/01/2013	11/30/2012	\$ —	\$ —	\$ —	—	—	30,000	—	—	\$ —	\$ 196,488
	01/01/2013	11/30/2012	\$ —	\$ —	\$ —	—	—	60,000	—	—	\$ 36.40	\$ 218,400
	04/01/2013	11/30/2012	\$ —	\$ —	\$ —	—	—	—	110	—	\$ —	\$ —
Robert E. Olson	01/01/2013	11/30/2012	\$ —	\$ —	\$ —	—	—	30,000	—	—	\$ —	\$ 196,488
	01/01/2013	11/30/2012	\$ —	\$ —	\$ —	—	—	60,000	—	—	\$ 36.40	\$ 218,400
	04/01/2013	11/30/2012	\$ —	\$ —	\$ —	—	—	—	110	—	\$ —	\$ —

(1) The amounts reported in the "All Other Stock Awards" column represent Class A Shares awarded to the eligible NEOs during 2013 pursuant to our profit sharing program.

(2) These amounts include both performance and non-performance based awards. The grant date fair values for performance awards are based on the probable outcome of the performance conditions under the awards and do not necessarily reflect the amount of compensation actually realized or that may be realized.

Assuming achievement of all performance conditions underlying the performance awards included in this column, the total grant date fair values would be as follows:

	2013 Performance Awards
Charles W. Ergen	\$ 2,074,440
David M. Shull	\$ 2,113,320
Joseph P. Clayton	\$ 2,074,440
Bernard L. Han	\$ 2,074,440
Robert E. Olson	\$ 2,074,440

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Assumptions used in the calculation of grant date fair values are included in Note 15 to the Corporation's audited financial statements for the fiscal year ended December 31, 2013, included in the Corporation's Annual Report on Form 10-K filed with the SEC on February 21, 2014.

Outstanding Equity Awards at Fiscal Year-End

Option Awards

Stock Awards

AA0398

001317

Name	Number of Securities Underlying Unexercised Options (#) Exercisable	Number of Securities Underlying Unexercised Options (#) Unexercisable	Equity Incentive Plan Awards: Number of Securities Underlying Unexercised Options (#)	Option Exercise Price (\$)	Option Expiration Date	Number of Shares or Units of Stock That Have Not Vested (#)	Market Value of Shares or Units of Stock That Have Not Vested (\$)	Equity Incentive Plan Awards: Number of Unearned Shares, Units or Other Rights That Have Not Vested (#)	Equity Incentive Plan Awards: Market or Payout Value of Unearned Shares, Units or Other Rights That Have Not Vested (1) (\$)
Charles W. Ergen	100,000	—	—	\$ 28.06	12/31/2014 (2)	—	\$ —	\$ —	
	—	—	900,000	\$ 19.81	09/30/2015 (3)	—	\$ —	\$ —	
	—	—	180,000	\$ 24.96	09/30/2015 (2)	—	\$ —	\$ —	
	495,000	—	—	\$ 6.32	03/31/2017 (3)	—	\$ —	\$ —	
	100,000	—	—	\$ 23.96	03/31/2018 (3)	—	\$ —	\$ —	
	330,000	—	870,000	\$ 27.90	09/30/2021 (3)	—	\$ —	\$ —	
	—	—	60,000	\$ 36.40	01/01/2023	—	\$ —	30,000(7) \$ 1,737,600	
David M. Shull	—	—	30,000	\$ 19.55	03/31/2015 (3)	—	\$ —	\$ —	
	—	—	6,000	\$ 24.69	03/31/2015 (2)	—	\$ —	\$ —	
	10,002	—	—	\$ 6.32	12/31/2008 (3)	—	\$ —	\$ —	
	—	15,000	—	\$ 21.59	03/31/2021 (3)	—	\$ —	\$ —	
	—	20,000	—	\$ 32.16	03/31/2022 (3)	—	\$ —	\$ —	
	—	—	30,000	\$ 36.40	01/01/2023	—	\$ —	15,000(7) \$ 868,800	
	—	—	30,000	\$ 38.04	01/01/2023	—	\$ —	15,000(8) \$ 868,800	
	—	50,000	—	\$ 38.04	04/01/2023	—	\$ —	\$ —	
Joseph P. Clayton	600,000	—	—	\$ 27.90	06/30/2021 (3)	—	\$ —	95,000(4) \$ 5,502,400	
	—	—	60,000	\$ 36.40	01/01/2023	—	\$ —	30,000(7) \$ 1,737,600	
Bernard L. Han	—	—	90,000	\$ 22.45	09/30/2016 (3)	—	\$ —	30,000(5) \$ 1,737,600	
	—	—	18,000	\$ 27.63	09/30/2016 (2)	—	\$ —	6,000(2) \$ 298,320	
	90,000	—	—	\$ 6.32	03/31/2017 (3)	—	\$ —	\$ —	
	60,000	60,000	—	\$ 6.34	03/31/2019 (3)	—	\$ —	\$ —	
	—	—	600,000	\$ 15.38	06/30/2020 (3)	—	\$ —	200,000(6) \$ 11,584,000	
	40,000	60,000	—	\$ 21.59	03/31/2021 (3)	—	\$ —	\$ —	
	—	—	60,000	\$ 36.40	01/01/2023	—	\$ —	30,000(7) \$ 1,737,600	
Robert E. Olson	—	20,000	—	\$ 11.44	06/30/2019 (3)	—	\$ —	\$ —	
	11,000	10,000	—	\$ 15.38	06/30/2020 (3)	—	\$ —	\$ —	
	—	—	60,000	\$ 36.40	01/01/2023	—	\$ —	30,000(7) \$ 1,737,600	

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- (1) Amount represents the number of unvested, performance-based restricted stock units multiplied by \$57.92 or \$49.72, the closing market prices of DISH Network's and EchoStar's Class A Shares, respectively, on December 31, 2013.
- (2) Amounts represent outstanding awards received by our NEOs from EchoStar as a result of the Spin-off (as defined below).
- (3) On December 2, 2012, we declared a dividend of \$1.00 per share on our outstanding Class A Shares and Class B Shares. The dividend was paid in cash on December 28, 2012 to shareholders of record on December 14, 2012. In light of such dividend, our Board of Directors and Compensation Committee, which administers our stock incentive plans, determined to adjust the exercise price of certain stock options issued under the plans by decreasing the exercise price by up to \$1.00 per share; provided that the exercise price of eligible stock options will not be reduced below \$1.00. As a result of this adjustment, the exercise price of these stock options was decreased by \$0.77 per share during January 2013.
- (4) Restricted stock awarded on June 30, 2011 under DISH Network's Stock Incentive Plans.
- (5) Restricted stock awarded on September 30, 2006 under DISH Network's Stock Incentive Plans.
- (6) Restricted stock awarded on June 30, 2010 under DISH Network's Stock Incentive Plans.
- (7) Restricted stock awarded on January 1, 2013 under DISH Network's Stock Incentive Plans.
- (8) Restricted stock awarded on April 1, 2013 under DISH Network's Stock Incentive Plans.

Option Exercises and Stock Vested

Name	Option Awards		Stock Awards	
	Number of Shares Acquired on Exercise (#)	Value Realized on Exercise (1) (\$)	Number of Shares Acquired on Vesting (#)	Value Realized on Vesting (\$)
Charles W. Ergen	—	\$ —	—	\$ —
David M. Shull	87,500	\$ 1,618,250	—	\$ —
Joseph P. Clayton	—	\$ —	125,000	\$ 4,922,400

Bernard L. Han	635,000	\$	16,890,939	—	\$	—
Robert E. Olson	120,000	\$	3,622,956	—	\$	—

- (1) The value realized on exercise is computed by multiplying the difference between the exercise price of the stock option and the market price of the Class A Shares on the date of exercise by the number of shares with respect to which the option was exercised.

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Potential Payments Upon Termination Following a Change in Control

As discussed in “Compensation Discussion and Analysis” above, our standard form of non-performance based option agreement given to executive officers includes acceleration of vesting upon a change in control of DISH Network for those executive officers that are terminated by us or the surviving entity, as applicable, for any reason other than for cause during the twenty-four month period following such change in control.

Generally a change in control is deemed to occur upon: (i) a transaction or a series of transactions the result of which is that any person (other than Mr. Ergen, our controlling shareholder, or a related party) individually owns more than fifty percent (50%) of the total equity interests of either (A) DISH Network or (B) the surviving entity in any such transaction(s) or a controlling affiliate of such surviving entity in such transaction(s); and (ii) the first day on which a majority of the members of the Board of Directors of DISH Network are not continuing directors.

Assuming a change in control were to have taken place as of December 31, 2013, and the executives were terminated by DISH Network or the surviving entity at such date, the estimated benefits that would have been provided are as follows:

Name	Maximum Value of Accelerated Vesting of Options
Charles W. Ergen (1)	\$ —
David M. Shull	\$ 2,054,150
Joseph P. Clayton (1)	\$ —
Bernard L. Han	\$ 6,820,900
Robert E. Olson	\$ 1,355,000

- (1) The value of potentially accelerated unvested options is zero because Mr. Ergen and Mr. Clayton did not have any unvested non-performance based options as of December 31, 2013.

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DIRECTOR COMPENSATION

The following table sets forth the cash and noncash compensation for the fiscal year ended December 31, 2013 for each of our nonemployee directors. Our employee directors are not compensated for their service as directors and, consequently, are not included in the table.

Fees Earned or Paid in Cash	Stock Awards	Option Awards (3)	Non-Equity Incentive Plan Compensation	Change in Pension Value and Nonqualified Deferred Compensation Earnings	All Other Compensation	Total
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						001319

Name	(\\$)	(\\$)	(\\$)	(\\$)	(\\$)	(\\$)	(\\$)
George R. Brokaw (1)	\$ 35,250	\$ —	\$ —	\$ —	\$ —	\$ —	\$ 35,250
Steven R. Goodbarn	\$ 107,500	\$ —	\$ 50,145	\$ —	\$ —	\$ —	\$ 157,645
Charles M. Lillis (2)	\$ 17,000	\$ —	\$ —	\$ —	\$ —	\$ —	\$ 17,000
Tom A. Ortolf	\$ 99,000	\$ —	\$ 50,145	\$ —	\$ —	\$ —	\$ 149,145

- (1) Mr. Brokaw was appointed as an independent member of the Board effective October 7, 2013.
- (2) Mr. Lillis was appointed as an independent member of the Board effective November 5, 2013. Mr. Lillis' fees do not include any amounts for his service on the Special Litigation Committee (as defined below) during 2013, which he joined on December 9, 2013.
- (3) The amounts reported in the "Option Awards" column reflect the aggregate grant date fair values. Assumptions used in the calculation of these amounts are included in Note 15 to the Corporation's audited financial statements for the fiscal year ended December 31, 2013, included in the Corporation's Annual Report on Form 10-K filed with the SEC on February 21, 2014.

On June 30, 2013, Mr. Goodbarn and Mr. Ortolf were each granted an option to acquire 5,000 Class A Shares at an exercise price of \$42.52 per share. Options granted under our 2001 Director Plan are 100% vested upon issuance. Thus, the amount recognized for financial statement reporting purposes and the full grant date fair value are the same.

Standard Nonemployee Director Compensation Arrangements

We use a combination of cash and equity compensation to attract and retain qualified candidates to serve on our Board.

Cash Compensation. Each nonemployee director receives an annual retainer of \$60,000 which is paid in equal quarterly installments; provided such person is a member of the Board on the last day of the applicable calendar quarter. Our nonemployee directors also receive \$1,000 for each meeting attended in person and \$500 for each meeting attended by telephone. Additionally, the chairperson of each committee of the Board receives a \$5,000 annual retainer, which is paid in equal quarterly installments; provided such person is the chairperson of the committee on the last day of the applicable calendar quarter. Furthermore, our nonemployee directors receive: (i) reimbursement, in full, of reasonable travel expenses related to attendance at all meetings of the Board of Directors and its committees and (ii) reimbursement, in full, of reasonable expenses related to educational activities undertaken in connection with service on the Board of Directors and its committees.

In July 2013, the Board approved a one-time retainer of \$25,000 for members of its special transaction committee (the "Special Transaction Committee") established in connection with the potential purchase by L-Band Acquisition, LLC, a wholly-owned subsidiary of DISH Network, of substantially all of the assets of LightSquared LP and certain of its subsidiaries. Mr Goodbarn served as a member of the Special Transaction Committee during 2013. In addition, in September 2013, the Board approved a \$5,000 monthly retainer for the members of its special litigation committee (the "Special Litigation Committee") established in connection with the litigation discussed in Part I of

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the 10-K filed with the SEC on February 21, 2014 under the caption "Item 3. Legal Proceedings — Lightsquared Transaction Shareholder Derivative Actions." Messrs. Ortolf, Brokaw and Lillis served as members of the Special Litigation Committee during 2013.

Equity Compensation. We have adopted a nonemployee director stock option plan, which we refer to as the 2001 Director Plan. The purpose of the 2001 Director Plan is to advance our interests through the motivation, attraction and retention of highly-qualified nonemployee directors. Upon election to our Board, our nonemployee directors are granted an option to acquire a certain number of our Class A Shares under our 2001 Nonemployee Director Stock Option Plan (our "2001 Director Plan") effective the first day of the next calendar quarter. Options granted under our 2001 Director Plan are 100% vested upon issuance and have a term of five years. We also have the discretion to grant each continuing nonemployee director an option to acquire Class A Shares annually, and we have historically granted each continuing nonemployee director an option to acquire 5,000 Class A Shares in recent years.

Our nonemployee directors do not hold any stock awards except those granted to the nonemployee directors pursuant to our 2001 Director Plan. We have granted the following options to our nonemployee directors under such plan:

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Name	Option Awards		
	Number of Securities Underlying Unexercised Options (#) Exercisable	Option Exercise Price (\$)	Option Expiration Date
Steven R. Goodbarn	5,000	\$ 27.78	6/30/2017(1)
	5,000	\$ 42.52	6/30/2018
<i>Total Options Outstanding at December 31, 2013</i>	<u>10,000</u>		
Tom A. Ortolf	10,000	\$ 27.90	6/30/2016(1)
	5,000	\$ 27.78	6/30/2017(1)
	5,000	\$ 42.52	6/30/2018
<i>Total Options Outstanding at December 31, 2013</i>	<u>20,000</u>		

- (1) On December 2, 2012, we declared a dividend of \$1.00 per share on our outstanding Class A Shares and Class B Shares. The dividend was paid in cash on December 28, 2012 to shareholders of record on December 14, 2012. In light of such dividend, our Board determined to adjust the exercise price of certain stock options issued to nonemployee directors under the plans by decreasing the exercise price by up to \$1.00 per share; provided that the exercise price of eligible stock options will not be reduced below \$1.00. As a result of this adjustment, the exercise price of these stock options was decreased by \$0.77 per share during January 2013.

On January 1, 2014, Mr. Brokaw and Mr. Lillis were each granted an option to acquire 7,500 Class A Shares under our 2001 Director Plan in connection with their election to the Board in 2013.

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Item 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

Equity Compensation Plan Information

We have two employee stock incentive plans: our 1999 Stock Incentive Plan and 2009 Stock Incentive Plan (the "Stock Incentive Plans"). We adopted the Stock Incentive Plans to provide incentives to attract and retain executive officers and other key employees. While awards remain outstanding under our 1999 Stock Incentive Plan, we no longer grant equity awards pursuant to this plan. The Stock Incentive Plans are administered by our Compensation Committee.

Awards available under the Stock Incentive Plans include: (i) common stock purchase options; (ii) stock appreciation rights; (iii) restricted stock and restricted stock units; (iv) performance awards; (v) dividend equivalents; and (vi) other stock-based awards. As of December 31, 2013, 68,797,894 of our Class A Shares were available for issuance under the 2009 Stock Incentive Plan. Our authorization to grant new awards under the 1999 Stock Incentive Plan has expired. The Compensation Committee retains discretion, subject to plan limits, to, among other things, modify the terms of outstanding awards and to adjust the price of awards.

As of December 31, 2013, there were outstanding options to purchase 14,058,574 Class A Shares and 1,943,497 outstanding restricted stock units under the Stock Incentive Plans. These awards generally vest at the rate of 20% per year commencing one year from the date of grant. The exercise prices of these options, which have generally been equal to or greater than the fair market value of our Class A Shares at the date of grant, range from less than \$1.00 to \$50.00 per Class A Share.

On December 2, 2012, we declared a dividend of \$1.00 per share on our outstanding Class A Shares and Class B Shares. The dividend was paid in cash on December 28, 2012 to shareholders of record on December 14, 2012. In light of such dividend, the Board of Directors and the Compensation Committee, which administers our Stock Incentive Plans, determined to adjust the exercise price of certain stock options issued under the plans by decreasing the exercise price by up to \$1.00 per share; provided, that the exercise price of eligible stock options will not be reduced below \$1.00. As a result of this adjustment, the exercise price of these stock options was decreased by \$0.77 per share during January 2013.

As previously discussed in Compensation Discussion & Analysis, we have adopted the 2005 LTIP, the 2008 LTIP, and the 2013 LTIP under DISH Network's Stock Incentive Plans.

In addition to the 2001 Director Plan and the Stock Incentive Plans, during 2002 we adopted and our shareholders approved our 2002 Class B Chairman Stock Option Plan, under which we have reserved 20 million Class B Shares for issuance. The Class B Shares available for issuance under the 2002 Class B Chairman Stock Option Plan are not included in the table below. No options have been granted to date under the 2002 Class B Chairman Stock Option Plan.

The following table sets forth information regarding outstanding stock options and restricted stock unit awards and the Class A Shares reserved for future issuance under our equity compensation plans as of December 31, 2013:

Plan Category	Number of Securities to be Issued Upon Exercise of Outstanding Options, Warrants and Rights (a)	Weighted-Average Exercise Price of Outstanding Options, Warrants and Rights (b) (1)	Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans (excluding securities reflected in column (a)) (c)
Equity compensation plans approved by security holders	16,002,071	\$ 21.71	69,702,894
Equity compensation plans not approved by security holders	—	—	—
Total	<u>16,002,071</u>	<u>\$ 21.71</u>	<u>69,702,894</u>

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- (1) The calculation of the weighted-average exercise price of outstanding options, warrants and rights excludes restricted stock units that provide for the issuance of shares of common stock upon vesting because these awards do not require payment of an exercise price in order to obtain the underlying shares upon vesting.

Equity Security Ownership

The following table sets forth, to the best of our knowledge, the beneficial ownership of our voting securities as of the close of business on April 25, 2014 by: (i) each person known by us to be the beneficial owner of more than five percent of any class of our voting securities; (ii) each of our directors; (iii) our Named Executive Officers; and (iv) all of our directors and executive officers as a group. Unless otherwise indicated, each person listed in the following table (alone or with family members) has sole voting and dispositive power over the shares listed opposite such person's name.

Name (1)	Amount and Nature of Beneficial Ownership	Percentage of Class
Class A Common Stock:		
Charles W. Ergen (2), (3)	224,634,999	50.7%
Cantey M. Ergen (4)	223,649,999	50.6%
Putnam Investments, LLC (5)	21,312,193	9.7%
William R. Gouger (6)	17,000,202	7.2%
JPMorgan Chase & Co. (7)	15,848,017	7.2%
Dodge & Cox (8)	15,174,269	6.9%
Invesco Ltd. (9)	13,477,974	6.1%
James DeFranco (10)	4,666,206	2.1%
David K. Moskowitz (11)	844,532	*
Joseph P. Clayton (12)	685,384	*
Bernard L. Han (13)	277,191	*
Carl E. Vogel (14)	211,438	*
Tom A. Ortolf (15)	80,200	*
Steven R. Goodbarn (16)	15,000	*

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Robert E. Olson (17)	11,716	*
David M. Shull (18)	11,135	*
George R. Brokaw (19)	7,500	*
Charles M. Lillis (20)	7,500	*
All Directors and Executive Officers as a Group (19 persons) (21)	232,451,456	54.5%
Class B Common Stock:		
Charles W. Ergen	221,442,395	92.9%
Cantey M. Ergen	221,442,395	92.9%
Trusts (22)	16,992,813	7.1%
All Directors and Executive Officers as a Group (19 persons) (21)	221,442,395	92.9%

* Less than 1%.

- Except as otherwise noted below, the address of each such person is 9601 S. Meridian Blvd., Englewood, Colorado 80112. As of the close of business on April 25, 2014, there were 220,574,658 outstanding Class A Shares and 238,435,208 outstanding Class B Shares.
- Mr. Ergen is deemed to own beneficially all of the Class A Shares owned by his spouse, Cantey M. Ergen. Mr. Ergen's beneficial ownership includes: (i) 2,144,511 Class A Shares; (ii) 19,549 Class A Shares held in the Corporation's 401(k) Plan; (iii) 985,000 Class A Shares subject to employee stock options that are either currently exercisable or may become exercisable within 60 days of April 25, 2014; (iv) 235 Class A Shares held by Mrs. Ergen; (v) 1,989 Class A Shares held in the 401(k) Plan by Mrs. Ergen; (vi) 14,320 Class A Shares held as custodian for Mr. Ergen's children; (vii) 27,000 Class A Shares held by a charitable foundation for which Mr. Ergen is an officer; and (viii) 221,442,395 Class A Shares issuable upon conversion of Mr. Ergen's Class B Shares. Mr. Ergen has sole voting and dispositive power with respect to 201,826,858 Class B Shares. Mr. Ergen's beneficial ownership of Class A Shares excludes 16,992,813 Class A Shares issuable upon conversion of Class B Shares held by certain trusts established by Mr. Ergen for the benefit of his family.

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- Because each Class B Share is entitled to 10 votes per share, Mr. Ergen owns beneficially equity securities of the Corporation representing approximately 85.1% of the voting power of the Corporation (assuming no conversion of the Class B Shares and after giving effect to the exercise of Mr. Ergen's options that are either currently exercisable or may become exercisable within 60 days of April 25, 2014). Mr. Ergen's beneficial ownership includes: (i) 9,192,670 Class B Shares owned beneficially by Mrs. Ergen solely by virtue of her position as trustee of the Ergen Four-Year 2010 DISH GRAT; and (iii) 10,422,867 Class B Shares owned beneficially by Mrs. Ergen solely by virtue of her position as trustee of the Ergen Five-Year 2010 DISH GRAT. Mr. Ergen's beneficial ownership excludes 16,992,813 Class A Shares issuable upon conversion of Class B Shares currently held by certain trusts established by Mr. Ergen for the benefit of his family. These trusts beneficially own approximately 7.2% of our total equity securities and possess approximately 6.5% of the total voting power.
- Mrs. Ergen beneficially owns all of the Class A Shares owned by her spouse, Mr. Ergen, except for 985,000 Class A Shares subject to employee stock options that are either currently exercisable or may become exercisable within 60 days of April 25, 2014.
- The address of Putnam Investments, LLC ("Putnam Investments") is One Post Office Square, Boston, Massachusetts 02109. Of the Class A Shares beneficially owned, Putnam Investments has sole voting power as to 229,429 Class A Shares and sole dispositive power as to 21,312,193 Class A Shares. The foregoing information is based solely upon a Schedule 13G filed by Putnam Investment with the SEC on February 14, 2014.
- The address of Mr. Gouger is 5701 S. Santa Fe Drive, Littleton, CO 80123. Mr. Gouger's beneficial ownership includes: (i) 140 Class A Shares; (ii) 7,249 Class A Shares owned beneficially indirectly by Mr. Gouger in his 401(k) Plan; (iii) 4,245,151 Class B Shares owned beneficially by Mr. Gouger solely by virtue of his position as trustee of certain trusts established by Charles W. Ergen for the benefit of his family; and (iv) 12,747,662 Class B Shares owned beneficially by Mr. Gouger solely by virtue of his position as trustee of the Ergen 2010 Family Trust.
- The address of JPMorgan Chase & Co. ("JPMorgan Chase") is 270 Park Avenue, New York, New York 10017. Of the Class A Shares beneficially owned, JPMorgan Chase has sole voting power as to 14,948,476 Class A Shares and sole dispositive power as to 15,598,979 Class A Shares. In addition, of the Class A Shares beneficially owned, JPMorgan Chase has shared voting power as to 207,717 Class A Shares and shared dispositive power as to 249,038 Class A Shares. The foregoing information is based solely upon a Schedule 13G filed by JPMorgan Chase with the SEC on January 28, 2014.
- The address of Dodge & Cox is 555 California Street, 40th Floor, San Francisco, California 94104. Of the Class A Shares beneficially owned, Dodge & Cox has sole voting power as to 14,274,702 Class A Shares and sole dispositive power as to 15,174,269 Class A Shares. The foregoing information is based solely upon a Schedule 13G filed by Dodge & Cox with the SEC on February 13, 2014.
- The address of Invesco Ltd. is 1555 Peachtree Street NE, Atlanta, Georgia 30309. Of the Class A Shares beneficially owned, Invesco Ltd. has sole voting power as to 13,182,496 Class A Shares and sole dispositive power as to 13,477,974 Class A Shares. The foregoing information is based solely upon a Schedule 13G filed by Invesco Ltd. with the SEC on February 10, 2014.

- (10) Mr. DeFranco's beneficial ownership includes: (i) 1,129,438 Class A Shares; (ii) 19,549 Class A Shares held in the 401(k) Plan; (iii) 300,000 Class A Shares subject to employee stock options that are either currently exercisable or may become exercisable within 60 days of April 25, 2014; (iv) 50,000 Class A Shares held by Mr. DeFranco in an irrevocable trust for the benefit of his children and grandchildren; (v) 12,160 Class A Shares held by Mr. DeFranco as custodian for his children; (vi) 1,250,000 Class A Shares controlled by Mr. DeFranco as general partner of a limited partnership; and (vii) 1,905,059 Class A Shares held by Mr. DeFranco as a general partner of a different limited partnership.
- (11) Mr. Moskowitz's beneficial ownership includes: (i) 127,779 Class A Shares; (ii) 18,741 Class A Shares held in the 401(k) Plan; (iii) 660,000 Class A Shares subject to employee stock options that are either currently exercisable or may become exercisable within 60 days of April 25, 2014; (iv) 1,328 Class A Shares held as custodian for his children; (v) 8,184 Class A Shares held as trustee for Mr. Ergen's children; and (vi) 28,500 Class A Shares held by a charitable foundation for which Mr. Moskowitz is a member of the board of directors.
- (12) Mr. Clayton's beneficial ownership includes: (i) 85,064 Class A Shares; (ii) 320 Class A Shares held in the 401(k) Plan; and (iii) 600,000 Class A Shares subject to employee stock options that are either currently exercisable or may become exercisable within 60 days of April 25, 2014.

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- (13) Mr. Han's beneficial ownership includes: (i) 6,170 Class A Shares; (ii) 1,021 Class A Shares held in the 401(k) Plan; and (iii) 270,000 Class A Shares subject to employee stock options that are either currently exercisable or may become exercisable within 60 days of April 25, 2014.
- (14) Mr. Vogel's beneficial ownership includes: (i) 10,165 Class A Shares (including 10,000 shares held in an account that is subject to a margin loan); (ii) 1,273 Class A Shares held in the 401(k) Plan; and (iii) 200,000 Class A Shares subject to employee stock options that are either currently exercisable or may become exercisable within 60 days of April 25, 2014.
- (15) Mr. Ortolf's beneficial ownership includes: (i) 20,000 Class A Shares subject to nonemployee director stock options that are either currently exercisable or may become exercisable within 60 days of April 25, 2014; (ii) 200 Class A Shares held in the name of one of his children; and (iii) 60,000 Class A Shares held by a partnership of which Mr. Ortolf is a partner and are held as collateral for a margin account.
- (16) Mr. Goodbarn's beneficial ownership includes: (i) 5,000 Class A Shares; and (ii) 10,000 Class A Shares subject to nonemployee director stock options that are either currently exercisable or may become exercisable within 60 days of April 25, 2014.
- (17) Mr. Olson's beneficial ownership includes: (i) 716 Class A Shares held in the 401(k) Plan; and (ii) 11,000 Class A Shares subject to employee stock options that are either currently exercisable or may become exercisable within 60 days of April 25, 2014.
- (18) Mr. Shull's beneficial ownership includes: (i) 1,133 Class A Shares held in the 401(k) Plan; and (ii) 10,002 Class A Shares subject to employee stock options that are either currently exercisable or may become exercisable within 60 days of April 25, 2014.
- (19) Mr. Brokaw's beneficial ownership includes 7,500 Class A Shares subject to nonemployee director stock options that are either currently exercisable or may become exercisable within 60 days of April 25, 2014.
- (20) Mr. Lillis' beneficial ownership includes 7,500 Class A Shares subject to nonemployee director stock options that are either currently exercisable or may become exercisable within 60 days of April 25, 2014.
- (21) Includes: (i) 3,515,664 Class A Shares; (ii) 71,144 Class A Shares held in the 401(k) Plan; (iii) 4,059,002 Class A Shares subject to employee and nonemployee director stock options that are either currently exercisable or may become exercisable within 60 days of April 25, 2014; (iv) 3,215,059 Class A Shares held in partnerships; (v) 221,442,395 Class A Shares issuable upon conversion of Class B Shares; (vi) 92,692 Class A Shares held in the name of, or in trust for, children and other family members; and (vii) 55,500 Class A Shares held by charitable foundations. Class A Shares and Class B Shares beneficially owned by both Mr. and Mrs. Ergen are only included once in calculating the aggregate number of shares owned by directors and executive officers as a group.
- (22) Held by certain trusts established by Mr. Ergen for the benefit of his family.

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Item 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

Our Board has adopted a written policy for the review and approval of transactions involving DISH Network and related parties, such as directors, executive officers (and their immediate family members) and EchoStar. In order to identify these transactions, we distribute questionnaires to our officers and directors on a quarterly basis. Our General Counsel then directs the appropriate review of all potential related-party transactions and generally schedules their presentation at the next regularly-scheduled meetings of the Audit Committee and the Board of Directors. The Audit Committee and the Board of Directors must approve these transactions, with all interested parties abstaining from the vote. Once each calendar year, the Audit Committee and the Board of Directors undertake a review of all recurring potential related-party transactions. Both the Audit Committee and the Board of Directors must approve the continuation of each such transaction, with all interested parties abstaining from the vote.

involving EchoStar are subject to the approval of a committee of the non-interlocking directors or in certain circumstances non-interlocking management.

Related Party Transactions with EchoStar Corporation

On January 1, 2008, we completed the spin-off of EchoStar (the “Spin-off”), which was previously our subsidiary. Following the Spin-off, DISH Network and EchoStar have operated as separate publicly-traded companies and, except for the Satellite and Tracking Stock Transaction described below, neither entity has any ownership interest in the other. However, a substantial majority of the voting power of the shares of both companies is owned beneficially by Charles W. Ergen, our Chairman, and by certain trusts established by Mr. Ergen for the benefit of his family.

EchoStar is our primary supplier of set-top boxes and digital broadcast operations and a supplier of a majority of our transponder capacity. Generally, the amounts we pay EchoStar for products and services are based on pricing equal to EchoStar’s cost plus a fixed margin (unless noted differently below), which will vary depending on the nature of the products and services provided.

In connection with and following the Spin-off, we and EchoStar have entered into certain agreements pursuant to which we obtain certain products, services and rights from EchoStar, EchoStar obtains certain products, services and rights from us, and we and EchoStar have indemnified each other against certain liabilities arising from our respective businesses. We also may enter into additional agreements with EchoStar in the future. The following is a summary of the terms of our principal agreements with EchoStar that may have an impact on our financial condition and results of operations.

Amended and Restated T2 Development Agreement. On August 29, 2013, we and EchoStar entered into a development agreement (the “T2 Development Agreement”) with respect to the T2 satellite, by which EchoStar reimburses us for amounts we pay pursuant to an authorization to proceed (the “T2 ATP”) with Space Systems/Loral, Inc. (“SS/L”) related to the T2 satellite construction contract. In exchange, we granted EchoStar a right of first refusal and right of first offer to purchase our rights in T2 during the term of the T2 Development Agreement. In addition, under certain circumstances EchoStar had a right to receive a portion of the sale proceeds in the event T2 is sold to a third party during or following the term of the T2 Development Agreement. Unless sooner terminated in accordance with its terms, the term of the T2 Development Agreement expired on the later of: (i) December 31, 2013, or (ii) the date on which the T2 ATP expires.

During the fourth quarter 2013, we and EchoStar amended and restated the T2 Development Agreement (the “Amended and Restated T2 Development Agreement”), which supersedes and replaces the T2 Development Agreement. Under the Amended and Restated T2 Development Agreement, EchoStar will continue to reimburse us for amounts we pay pursuant to the T2 ATP with SS/L. In exchange, we granted EchoStar the right and option to purchase our rights in T2 for the sum of \$55 million, exercisable at any time between January 1, 2014 and (i) the expiration or earlier termination of the Amended and Restated T2 Development Agreement or (ii) December 19, 2014, whichever occurs sooner. Unless sooner terminated in accordance with its terms, the term of the Amended and Restated T2 Development Agreement expires on the later of: (a) December 19, 2014; or (b) the date on which the T2 ATP expires. We received payments from EchoStar of approximately \$16 million under the Amended and Restated T2 Development Agreement during 2013.

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Application Development Agreement. During the fourth quarter 2012, we and EchoStar entered into a set-top box application development agreement (the “Application Development Agreement”) pursuant to which EchoStar provides us with certain services relating to the development of web-based applications for set-top boxes for a period ending on February 1, 2015. The Application Development Agreement renews automatically for successive one-year periods thereafter, unless terminated earlier by us or EchoStar at any time upon at least 90 days’ notice. The fees for services provided under the Application Development Agreement are calculated at EchoStar’s cost of providing the relevant service plus a fixed margin, which will depend on the nature of the services provided. We incurred expenses payable to EchoStar of approximately \$4 million under the Application Development Agreement during 2013.

Broadcast Agreement. Effective January 1, 2012, we and EchoStar entered into a broadcast agreement (the “2012 Broadcast Agreement”) pursuant to which EchoStar provides broadcast services to us, including teleport services such as transmission and downlinking, channel origination services, and channel management services, for the period from January 1, 2012 to December 31, 2016. The fees for services provided under the 2012 Broadcast Agreement are calculated at either: (a) EchoStar’s cost of providing the relevant service plus a fixed dollar fee, which is subject to certain adjustments; or (b) EchoStar’s cost of providing the relevant service plus a fixed margin, which will depend on the nature of the services provided. We have the ability to terminate channel origination services and channel management services for any reason and without any liability upon at least 60 days notice to EchoStar. If we terminate the teleport services provided under the 2012 Broadcast Agreement for a reason other than EchoStar’s breach, we are generally obligated to reimburse EchoStar for any direct costs EchoStar incurs related to any such termination that it cannot reasonably mitigate. We incurred expenses payable to EchoStar of approximately \$230 million under the 2012 Broadcast Agreement during 2013.

Broadcast Agreement for Certain Sports Related Programming. During May 2010, we and EchoStar entered into a broadcast agreement pursuant to which EchoStar provides certain broadcast services to us in connection with our carriage of certain sports related programming. The term of this agreement is for ten years. If we terminate this agreement for a reason other than EchoStar's breach, we are generally obligated to reimburse EchoStar for any direct costs EchoStar incurs related to any such termination that it cannot reasonably mitigate. The fees for the broadcast services provided under this agreement depend, among other things, upon the cost to develop and provide such services. We incurred expenses payable to EchoStar of approximately \$1 million under this broadcast agreement during 2013.

DISH Digital Holding L.L.C. Effective July 1, 2012, we and EchoStar formed DISH Digital Holding L.L.C. ("DISH Digital"), which is owned two-thirds by us and one-third by EchoStar and is consolidated into our financial statements beginning July 1, 2012. DISH Digital was formed to develop and commercialize certain advanced technologies. We, EchoStar and DISH Digital entered into the following agreements with respect to DISH Digital: (i) a contribution agreement pursuant to which we and EchoStar contributed certain assets in exchange for our respective ownership interests in DISH Digital; (ii) a limited liability company operating agreement, which provides for the governance of DISH Digital; and (iii) a commercial agreement pursuant to which, among other things, DISH Digital has: (a) certain rights and corresponding obligations with respect to DISH Digital's business; and (b) the right, but not the obligation, to receive certain services from us and EchoStar, respectively (the "Commercial Agreement"). DISH Digital incurred expenses payable to EchoStar of approximately \$18 million under the Commercial Agreement during 2012.

DISH Remote Access Services Agreement. Effective February 23, 2010, we entered into an agreement with EchoStar pursuant to which we receive, among other things, certain remote DVR management services. The fees for the services provided under this services agreement depend, among other things, upon the cost to develop and operate such services. This agreement has a term of five years with automatic renewal for successive one year terms. This agreement may be terminated for any reason upon at least 120 days notice to EchoStar. We incurred expenses payable to EchoStar of approximately \$2 million under the remote access services agreement during 2013.

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DISHOnline.com Services Agreement. Effective January 1, 2010, we entered into a two-year agreement with EchoStar pursuant to which we receive certain services associated with an online video portal. The fees for the services provided under this services agreement depend, among other things, upon the cost to develop and operate such services. We have the option to renew this agreement for three successive one year terms and the agreement may be terminated for any reason upon at least 120 days notice to EchoStar. In November 2013, we exercised our right to renew this agreement for a one-year period ending on December 31, 2014. We incurred expenses payable to EchoStar of approximately \$6 million under the DISHOnline.com services agreement during 2013.

Hughes Agreements.

Blockbuster Agreement. On April 26, 2011, we completed the acquisition of substantially all of the assets of Blockbuster, Inc. (the "Blockbuster Acquisition"). During the second quarter 2011, EchoStar acquired Hughes Communications, Inc. ("Hughes"). Blockbuster purchased certain broadband products and services from Hughes Network Systems, LLC ("HNS"), a wholly-owned subsidiary of Hughes, pursuant to an agreement that was entered into prior to the Blockbuster Acquisition and EchoStar's acquisition of Hughes. Subsequent to these transactions, Blockbuster entered into a new agreement with HNS which extends for a period through October 31, 2014, pursuant to which Blockbuster may continue to purchase certain broadband products and services from HNS. This agreement was terminated by Blockbuster effective February 1, 2014. Blockbuster incurred expenses payable to EchoStar of approximately \$1 million under this agreement during 2013.

DBSD North America. On March 9, 2012, we completed the acquisition of 100% of the equity of reorganized DBSD North America, Inc. ("DBSD North America"). During the second quarter 2011, EchoStar acquired Hughes. Prior to our acquisition of DBSD North America and EchoStar's acquisition of Hughes, DBSD North America and HNS entered into an agreement pursuant to which HNS provides, among other things, hosting, operations and maintenance services for DBSD North America's satellite gateway and associated ground infrastructure. This agreement renewed for a one-year period ending on February 15, 2015, and renews for two successive one-year periods unless terminated by DBSD North America upon at least 30 days notice prior to the expiration of any renewal term. We incurred expenses payable to HNS of approximately \$2 million under this agreement during 2013.

Hughes Broadband Distribution Agreement. Effective October 1, 2012, dishNET Satellite Broadband L.L.C. ("dishNET Satellite Broadband"), our wholly-owned subsidiary, and HNS entered into a Distribution Agreement (the "Distribution Agreement") pursuant to which dishNET Satellite Broadband has the right, but not the obligation, to market, sell and distribute the HNS satellite Internet service (the "Service"). dishNET Satellite Broadband pays HNS a monthly per subscriber wholesale service fee for the Service based upon the subscriber's service level, and, beginning January 1, 2014, certain volume subscription thresholds. The Distribution Agreement also provides that dishNET Satellite Broadband has the right, but not the obligation, to purchase certain broadband equipment from HNS to support the sale of the Service. The Distribution Agreement initially had a term of five years with automatic renewal for successive one year terms unless either party gives written notice of its intent not to renew to

the other party at least 180 days before the expiration of the then-current term. On February 20, 2014, dishNET Satellite Broadband and HNS amended the Distribution Agreement which, among other things, extends the initial term of the Distribution Agreement through March 1, 2024. Upon expiration or termination of the Distribution Agreement, the parties will continue to provide the Service to the then-current dishNET subscribers pursuant to the terms and conditions of the Distribution Agreement. We incurred expenses payable to HNS of approximately \$32 million under the Distribution Agreement during 2013 for services from HNS. In addition, we purchased \$69 million of broadband customer premise equipment from HNS during 2013.

Radio Access Network Agreement. On November 29, 2012, we entered into an agreement with HNS pursuant to which HNS will construct for us a ground-based satellite radio access network (“RAN”) for a fixed fee. The completion of the RAN under this agreement is expected to occur on or before November 29, 2014. This agreement generally may be terminated by us at any time for convenience. We incurred expenses payable to HNS of approximately \$10 million under this agreement during 2013.

RUS Implementation Agreement. In September 2010, DISH Broadband L.L.C. (“DISH Broadband”), our wholly-owned subsidiary, was selected by the Rural Utilities Service (“RUS”) of the United States Department of Agriculture to receive up to approximately \$14 million in broadband stimulus grant funds (the “Grant Funds”). Effective November 2011, DISH Broadband and HNS, entered into a RUS Implementation Agreement (the “RUS Agreement”) pursuant to which HNS provides certain portions of the equipment and broadband service used to

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implement our RUS program. The RUS Agreement expired during June 2013 when the Grant Funds were exhausted. We incurred expenses payable to HNS of approximately \$3 million under the RUS Agreement during 2013.

TerreStar. On March 9, 2012, we completed the acquisition of substantially all the assets of TerreStar Networks, Inc. (“TerreStar”). Prior to our acquisition of substantially all the assets of TerreStar and EchoStar’s acquisition of Hughes, TerreStar and HNS entered into various agreements pursuant to which HNS provides, among other things, hosting, operations and maintenance services for TerreStar’s satellite gateway and associated ground infrastructure. These agreements generally may be terminated by us at any time for convenience. We incurred expenses payable to HNS of approximately \$5 million under these agreements during 2013.

Intellectual Property Matters Agreement. In connection with the Spin-off, we entered into an intellectual property matters agreement with EchoStar. The intellectual property matters agreement governs our relationship with EchoStar with respect to patents, trademarks and other intellectual property. The term of the intellectual property matters agreement will continue in perpetuity. Pursuant to the intellectual property matters agreement we irrevocably assigned to EchoStar all right, title and interest in certain patents, trademarks and other intellectual property necessary for the operation of EchoStar’s set-top box business. In addition, the agreement permits EchoStar to use, in the operation of its set-top box business, certain other intellectual property currently owned or licensed by us and our subsidiaries. EchoStar granted to us and our subsidiaries a non-exclusive, non-transferable, worldwide license to use the name “EchoStar” and a portion of the assigned intellectual property as trade names and trademarks for a limited period of time in connection with the continued operation of our consumer business. The purpose of such license is to eliminate confusion on the part of customers and others during the period following the Spin-off. After the transitional period, we may not use the “EchoStar” name as a trademark, except in certain limited circumstances. Similarly, the intellectual property matters agreement provides that EchoStar will not make any use of the name or trademark “DISH Network” or any other trademark owned by us, except in certain circumstances. There were no payments under the intellectual property matters agreement during 2013. There are no payments expected under the intellectual property matters agreement in 2014.

Management Services Agreement. In connection with the Spin-off, we entered into a Management Services Agreement with EchoStar pursuant to which we have made certain of our officers available to provide services (which were primarily legal and accounting services) to EchoStar. The Management Services Agreement automatically renewed on January 1, 2013 for an additional one-year period until January 1, 2014. Effective June 15, 2013, the Management Services Agreement was terminated by EchoStar. EchoStar made payments to us based upon an allocable portion of the personnel costs and expenses incurred by us with respect to any such officers (taking into account wages and fringe benefits). These allocations were based upon the estimated percentages of time spent by our executive officers performing services for EchoStar under the Management Services Agreement. EchoStar also reimbursed us for direct out-of-pocket costs incurred by us for management services provided to EchoStar. We and EchoStar evaluated all charges for reasonableness at least annually and made any adjustments to these charges as we and EchoStar mutually agree upon. No payments were made under the Management Services Agreement during 2013.

Patent Cross-License Agreements. During December 2011, we and EchoStar entered into separate patent cross-license agreements with the same third party whereby: (i) EchoStar and such third party licensed their respective patents to each other subject to certain conditions; and (ii) we and such third party licensed our respective patents to each other subject to certain conditions (each, a “Cross-License Agreement”). Each Cross-License Agreement covers patents acquired by the respective party prior to January 1, 2017 and aggregate payments under both Cross-License Agreements total less than \$10 million. Each Cross-License Agreement also contains an option to extend each Cross-License Agreement to

include patents acquired by the respective party prior to January 1, 2022. If both options are exercised, the aggregate additional payments to such third party would total less than \$3 million. However, we and EchoStar may elect to extend our respective Cross-License Agreement independently of each other. Since the aggregate payments under both Cross-License Agreements were based on the combined annual revenues of us and EchoStar, we and EchoStar agreed to allocate our respective payments to such third party based on our respective percentage of combined total revenue. No payments were made under the Cross-License Agreements during 2013.

Product Support Agreement. In connection with the Spin-off, we entered into a product support agreement pursuant to which we have the right, but not the obligation, to receive product support from EchoStar (including certain engineering and technical support services) for all set-top boxes and related accessories that EchoStar has

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previously sold and in the future may sell to us. The fees for the services provided under the product support agreement are calculated at cost plus a fixed margin, which varies depending on the nature of the services provided. The term of the product support agreement is the economic life of such receivers and related accessories, unless terminated earlier. We may terminate the product support agreement for any reason upon at least 60 days notice. In the event of an early termination of this agreement, we are entitled to a refund of any unearned fees paid to EchoStar for the services. We incurred expenses payable to EchoStar of approximately \$37 million under the product support agreement during 2013.

Professional Services Agreement. Prior to 2010, in connection with the Spin-off, we entered into various agreements with EchoStar including the Transition Services Agreement, Satellite Procurement Agreement and Services Agreement, which all expired on January 1, 2010 and were replaced by a Professional Services Agreement. During 2009, we and EchoStar agreed that EchoStar shall continue to have the right, but not the obligation, to receive the following services from us, among others, certain of which were previously provided under the Transition Services Agreement: information technology, travel and event coordination, internal audit, legal, accounting and tax, benefits administration, program acquisition services and other support services. Additionally, we and EchoStar agreed that we shall continue to have the right, but not the obligation, to engage EchoStar to manage the process of procuring new satellite capacity for us (previously provided under the Satellite Procurement Agreement) and receive logistics, procurement and quality assurance services from EchoStar (previously provided under the Services Agreement) and other support services. The Professional Services Agreement automatically renewed on January 1, 2014 for an additional one-year period until January 1, 2015 and renews automatically for successive one-year periods thereafter, unless terminated earlier by either party upon at least 60 days notice. However, either party may terminate the Professional Services Agreement in part with respect to any particular service it receives for any reason upon at least 30 days notice. We earned revenues of approximately \$1 million from EchoStar under the Professional Services Agreement during 2013. We incurred expenses payable to EchoStar of approximately \$18 million under the Professional Services Agreement during 2013.

Real Estate Lease Agreements. We have entered into lease agreements pursuant to which we lease certain real estate from EchoStar. The rent on a per square foot basis for each of the leases is comparable to per square foot rental rates of similar commercial property in the same geographic area, and EchoStar is responsible for its portion of the taxes, insurance, utilities and maintenance of the premises. We incurred expenses payable to EchoStar of approximately \$12 million under these real estate lease agreements during 2013. The term of each lease is set forth below:

- *Inverness Lease Agreement.* The lease for certain space at 90 Inverness Circle East in Englewood, Colorado is for a period ending on December 31, 2016. This agreement can be terminated by either party upon six months prior notice.
- *Meridian Lease Agreement.* The lease for all of 9601 S. Meridian Blvd. in Englewood, Colorado is for a period ending on December 31, 2016.
- *Santa Fe Lease Agreement.* The lease for all of 5701 S. Santa Fe Dr. in Littleton, Colorado is for a period ending on December 31, 2016 with a renewal option for one additional year.
- *EchoStar Data Networks Sublease Agreement.* The sublease for certain space at 211 Perimeter Center in Atlanta, Georgia is for a period ending on October 31, 2016.
- *Gilbert Lease Agreement.* The lease for certain space at 801 N. DISH Dr. in Gilbert, Arizona is a month-to-month lease and can be terminated by either party upon 30 days prior notice. We expect this lease to terminate in 2014.
- *Cheyenne Lease Agreement.* The lease for certain space at 530 EchoStar Drive in Cheyenne, Wyoming is for a period ending on December 31, 2031.

Additionally, since the Spin-off, we have entered into lease agreements pursuant to which we lease certain real estate to EchoStar. The rent on a per square foot basis for each of the leases is comparable to per square foot rental rates of similar commercial property in the same geographic

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taxes, insurance, utilities and maintenance of the premises. We earned revenues of less than \$1 million from EchoStar under these real estate leases during 2013. The term of each lease is set forth below:

- *El Paso Lease Agreement.* During 2012, we leased certain space at 1285 Joe Battle Blvd., El Paso, Texas to EchoStar for a period ending on August 1, 2015, which also provides EchoStar with renewal options for four consecutive three-year terms.
- *American Fork Occupancy License Agreement.* During 2013, we subleased certain space at 796 East Utah Valley Drive, American Fork, Utah to EchoStar for a period ending on July 31, 2017.

Receiver Agreement. EchoStar is currently our sole supplier of set-top box receivers. Effective January 1, 2012, we and EchoStar entered into a receiver agreement (the “2012 Receiver Agreement”) pursuant to which we have the right, but not the obligation, to purchase digital set-top boxes, related accessories, and other equipment from EchoStar for the period from January 1, 2012 to December 31, 2014. We have an option, but not the obligation, to extend the 2012 Receiver Agreement for one additional year upon 180 days notice prior to the end of the term. The 2012 Receiver Agreement allows us to purchase digital set-top boxes, related accessories and other equipment from EchoStar either: (i) at a cost (decreasing as EchoStar reduces costs and increasing as costs increase) plus a dollar mark-up which will depend upon the cost of the product subject to a collar on EchoStar’s mark-up; or (ii) at cost plus a fixed margin, which will depend on the nature of the equipment purchased. Under the 2012 Receiver Agreement, EchoStar’s margins will be increased if they are able to reduce the costs of their digital set-top boxes and their margins will be reduced if these costs increase. EchoStar provides us with standard manufacturer warranties for the goods sold under the 2012 Receiver Agreement. Additionally, the 2012 Receiver Agreement includes an indemnification provision, whereby the parties indemnify each other for certain intellectual property matters. We are able to terminate the 2012 Receiver Agreement for any reason upon at least 60 days notice to EchoStar. EchoStar is able to terminate the 2012 Receiver Agreement if certain entities acquire us. We incurred expenses payable to EchoStar of approximately \$1.242 billion under the 2012 Receiver Agreement during 2013. Included in this amount are purchases of certain broadband customer premise equipment from EchoStar under the 2012 Receiver Agreement.

Remanufactured Receiver Agreement. We entered into a remanufactured receiver agreement with EchoStar pursuant to which EchoStar has the right, but not the obligation, to purchase remanufactured receivers and accessories from us at cost plus a fixed margin, which varies depending on the nature of the equipment purchased. In November 2013, we and EchoStar extended this agreement until December 31, 2014. EchoStar may terminate the remanufactured receiver agreement for any reason upon at least 60 days written notice to us. We may also terminate this agreement if certain entities acquire us. We earned revenues of less than \$1 million as a result of EchoStar’s purchases of remanufactured receivers and accessories from us in 2013.

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Satellite Capacity Agreements

Satellite Capacity Leased from EchoStar. Since the Spin-off, we have entered into certain satellite capacity agreements pursuant to which we lease certain satellite capacity on certain satellites owned or leased by EchoStar. The fees for the services provided under these satellite capacity agreements depend, among other things, upon the orbital location of the applicable satellite, the number of transponders that are leased on the applicable satellite and the length of the lease. We incurred expenses payable to EchoStar of approximately \$162 million under satellite capacity agreements during 2013. The term of each lease is set forth below:

EchoStar VI, VIII and XII. The leases for EchoStar VI, VIII and XII generally terminate upon the earlier of: (i) the end-of-life or replacement of the satellite (unless we determine to renew on a year-to-year basis); (ii) the date the satellite fails; (iii) the date the transponders on which service is being provided fails; or (iv) a certain date, which depends upon, among other things, the estimated useful life of the satellite, whether the replacement satellite fails at launch or in orbit prior to being placed into service and the exercise of certain renewal options. We generally have the option to renew each lease on a year-to-year basis through the end of the respective satellite’s life. There can be no assurance that any options to renew such agreements will be exercised. Beginning in the first quarter 2013, the leases for the EchoStar VI and VIII satellites expired in accordance with their terms and we no longer leased capacity from EchoStar on EchoStar VI and VIII. During May 2013, we began leasing capacity from EchoStar on EchoStar VIII as an in-orbit spare. Effective March 1, 2014, this lease converted to a month-to-month lease. Both parties have the right to terminate this lease **410** days notice.

EchoStar IX. We lease certain satellite capacity from EchoStar on EchoStar IX. Subject to availability, we generally have the right to continue to lease satellite capacity from EchoStar on EchoStar IX on a month-to-month basis.

EchoStar XVI. During December 2009, we entered into a transponder service agreement with EchoStar to lease all of the capacity on EchoStar XVI, a DBS satellite, after its service commencement date. EchoStar XVI was launched during November 2012 to replace EchoStar XV at the 61.5 degree orbital location and is currently in service. Under the original transponder service agreement, the initial term generally expired upon the earlier of: (i) the end-of-life or replacement of the satellite; (ii) the date the satellite failed; (iii) the date the transponder(s) on which service was being provided under the agreement failed; or (iv) ten years following the actual service commencement date. Prior to expiration of the initial term, we also had the option to renew on a year-to-year basis through the end-of-life of the satellite. Effective December 21, 2012, we and EchoStar amended the transponder service agreement to, among other things, change the initial term to generally expire upon the earlier of: (i) the end-of-life or replacement of the satellite; (ii) the date the satellite fails; (iii) the date the transponder(s) on which service is being provided under the agreement fails; or (iv) four years following the actual service commencement date. Prior to expiration of the initial term, we have the option to renew for an additional six-year period. Prior to expiration of the initial term, EchoStar also has the right, upon certain conditions, to renew for an additional six-year period. If either we or EchoStar exercise our respective six-year renewal options, then we have the option to renew for an additional five-year period prior to expiration of the then-current term. There can be no assurance that any options to renew this agreement will be exercised.

Nimiq 5 Agreement. During 2009, EchoStar entered into a fifteen-year satellite service agreement with Telesat Canada (“Telesat”) to receive service on all 32 DBS transponders on the Nimiq 5 satellite at the 72.7 degree orbital location (the “Telesat Transponder Agreement”). During 2009, EchoStar also entered into a satellite service agreement (the “DISH Nimiq 5 Agreement”) with us, pursuant to which we currently receive service from EchoStar on all 32 of the DBS transponders covered by the Telesat Transponder Agreement. We have also guaranteed certain obligations of EchoStar under the Telesat Transponder Agreement.

Under the terms of the DISH Nimiq 5 Agreement, we make certain monthly payments to EchoStar that commenced in September 2009 when the Nimiq 5 satellite was placed into service and continue through the service term. Unless earlier terminated under the terms and conditions of the DISH Nimiq 5 Agreement, the service term will expire ten years following the date the Nimiq 5 satellite was placed into service. Upon expiration of the initial term, we have the option to renew the DISH Nimiq 5 Agreement on a year-to-year basis through the end-of-life of the Nimiq 5 satellite. Upon in-orbit failure or end-of-life of

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the Nimiq 5 satellite, and in certain other circumstances, we have certain rights to receive service from EchoStar on a replacement satellite. There can be no assurance that any options to renew the DISH Nimiq 5 Agreement will be exercised or that we will exercise our option to receive service on a replacement satellite. We incurred expenses payable to EchoStar of approximately \$79 million under the DISH Nimiq 5 Agreement during 2013.

QuetzSat-1 Lease Agreement. During 2008, EchoStar entered into a ten-year satellite service agreement with SES Latin America S.A. (“SES”), which provides, among other things, for the provision by SES to EchoStar of service on 32 DBS transponders on the QuetzSat-1 satellite. During 2008, EchoStar also entered into a transponder service agreement (“QuetzSat-1 Transponder Agreement”) with us pursuant to which we receive service from EchoStar on 24 DBS transponders. QuetzSat-1 was launched on September 29, 2011 and was placed into service during the fourth quarter 2011 at the 67.1 degree orbital location while we and EchoStar explored alternative uses for the QuetzSat-1 satellite. In the interim, EchoStar provided us with alternate capacity at the 77 degree orbital location. During the third quarter 2012, we and EchoStar entered into an agreement pursuant to which we sublease five DBS transponders back to EchoStar. During January 2013, QuetzSat-1 was moved to the 77 degree orbital location and we commenced commercial operations at this location in February 2013.

Unless earlier terminated under the terms and conditions of the QuetzSat-1 Transponder Agreement, the initial service term will expire in November 2021. Upon expiration of the initial term, we have the option to renew the QuetzSat-1 Transponder Agreement on a year-to-year basis through the end-of-life of the QuetzSat-1 satellite. Upon an in-orbit failure or end-of-life of the QuetzSat-1 satellite, and in certain other circumstances, we have certain rights to receive service from EchoStar on a replacement satellite. There can be no assurance that any options to renew the QuetzSat-1 Transponder Agreement will be exercised or that we will exercise our option to receive service on a replacement satellite.

103 Degree Orbital Location/SES-3. During May 2012, EchoStar entered into a spectrum development agreement (the “103 Spectrum Development Agreement”) with Ciel Satellite Holdings Inc. (“Ciel”) to develop certain spectrum rights at the 103 degree orbital location (the “103 Spectrum Rights”). During June 2013, we and EchoStar entered into a spectrum development agreement (the “DISH 103

Spectrum Development Agreement”) pursuant to which we may use and develop the 103 Spectrum Rights. During the third quarter 2013, we made a \$23 million payment to EchoStar in exchange for these rights. In accordance with accounting principles that apply to transfers of assets between companies under common control, we recorded EchoStar’s net book value of this asset of \$20 million in “Other noncurrent assets, net” on our Consolidated Balance Sheets and recorded the amount in excess of EchoStar’s net book value of \$3 million as a capital distribution. Unless earlier terminated under the terms and conditions of the DISH 103 Spectrum Development Agreement, the term generally will continue for the duration of the 103 Spectrum Rights.

In connection with the 103 Spectrum Development Agreement, during May 2012, EchoStar also entered into a ten-year service agreement with Ciel pursuant to which EchoStar leases certain satellite capacity from Ciel on the SES-3 satellite at the 103 degree orbital location (the “103 Service Agreement”). During June 2013, we and EchoStar entered into an agreement pursuant to which we lease certain satellite capacity from EchoStar on the SES-3 satellite (the “DISH 103 Service Agreement”). Under the terms of the DISH 103 Service Agreement, we make certain monthly payments to EchoStar through the service term. Unless earlier terminated under the terms and conditions of the DISH 103 Service Agreement, the initial service term will expire on the earlier of: (i) the date the SES-3 satellite fails; (ii) the date the transponder(s) on which service was being provided under the agreement fails; or (iii) ten years following the actual service commencement date. Upon in-orbit failure or end of life of the SES-3 satellite, and in certain other circumstances, we have certain rights to receive service from EchoStar on a replacement satellite. There can be no assurance that we will exercise our option to receive service on a replacement satellite.

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Satellite Capacity Leased to EchoStar. Since the Spin-off, we have entered into certain satellite capacity agreements pursuant to which EchoStar leases certain satellite capacity on certain satellites owned by us. The fees for the services provided under these satellite capacity agreements depend, among other things, upon the orbital location of the applicable satellite, the number of transponders that are leased on the applicable satellite and the length of the lease. We earned revenues of approximately \$37 million from EchoStar under these satellite capacity agreements during 2013. The term of each lease is set forth below:

D1. Effective November 1, 2012, we entered into a satellite capacity agreement pursuant to which HNS leases certain satellite capacity from us on D1 for research and development. This lease generally terminates upon the earlier of: (i) the end-of-life of the satellite; (ii) the date the satellite fails; (iii) the date the spectrum capacity on which service is being provided under the agreement fails; or (iv) June 30, 2014.

EchoStar XV. During May 2013, we began leasing satellite capacity to EchoStar on EchoStar XV and relocated the satellite for testing at EchoStar’s Brazilian authorization at the 45 degree orbital location. Effective March 1, 2014, this lease converted to a month-to-month lease. Both parties have the right to terminate this lease with 30 days notice. Upon termination, EchoStar is responsible, among other things, for relocating this satellite from the 45 degree orbital location back to the 61.5 degree orbital location.

Satellite and Tracking Stock Transaction with EchoStar. To improve our position in the growing consumer satellite broadband market, among other reasons, on February 20, 2014, we entered into agreements with EchoStar to implement a transaction pursuant to which, among other things: (i) on March 1, 2014, we transferred to EchoStar and Hughes Satellite Systems Corporation (“HSSC”), a wholly-owned subsidiary of EchoStar, five satellites (EchoStar I, EchoStar VII, EchoStar X, EchoStar XI and EchoStar XIV, including related in-orbit incentive obligations and interest payments of approximately \$59 million) and approximately \$11 million in cash in exchange for shares of a series of preferred tracking stock issued by EchoStar and shares of a series of preferred tracking stock issued by HSSC; and (ii) beginning on March 1, 2014, we lease back certain satellite capacity on these five satellites (collectively, the “Satellite and Tracking Stock Transaction”). The Satellite and Tracking Stock Transaction is further described below:

Transaction Agreement. On February 20, 2014, DISH Operating L.L.C. (“DOLLC”) and DISH Network L.L.C. (“DNLLC”, together with DOLLC, the “DISH Investors”) and EchoStar XI Holding L.L.C., all indirect wholly-owned subsidiaries of us, entered into a Transaction Agreement (the “Transaction Agreement”) with EchoStar, HSSC and Alpha Company LLC, a wholly-owned subsidiary of EchoStar, pursuant to which, on March 1, 2014, we, among other things, transferred to EchoStar and HSSC five of our satellites (EchoStar I, EchoStar VII, EchoStar X, EchoStar XI and EchoStar XIV, including related in-orbit incentive obligations and interest payments of approximately \$59 million) and approximately \$11 million in cash in exchange for an aggregate of 6,290,499 shares of preferred tracking stock issued by EchoStar and 81.128 shares of preferred tracking stock issued by HSSC (collectively, the “Tracking Stock”). The Tracking Stock generally tracks the residential retail satellite broadband business of HNS, including without limitation the operations, assets and liabilities attributed to the Hughes residential retail satellite broadband business (collectively, the “Hughes Retail Group”). The shares of the Tracking Stock issued to the DISH Investors represent an aggregate 80% economic interest in the Hughes Retail Group. The Transaction Agreement includes, among other things, customary mutual provisions for representations, warranties and indemnification.

Satellite Capacity Leased from EchoStar. On February 20, 2014, we entered into satellite capacity agreements with certain subsidiaries of EchoStar pursuant to which, beginning March 1, 2014, we, among other things, lease certain satellite capacity on the EchoStar I, EchoStar VII, EchoStar X, EchoStar XI and EchoStar XIV satellites. The total fees for the services provided under each satellite capacity agreement depends, among other things, upon the number of transponders that are leased on the applicable satellite and the length of the lease. The term of each satellite capacity agreement generally terminates upon the earlier of: (i) the end of life of the satellite; (ii) the date the satellite fails; or (iii) a certain date, which depends upon, among other things, the estimated useful life of the satellite. We generally have the option to renew each satellite capacity agreement on a year-to-year basis through the end of the respective satellite's life. There can be no assurance that any options to renew such agreements will be exercised.

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Investor Rights Agreement. On February 20, 2014, EchoStar, HSSC and the DISH Investors also entered into an Investor Rights Agreement (the "Investor Rights Agreement") with respect to the Tracking Stock. The Investor Rights Agreement provides, among other things, certain information and consultation rights for the DISH Investors; certain transfer restrictions on the Tracking Stock and certain rights and obligations to offer and sell under certain circumstances (including a prohibition on transfers of the Tracking Stock for one year, with continuing transfer restrictions (including a right of first offer in favor of EchoStar) thereafter, an obligation to sell the Tracking Stock to EchoStar in connection with a change of control of us and a right to require EchoStar to repurchase the Tracking Stock in connection with a change of control of EchoStar, in each case subject to certain terms and conditions); certain registration rights; certain obligations to provide conversion and exchange rights of the Tracking Stock under certain circumstances; and certain protective covenants afforded to holders of the Tracking Stock. The Investor Rights Agreement generally will terminate as to the DISH Investors at such time as the DISH Investors no longer hold any shares of the HSSC-issued Tracking Stock and any registrable securities under the Investor Rights Agreement.

SlingService Services Agreement. Effective February 23, 2010, we entered into an agreement with EchoStar pursuant to which we receive certain services related to placeshifting. The fees for the services provided under this services agreement depend, among other things, upon the cost to develop and operate such services. This agreement has a term of five years with automatic renewal for successive one year terms. This agreement may be terminated for any reason upon at least 120 days notice to EchoStar. We incurred expenses payable to EchoStar of approximately \$3 million under the SlingService services agreement during 2013.

Tax Sharing Agreement. In connection with the Spin-off, we entered into a tax sharing agreement with EchoStar which governs our respective rights, responsibilities and obligations after the Spin-off with respect to taxes for the periods ending on or before the Spin-off. Generally, all pre-Spin-off taxes, including any taxes that are incurred as a result of restructuring activities undertaken to implement the Spin-off, are borne by us, and we will indemnify EchoStar for such taxes. However, we are not liable for and will not indemnify EchoStar for any taxes that are incurred as a result of the Spin-off or certain related transactions failing to qualify as tax-free distributions pursuant to any provision of Section 355 or Section 361 of the Internal Revenue Code of 1986, as amended (the "Code") because of: (i) a direct or indirect acquisition of any of EchoStar's stock, stock options or assets; (ii) any action that EchoStar takes or fails to take; or (iii) any action that EchoStar takes that is inconsistent with the information and representations furnished to the Internal Revenue Service ("IRS") in connection with the request for the private letter ruling, or to counsel in connection with any opinion being delivered by counsel with respect to the Spin-off or certain related transactions. In such case, EchoStar is solely liable for, and will indemnify us for, any resulting taxes, as well as any losses, claims and expenses. The tax sharing agreement will only terminate after the later of the full period of all applicable statutes of limitations, including extensions, or once all rights and obligations are fully effectuated or performed.

In light of the tax sharing agreement, among other things, and in connection with our consolidated federal income tax returns for certain tax years prior to and for the year of the Spin-off, during the third quarter 2013, we and EchoStar agreed upon a supplemental allocation of the tax benefits arising from certain tax items resolved in the course of the IRS' examination of these consolidated tax returns. As a result, we agreed to pay EchoStar \$83 million of the tax benefit we received or will receive. Any payment to EchoStar, including accrued interest, will be made at such time as EchoStar would have otherwise been able to realize such tax benefit. In addition, during the third quarter 2013, we and EchoStar agreed upon a tax sharing arrangement for filing certain combined state income tax returns and a method of allocating the respective tax liabilities between us and EchoStar for such combined returns, through the taxable period ending on December 31, 2017. No payments were made with respect to the tax sharing agreement during 2013.

TiVo. On April 29, 2011, we and EchoStar entered into a settlement agreement with TiVo, Inc. ("TiVo"). The settlement resolved all pending litigation between us and EchoStar, on the one hand, and TiVo, on the other hand, including litigation relating to alleged patent infringement involving certain DISH digital video recorders, or DVRs.

Under the settlement agreement, all pending litigation was dismissed with prejudice and all injunctions that permanently restrain, enjoin or compel

any action by us or EchoStar were dissolved. We and EchoStar are jointly responsible for making payments to TiVo in the aggregate amount of \$500 million, including an initial payment of

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\$300 million and the remaining \$200 million in six equal annual installments between 2012 and 2017. Pursuant to the terms and conditions of the agreements entered into in connection with the Spin-off of EchoStar from us, we made the initial payment to TiVo in May 2011, except for the contribution from EchoStar totaling approximately \$10 million, representing an allocation of liability relating to EchoStar's sales of DVR-enabled receivers to an international customer. Future payments will be allocated between us and EchoStar based on historical sales of certain licensed products, with us being responsible for 95% of each annual payment.

We and EchoStar, on the one hand, and TiVo, on the other hand, also agreed on mutual releases of certain related claims and agreed not to challenge each other's DVR technology-related patents that are licensed under the settlement agreement.

Because both we and EchoStar were defendants in the TiVo lawsuit, we and EchoStar were jointly and severally liable to TiVo for any final damages and sanctions that could have been awarded by the District Court. As previously disclosed, we determined that we were obligated under the agreements entered into in connection with the Spin-off to indemnify EchoStar for substantially all liability arising from this lawsuit. EchoStar contributed an amount equal to its \$5 million intellectual property liability limit under the receiver agreement. We and EchoStar further agreed that EchoStar's \$5 million contribution would not exhaust EchoStar's liability to us for other intellectual property claims that may arise under the receiver agreement. We and EchoStar also agreed that we would each be entitled to joint ownership of, and a cross-license to use, any intellectual property developed in connection with any potential new alternative technology. Any amounts that EchoStar is responsible for under the settlement agreement with TiVo are in addition to the \$5 million contribution previously made by EchoStar.

TT&C Agreement. Effective January 1, 2012, we entered into a telemetry, tracking and control ("TT&C") agreement pursuant to which we receive TT&C services from EchoStar for a period ending on December 31, 2016 (the "2012 TT&C Agreement"). The fees for services provided under the 2012 TT&C Agreement are calculated at either: (i) a fixed fee; or (ii) cost plus a fixed margin, which will vary depending on the nature of the services provided. We are able to terminate the 2012 TT&C Agreement for any reason upon 60 days notice. We incurred expenses payable to EchoStar of approximately \$5 million under the 2012 TT&C Agreement during 2013.

As part of the Satellite and Tracking Stock Transaction, on February 20, 2014, we amended the 2012 TT&C Agreement to cease the provision of TT&C services from EchoStar for the EchoStar I, EchoStar VII, EchoStar X, EchoStar XI and EchoStar XIV satellites.

XiP Encryption Agreement. During the third quarter 2012, we entered into an encryption agreement with EchoStar for our whole-home HD DVR line of set-top boxes (the "XiP Encryption Agreement") pursuant to which EchoStar provides certain security measures on our whole-home HD DVR line of set-top boxes to encrypt the content delivered to the set-top box via a smart card and secure the content between set-top boxes. The term of the XiP Encryption Agreement is for a period until December 31, 2014. Under the XiP Encryption Agreement, we have the option, but not the obligation, to extend the XiP Encryption Agreement for one additional year upon 180 days notice prior to the end of the term. We and EchoStar each have the right to terminate the XiP Encryption Agreement for any reason upon at least 30 days notice and 180 days notice, respectively. The fees for the services provided under the XiP Encryption Agreement are calculated on a monthly basis based on the number of receivers utilizing such security measures each month. No payments were made under the XiP Encryption Agreement during 2013.

Other Agreement. In November 2009, Mr. Roger Lynch became employed by both us and EchoStar as Executive Vice President. Mr. Lynch is responsible for the development and implementation of advanced technologies that are of potential utility and importance to both us and EchoStar. Mr. Lynch's compensation consists of cash and equity compensation and is borne by both EchoStar and us.

Related Party Transactions with NagraStar L.L.C. ("NagraStar")

NagraStar is a joint venture between EchoStar and Nagra USA, Inc. that is our provider of encryption and related security systems intended to assure that only authorized customers have access to our programming. During the year ended December 31, 2013, we purchased from NagraStar security access and other fees at an aggregate cost to us of \$92 million. As of December 31, 2013, amounts payable to NagraStar totaled \$23 million.

Certain Related Party Transactions with Certain of Our Executive Officers

Mr. Michael Kelly. During the first quarter 2014, we entered into an agreement pursuant to which we sold all of the equity of Blockbuster Alpha L.L.C. (“Alpha”), our wholly-owned subsidiary that held certain point-of-sale software and equipment, to Mr. Michael Kelly, the President of Blockbuster L.L.C. (the “Kelly Transaction”). Pursuant to the terms and conditions of the Kelly Transaction, Mr. Kelly paid us an initial purchase price of \$500,000 and may pay us additional amounts up to an aggregate purchase price of \$5,000,000 based on gross revenues generated by Alpha and/or a sale of Alpha or its assets.

Certain Related Party Transactions with Certain Members of Our Board of Directors

Ergen Family. During 2013, Mrs. Ergen served as a Senior Advisor and as a member of our Board of Directors, and we paid her approximately \$100,000. Beginning in April 2013, we employed Mrs. Katie Flynn, the daughter of Mr. and Mrs. Ergen, as an Assistant Brand Manager and paid her approximately \$52,000 during 2013. During 2014, we expect to continue to employ Mrs. Ergen, Mrs. Flynn and certain other Ergen children. While the amount paid during 2014 will depend on the time and services that will be provided, we expect to pay Mrs. Ergen approximately \$100,000, Mrs. Flynn approximately \$80,000 and certain other Ergen children approximately \$25,000 in the aggregate during 2014.

LightSquared. As previously disclosed in our public filings, L-Band Acquisition, LLC (“LBAC”), our wholly-owned subsidiary, entered into a Plan Support Agreement (the “PSA”) with certain senior secured lenders to LightSquared LP (the “LightSquared LP Lenders”) on July 23, 2013, which contemplated the purchase by LBAC of substantially all of the assets of LightSquared LP and certain of its subsidiaries that are debtors and debtors in possession in the LightSquared bankruptcy cases pending in the United States Bankruptcy Court for the Southern District of New York, which cases are jointly administered under the caption In re LightSquared Inc., et. al., Case No. 12 12080 (SCC), for a purchase price of \$2.22 billion in cash, plus the assumption of certain liabilities pursuant to the terms and conditions of a proposed asset purchase agreement (the “LBAC Bid”). SP Special Opportunities, LLC, an entity controlled by Mr. Ergen, is a LightSquared LP Lender and holds a substantial portion of LightSquared LP’s senior secured debt. We were a party to the PSA solely with respect to certain guaranty obligations.

Pursuant to the PSA, LBAC was entitled to terminate the PSA in certain circumstances, certain of which required three business days’ written notice, including, without limitation, in the event that certain milestones specified in the PSA were not met. On January 7, 2014, LBAC delivered written notice of termination of the PSA to the LightSquared LP Lenders. As a result, the PSA terminated effective on January 10, 2014, and the LBAC Bid was withdrawn.

Mr. Christopher Ergen/Yottabytes Ventures LLC. During the second quarter 2012, we entered into an agreement pursuant to which we had the right to make certain investments in Yottabytes Ventures LLC (“YBV”), a company that develops mobile web-based video applications. As of December 31, 2013, we had invested \$700,000 in YBV, which resulted in us owning approximately 77.8% of YBV. We have the right, but not the obligation, to invest an additional \$100,000 in YBV, which if exercised would bring our aggregate ownership interest in YBV to 80%. As part of our investment, we also have the right to appoint two out of the three members of the YBV board of directors.

Mr. Christopher Ergen, Mr. and Mrs. Ergen’s son, is an owner in YBV. As of December 31, 2013, Mr. Christopher Ergen had approximately a 5.6% ownership interest in YBV, which interest is subject to a repurchase option by YBV at a price of \$0.001 per common share. Fifty percent (50%) of his interest is released from the repurchase option after each of the first and second anniversary of our initial investment in YBV. As of December 31, 2013, fifty percent (50%) of the common shares which Mr. Christopher Ergen owned in YBV remained subject to the repurchase option. Mr. Christopher Ergen also acted as an advisor for YBV for which he was paid approximately \$10,000 by YBV during 2013. In addition, Mr. Christopher Ergen has a warrant to purchase additional common shares from YBV, the exercise of which is subject to certain conditions and expires in July 2017 or sooner if he is no longer an advisor for YBV or otherwise employed or engaged as a consultant by YBV. If Mr. Christopher Ergen fully exercises his warrant, he would have approximately a 17.5% ownership interest in YBV on a fully diluted basis assuming we have exercised our right to invest an additional \$100,000 in YBV. As of December 31, 2013, the common shares under the warrant were exercisable.

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Director Independence

We are a “controlled company” within the meaning of the NASDAQ Marketplace Rules because more than 50% of our voting power is held by Charles W. Ergen, our Chairman. Mr. Ergen currently beneficially owns approximately 50.7% of our total equity securities and possesses approximately 85.1% of the total voting power. Mr. Ergen’s beneficial ownership excludes 16,992,813 of Class A Shares issuable upon conversion of Class B Shares currently held by certain trusts established by Mr. Ergen for the benefit of his family. These trusts beneficially own approximately 7.2% of our total equity securities and possess approximately 6.5% of the total voting power. Please see “Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters - Equity Security Ownership” above. Therefore, we are not subject

to the NASDAQ listing requirements that would otherwise require us to have: (i) a Board of Directors comprised of a majority of independent directors; (ii) compensation of our executive officers determined by a majority of the independent directors or a compensation committee composed solely of independent directors; and (iii) director nominees selected, or recommended for the Board's selection, either by a majority of the independent directors or a nominating committee composed solely of independent directors. Nevertheless, the Corporation has created an Executive Compensation Committee and a Nominating Committee, in addition to an Audit Committee, all of which are composed entirely of independent directors. The charters of our Compensation, Audit, and Nominating Committees are available free of charge on our website at <http://www.dish.com>.

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Item 14. PRINCIPAL ACCOUNTING FEES AND SERVICES

Appointment of Independent Registered Public Accounting Firm

KPMG LLP served as our independent registered public accounting firm for the fiscal year ended December 31, 2013. The Audit Committee, in its discretion, may direct the appointment of a different independent registered public accounting firm at any time during the year if the Audit Committee believes that a change would be in the best interests of DISH Network.

Fees Paid to KPMG LLP for 2013 and 2012

The following table presents fees for professional audit services rendered by KPMG LLP for the audit of our annual financial statements for the years ended December 31, 2013 and December 31, 2012, and fees billed for other services rendered by KPMG LLP during those periods.

	For the Years Ended December 31,	
	2013	2012
Audit Fees (1)	\$ 2,125,000	\$ 2,225,000
Audit-Related Fees (2)	385,135	329,117
Total Audit and Audit-Related Fees	2,510,135	2,554,117
Tax Compliance Fees	811,924	664,929
Tax Consultation Fees	1,469,794	1,087,836
All Other Fees	—	—
Total Fees	\$ 4,791,853	\$ 4,306,882

- (1) Consists of fees paid by us for the audit of our consolidated financial statements included in our Annual Report on Form 10-K, review of our unaudited financial statements included in our Quarterly Reports on Form 10-Q and fees in connection with the audit of our internal control over financial reporting.
- (2) Consists of fees for audit of financial statements of certain employee benefit plans and fees for other services that are normally provided by the accountant in connection with registration statement filings, issuance of consents and professional consultations with respect to accounting issues.

Policy on Audit Committee Pre-Approval of Audit and Permissible Non-Audit Services of Independent Registered Public Accounting Firm

The Audit Committee is responsible for appointing, setting compensation, retaining and overseeing the work of our independent registered public accounting firm. The Audit Committee has established a process regarding pre-approval of all audit and permissible non-audit services provided by the independent registered public accounting firm.

Requests are submitted to the Audit Committee in one of the following ways:

- Request for approval of services at a meeting of the Audit Committee; or
- Request for approval of services by members of the Audit Committee acting by written consent.

The request may be made with respect to either specific services or a type of service for predictable or recurring services. 100% of the fees paid by us to KPMG LLP for services rendered in 2013 and 2012 were pre-approved by the Audit Committee.

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(a) Documents filed as part of this report:

(1) *Consolidated Financial Statements*

No consolidated financial statements are filed with this 10-K/A. The consolidated financial statements and notes thereto were included as part of the 10-K filed with the SEC on February 21, 2014.

(2) *Financial Statement Schedules*

No financial statement schedules are filed with this 10-K/A. All schedules were included in the consolidated financial statements or notes thereto of the 10-K filed with the SEC on February 21, 2014.

(3) *Exhibits*

- 3.1(a)* Amended and Restated Articles of Incorporation of DISH Network Corporation (incorporated by reference to Exhibit 3.1(a) on the Quarterly Report on Form 10-Q of DISH Network Corporation for the quarter ended June 30, 2003, Commission File No. 0-26176) as amended by the Certificate of Amendment to the Articles of Incorporation of DISH Network Corporation (incorporated by reference to Annex 1 on DISH Network Corporation's Definitive Information Statement on Schedule 14C filed on December 31, 2007, Commission File No. 0-26176).
- 3.1(b)* Amended and Restated Bylaws of DISH Network Corporation (incorporated by reference to Exhibit 3.1(b) on the Quarterly Report on Form 10-Q of DISH Network Corporation for the quarter ended March 31, 2007, Commission File No. 0-26176).
- 3.2(a)* Articles of Incorporation of DISH DBS Corporation (incorporated by reference to Exhibit 3.4(a) to the Registration Statement on Form S-4 of DISH DBS Corporation, Registration No. 333-31929).
- 3.2(b)* Bylaws of DISH DBS Corporation (incorporated by reference to Exhibit 3.4(b) to the Registration Statement on Form S-4 of DISH DBS Corporation, Registration No. 333-31929).
- 4.1* Registration Rights Agreement by and between DISH Network Corporation and Charles W. Ergen (incorporated by reference to Exhibit 4.8 to the Registration Statement on Form S-1 of DISH Network Corporation, Registration No. 33-91276).
- 4.2* Indenture, relating to the 6 5/8% Senior Notes Due 2014, dated as of October 1, 2004 between DISH DBS Corporation and U.S. Bank National Association, as Trustee (incorporated by reference to Exhibit 4.1 to the Current Report on Form 8-K of DISH Network Corporation filed October 1, 2004, Commission File No. 0-26176).
- 4.3* Indenture, relating to the 7 1/8% Senior Notes Due 2016, dated as of February 2, 2006 between DISH DBS Corporation and U.S. Bank National Association, as Trustee (incorporated by reference to Exhibit 4.1 to the Current Report on Form 8-K of DISH Network Corporation filed February 3, 2006, Commission File No. 0-26176).
- 4.4* Indenture, relating to the 7 3/4% Senior Notes Due 2015, dated as of May 27, 2008 between DISH DBS Corporation and U.S. Bank National Association, as Trustee (incorporated by reference to Exhibit 4.1 to the Current Report on Form 8-K of DISH Network Corporation filed May 28, 2008, Commission File No. 0-26176).
- 4.5* Indenture, relating to the 7 7/8% Senior Notes Due 2019, dated as of August 17, 2009 between DISH DBS Corporation and U.S. Bank National Association, as Trustee (incorporated by reference to Exhibit 4.1 to the Current Report on Form 8-K of DISH Network Corporation filed August 18, 2009, Commission File No. 0-26176).

- 4.6* Indenture, relating to the 6.75% Senior Notes due 2021, dated as of May 5, 2011, among DISH DBS Corporation, the guarantors named on the signature pages thereto and Wells Fargo Bank, National Association, as trustee (incorporated by reference from Exhibit 4.1 to the Current Report on Form 8-K of DISH Network Corporation filed May 5, 2011, Commission File No. 000-26176).
- 4.7* Indenture, relating to the 4 5/8% Senior Notes due 2017, dated as of May 16, 2012 between DISH DBS Corporation, the guarantors named on the signature pages thereto and Wells Fargo Bank, National Association, as Trustee (incorporated by reference to Exhibit 4.1 to the Current Report on Form 8-K of DISH Network Corporation filed May 16, 2012, Commission File No. 0-26176).
- 4.8* Indenture, relating to the 5 7/8% Senior Notes due 2022, dated as of May 16, 2012 between DISH DBS Corporation, the guarantors named on the signature pages thereto and Wells Fargo Bank, National Association, as Trustee (incorporated by reference to Exhibit 4.2 to the Current Report on Form 8-K of DISH Network Corporation filed May 16, 2012, Commission File No. 0-26176).
- 4.9* Indenture, relating to the 5% Senior Notes due 2023, dated as of December 27, 2012 between DISH DBS Corporation, the guarantors named on the signature pages thereto and Wells Fargo Bank, National Association, as Trustee (incorporated by reference to Exhibit 4.1 to the Current Report on Form 8-K of DISH Network Corporation filed December 27, 2012, Commission File No. 0-26176).
- 4.10* Indenture, relating to the 5.125% Senior Notes due 2020, dated as of April 5, 2013, among DISH DBS Corporation, the guarantors named on the signature pages thereto and Wells Fargo Bank, National Association, as Trustee (incorporated by reference to Exhibit 4.1 to the Current Report on Form 8-K of DISH Network Corporation filed April 5, 2013, Commission File No. 0-26176).
- 4.11* Indenture, relating to the 4.250% Senior Notes due 2018, dated as of April 5, 2013, among DISH DBS Corporation, the guarantors named on the signature pages thereto and Wells Fargo Bank, National Association, as Trustee (incorporated by reference to Exhibit 4.2 to the Current Report on Form 8-K of DISH Network Corporation filed April 5, 2013, Commission File No. 0-26176).
- 10.1* 2002 Class B CEO Stock Option Plan (incorporated by reference to Appendix A to DISH Network Corporation's Definitive Proxy Statement on Schedule 14A dated April 9, 2002).**
- 10.2* Satellite Service Agreement, dated as of March 21, 2003, between SES Americom, Inc., DISH Network L.L.C. and DISH Network Corporation (incorporated by reference to Exhibit 10.1 to the Quarterly Report on Form 10-Q of DISH Network Corporation for the quarter ended March 31, 2003, Commission File No. 0-26176).***
- 10.3* Amendment No. 1 to Satellite Service Agreement dated March 31, 2003 between SES Americom Inc. and DISH Network Corporation (incorporated by reference to Exhibit 10.1 to the Quarterly Report on Form 10-Q of DISH Network Corporation for the quarter ended September 30, 2003, Commission File No. 0-26176). ***
- 10.4* Satellite Service Agreement dated as of August 13, 2003 between SES Americom Inc. and DISH Network Corporation (incorporated by reference to Exhibit 10.2 to the Quarterly Report on Form 10-Q of DISH Network Corporation for the quarter ended September 30, 2003, Commission File No. 0-26176). ***
- 10.5* Satellite Service Agreement, dated February 19, 2004, between SES Americom, Inc. and DISH Network Corporation (incorporated by reference to Exhibit 10.1 to the Quarterly Report on Form 10-Q of DISH Network Corporation for the quarter ended March 31, 2004, Commission File No. 0-26176). ***
- 10.6* Amendment No. 1 to Satellite Service Agreement, dated March 10, 2004, between SES Americom, Inc. and DISH Network Corporation (incorporated by reference to Exhibit 10.2 to the Quarterly Report on Form 10-Q of DISH Network Corporation for the quarter ended March 31, 2004, Commission File No. 0-26176). ***

- 10.7* Amendment No. 3 to Satellite Service Agreement, dated February 19, 2004, between SES Americom, Inc. and DISH Network Corporation (incorporated by reference to Exhibit 10.3 to the Quarterly Report on Form 10-Q of DISH Network Corporation for the quarter ended March 31, 2004, Commission File No. 0-26176). ***
- 10.8* Whole RF Channel Service Agreement, dated February 4, 2004, between Telesat Canada and DISH Network Corporation (incorporated by reference to Exhibit 10.4 to the Quarterly Report on Form 10-Q of DISH Network Corporation for the quarter ended March 31, 2004, Commission File No. 0-26176). ***
- 10.9* Letter Amendment to Whole RF Channel Service Agreement, dated March 25, 2004, between Telesat Canada and DISH Network Corporation (incorporated by reference to Exhibit 10.5 to the Quarterly Report on Form 10-Q of DISH Network Corporation for the quarter ended March 31, 2004, Commission File No. 0-26176). ***
- 10.10* Amendment No. 2 to Satellite Service Agreement, dated April 30, 2004, between SES Americom, Inc. and DISH Network Corporation (incorporated by reference to Exhibit 10.1 to the Quarterly Report on Form 10-Q of DISH Network Corporation for the quarter ended June 30, 2004, Commission File No. 0-26176). ***
- 10.11* Second Amendment to Whole RF Channel Service Agreement, dated May 5, 2004, between Telesat Canada and DISH Network Corporation (incorporated by reference to Exhibit 10.2 to the Quarterly Report on Form 10-Q of DISH Network Corporation for the quarter ended June 30, 2004, Commission File No. 0-26176). ***
- 10.12* Third Amendment to Whole RF Channel Service Agreement, dated October 12, 2004, between Telesat Canada and DISH Network Corporation (incorporated by reference to Exhibit 10.22 to the Annual Report on Form 10-K of DISH Network Corporation for the year ended December 31, 2004, Commission File No. 0-26176). ***
- 10.13* Amendment No. 4 to Satellite Service Agreement, dated October 21, 2004, between SES Americom, Inc. and DISH Network Corporation (incorporated by reference to Exhibit 10.23 to the Annual Report on Form 10-K of DISH Network Corporation for the year ended December 31, 2004, Commission File No. 0-26176). ***
- 10.14* Amendment No. 3 to Satellite Service Agreement, dated November 19, 2004 between SES Americom, Inc. and DISH Network Corporation (incorporated by reference to Exhibit 10.24 to the Annual Report on Form 10-K of DISH Network Corporation for the year ended December 31, 2004, Commission File No. 0-26176). ***
- 10.15* Amendment No. 5 to Satellite Service Agreement, dated November 19, 2004, between SES Americom, Inc. and DISH Network Corporation (incorporated by reference to Exhibit 10.25 to the Annual Report on Form 10-K of DISH Network Corporation for the year ended December 31, 2004, Commission File No. 0-26176). ***
- 10.16* Amendment No. 6 to Satellite Service Agreement, dated December 20, 2004, between SES Americom, Inc. and DISH Network Corporation (incorporated by reference to Exhibit 10.26 to the Annual Report on Form 10-K of DISH Network Corporation for the year ended December 31, 2004, Commission File No. 0-26176). ***
- 10.17* Description of the 2005 Long-Term Incentive Plan dated January 26, 2005 (incorporated by reference to Exhibit 10.1 to the Quarterly Report on Form 10-Q of DISH Network Corporation for the quarter ended March 31, 2005, Commission File No. 0-26176).**
- 10.18* Amendment No. 4 to Satellite Service Agreement, dated April 6, 2005, between SES Americom, Inc. and DISH Network Corporation (incorporated by reference to Exhibit 10.1 to the Quarterly Report on Form 10-Q of DISH Network Corporation for the quarter ended June 30, 2005, Commission File No. 0-26176). ***

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- 10.19* Amendment No. 5 to Satellite Service Agreement, dated June 20, 2005, between SES Americom, Inc. and DISH Network Corporation (incorporated by reference to Exhibit 10.2 to the Quarterly Report on Form 10-Q of DISH Network Corporation for the quarter ended June 30, 2005, Commission File No. 0-26176). ***
- 10.20* Incentive Stock Option Agreement (Form A) (incorporated by reference to Exhibit 99.1 to the Current Report on Form 8-K of DISH Network Corporation filed July 7, 2005, Commission File No. 0-26176).**

- 10.21* Incentive Stock Option Agreement (Form B) (incorporated by reference to Exhibit 99.2 to the Current Report on Form 8-K of DISH Network Corporation filed July 7, 2005, Commission File No. 0-26176).**
- 10.22* Restricted Stock Unit Agreement (Form A) (incorporated by reference to Exhibit 99.3 to the Current Report on Form 8-K of DISH Network Corporation filed July 7, 2005, Commission File No. 0-26176).**
- 10.23* Restricted Stock Unit Agreement (Form B) (incorporated by reference to Exhibit 99.4 to the Current Report on Form 8-K of DISH Network Corporation filed July 7, 2005, Commission File No. 0-26176).**
- 10.24* Incentive Stock Option Agreement (1999 Long-Term Incentive Plan) (incorporated by reference to Exhibit 99.5 to the Current Report on Form 8-K of DISH Network Corporation filed July 7, 2005, Commission File No. 0-26176).**
- 10.25* Nonemployee Director Stock Option Agreement (incorporated by reference to Exhibit 99.6 to the Current Report on Form 8-K of DISH Network Corporation filed July 7, 2005, Commission File No. 0-26176).**
- 10.26* Nonqualifying Stock Option Agreement (2005 Long-Term Incentive Plan) (incorporated by reference to Exhibit 99.7 to the Current Report on Form 8-K of DISH Network Corporation filed July 7, 2005, Commission File No. 0-26176).**
- 10.27* Restricted Stock Unit Agreement (2005 Long-Term Incentive Plan) (incorporated by reference to Exhibit 99.8 to the Current Report on Form 8-K of DISH Network Corporation filed July 7, 2005, Commission File No. 0-26176).**
- 10.28* Separation Agreement between EchoStar Corporation and DISH Network Corporation (incorporated by reference from Exhibit 2.1 to the Amendment No. 1 to the Form 10 of EchoStar Corporation filed December 12, 2007, Commission File No. 001-33807).
- 10.29* Tax Sharing Agreement between EchoStar Corporation and DISH Network Corporation (incorporated by reference from Exhibit 10.2 to the Amendment No. 1 to the Form 10 of EchoStar Corporation filed December 12, 2007, Commission File No. 001-33807).
- 10.30* Employee Matters Agreement between EchoStar Corporation and DISH Network Corporation (incorporated by reference from Exhibit 10.3 to the Amendment No. 1 to the Form 10 of EchoStar Corporation filed December 12, 2007, Commission File No. 001-33807).
- 10.31* Intellectual Property Matters Agreement between EchoStar Corporation, EchoStar Acquisition L.L.C., Echosphere L.L.C., DISH DBS Corporation, EIC Spain SL, EchoStar Technologies L.L.C. and DISH Network Corporation (incorporated by reference from Exhibit 10.4 to the Amendment No. 1 to the Form 10 of EchoStar Corporation filed December 12, 2007, Commission File No. 001-33807).
- 10.32* Management Services Agreement between EchoStar Corporation and DISH Network Corporation (incorporated by reference from Exhibit 10.5 to the Amendment No. 1 to the Form 10 of EchoStar Corporation filed December 12, 2007, Commission File No. 001-33807).

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- 10.33* Form of Satellite Capacity Agreement between EchoStar Corporation and DISH Network L.L.C. (incorporated by reference from Exhibit 10.28 to the Amendment No. 2 to Form 10 of EchoStar Corporation filed December 26, 2007, Commission File No. 001-33807).
- 10.34* Amendment No. 1 to Receiver Agreement dated December 31, 2007 between EchoSphere L.L.C. and EchoStar Technologies L.L.C. (incorporated by reference to Exhibit 99.1 to the Quarterly Report on Form 10-Q of DISH Network Corporation for the quarter ended September 30, 2008, Commission File No. 0-26176).
- 10.35* Amendment No. 1 to Broadcast Agreement dated December 31, 2007 between EchoStar Corporation and DISH Network L.L.C. (incorporated by reference to Exhibit 99.2 to the Quarterly Report on Form 10-Q of DISH Network Corporation for the quarter ended September 30, 2008, Commission File No. 0-26176).
- 10.36* Description of the 2008 Long-Term Incentive Plan dated December 22, 2008 (incorporated by reference to Exhibit 10.42 to

the Annual Report on Form 10-K of DISH Network Corporation for the year ended December 31, 2008, Commission File No. 0-26176). **

- 10.37* DISH Network Corporation 2009 Stock Incentive Plan (incorporated by reference to Appendix A to DISH Network Corporation's Definitive Proxy Statement on Form 14A filed March 31, 2009, Commission File No. 000-26176). **
- 10.38* Amended and Restated DISH Network Corporation 2001 Nonemployee Director Stock Option Plan (incorporated by reference to Appendix B to DISH Network Corporation's Definitive Proxy Statement on Form 14A filed March 31, 2009, Commission File No. 000-26176). **
- 10.39* Amended and Restated DISH Network Corporation 1999 Stock Incentive Plan (incorporated by reference to Appendix C to DISH Network Corporation's Definitive Proxy Statement on Form 14A filed March 31, 2009, Commission File No. 000-26176). **
- 10.40* Amended and Restated DISH Network Corporation 1995 Stock Incentive Plan (incorporated by reference to Appendix D to DISH Network Corporation's Definitive Proxy Statement on Form 14A filed March 31, 2009, Commission File No. 000-26176). **
- 10.41* NIMI Q 5 Whole RF Channel Service Agreement, dated September 15, 2009, between Telesat Canada and EchoStar Corporation (incorporated by reference from Exhibit 10.30 to the Annual Report on Form 10-K of EchoStar Corporation for the year ended December 31, 2009, Commission File No. 001-33807).***
- 10.42* NIMI Q 5 Whole RF Channel Service Agreement, dated September 15, 2009, between EchoStar Corporation and DISH Network L.L.C. (incorporated by reference from Exhibit 10.31 to the Quarterly Report on Form 10-K of EchoStar Corporation for the year ended December 31, 2009, Commission File No. 001-33807).***
- 10.43* Professional Services Agreement, dated August 4, 2009, between EchoStar Corporation and DISH Network Corporation (incorporated by reference from Exhibit 10.3 to the Quarterly Report on Form 10-Q of EchoStar Corporation for the quarter ended September 30, 2009, Commission File No. 001-33807).***
- 10.44* Allocation Agreement, dated August 4, 2009, between EchoStar Corporation and DISH Network Corporation (incorporated by reference from Exhibit 10.4 to the Quarterly Report on Form 10-Q of EchoStar Corporation for the quarter ended September 30, 2009, Commission File No. 001-33807).
- 10.45* Amendment to Form of Satellite Capacity Agreement (Form A) between EchoStar Corporation and DISH Network L.L.C. (incorporated by reference from Exhibit 10.34 to the Annual Report on Form 10-K of EchoStar Corporation for the year ended December 31, 2009, Commission File No. 001-33807).

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- 10.46* Amendment to Form of Satellite Capacity Agreement (Form B) between EchoStar Corporation and DISH Network L.L.C. (incorporated by reference from Exhibit 10.35 to the Annual Report on Form 10-K of EchoStar Corporation for the year ended December 31, 2009, Commission File No. 001-33807).
- 10.47* EchoStar XVI Satellite Capacity Agreement between EchoStar Satellite Services L.L.C. and DISH Network L.L.C. (incorporated by reference from Exhibit 10.36 to the Annual Report on Form 10-K of EchoStar Corporation for the year ended December 31, 2009, Commission File No. 001-33807).***
- 10.48* Assignment of Rights Under Launch Service Contract from EchoStar Corporation to DISH Orbital II L.L.C. (incorporated by reference from Exhibit 10.37 to the Annual Report on Form 10-K of EchoStar Corporation for the year ended December 31, 2009, Commission File No. 001-33807).
- 10.49* Amended and Restated Investment Agreement, dated as of February 24, 2011, and First Amendment to Amended and Restated Investment Agreement, dated as of March 15, 2011, between DISH Network Corporation and DBSD North America, Inc. (incorporated by reference from Exhibit 10.1 to the Current Report on Form 8-K of ICO Global Communications (Holdings) Limited filed March 17, 2011, Commission File No. 001-33008).

- 10.50* Implementation Agreement, dated as of March 15, 2011, between DISH Network and ICO Global Communications (Holdings) Limited (incorporated by reference from Exhibit 10.2 to the Current Report on Form 8-K of ICO Global Communications (Holdings) Limited filed March 17, 2011, Commission File No. 001-33008).
- 10.51* Restructuring Support Agreement, dated as of March 15, 2011, between DISH Network and ICO Global Communications (Holdings) Limited (incorporated by reference from Exhibit 10.3 to the Current Report on Form 8-K of ICO Global Communications (Holdings) Limited filed March 17, 2011, Commission File No. 001-33008).
- 10.52* Purchase Agreement, dated as of June 14, 2011, by and among TerreStar Networks Inc., TerreStar License Inc., TerreStar National Services Inc., TerreStar Networks Holdings (Canada) Inc., TerreStar Networks (Canada) Inc., 0887729 B.C. Ltd., and Gamma Acquisition L.L.C. and DISH Network Corporation (solely with respect to Section 6.19 thereof) (incorporated by reference from Exhibit 99.1 to the Current Report on Form 8-K of DISH Network Corporation filed June 16, 2011, Commission File No. 000-26176).
- 10.53* Cost Allocation Agreement, dated April 29, 2011, between EchoStar and DISH Network (incorporated by reference from Exhibit 10.2 to the Quarterly Report on Form 10-Q of EchoStar for the quarter ended June 30, 2011, Commission File No. 001-33807).
- 10.54* Settlement and Patent License between TiVo Inc. and DISH Network Corporation and EchoStar Corporation, dated as of April 29, 2011 (incorporated by reference to Exhibit 10.9 to the Quarterly Report on Form 10-Q/A of EchoStar Corporation filed February 21, 2012, Commission File No. 001-33807).***
- 10.55* QuetzSat-1 Transponder Service Agreement, dated November 24, 2008, between EchoStar 77 Corporation, a direct wholly-owned subsidiary of EchoStar, and DISH Network L.L.C. (incorporated by reference to Exhibit 10.25 to the Annual Report on Form 10-K of EchoStar Corporation for the year ended December 31, 2009, Commission File No. 001-33807).***
- 10.56* Receiver Agreement dated January 1, 2012 between Echosphere L.L.C. and EchoStar Technologies L.L.C. (incorporated by reference to Exhibit 10.1 to the Quarterly Report on Form 10-Q of DISH Network Corporation for the quarter ended March 31, 2012, Commission File No. 0-26176).***

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- 10.57* Broadcast Agreement dated January 1, 2012 between EchoStar Broadcasting Corporation and DISH Network L.L.C. (incorporated by reference to Exhibit 10.2 to the Quarterly Report on Form 10-Q of DISH Network Corporation for the quarter ended March 31, 2012, Commission File No. 0-26176).***
- 10.58* Confidential Settlement Agreement and Release dated as of October 21, 2012 by and between Voom HD Holdings LLC and CSC Holdings, LLC, on the other hand, and DISH Network L.L.C., on the other hand, and for certain limited purposes, DISH Media Holdings Corporation, MSG Holdings, L.P., The Madison Square Garden Company and EchoStar Corporation (incorporated by reference to Exhibit 10.1 to the Quarterly Report on Form 10-Q of DISH Network Corporation for the quarter ended September 30, 2012, Commission File No. 0-26176).***
- 10.59* Description of the 2013 Long-Term Incentive Plan dated November 30, 2012 (incorporated by reference to the Current Report on Form 8-K of DISH Network Corporation filed December 6, 2012, Commission File No. 000-26176).**
- 10.60* Amendment to EchoStar XVI Satellite Capacity Agreement between EchoStar Satellite Services L.L.C. and DISH Network L.L.C. dated December 21, 2012 (incorporated by reference to Exhibit 10.62 to the Annual Report on Form 10-K of DISH Network Corporation for the year ended December 31, 2012, Commission File No. 0-26176).***
- 21* Subsidiaries of DISH Network Corporation (incorporated by reference to Exhibit 21 to the Annual Report on Form 10-K of DISH Network Corporation for the year ended December 31, 2013, Commission File No. 0-26176).
- 23* Consent of KPMG LLP, Independent Registered Public Accounting Firm (incorporated by reference to Exhibit 23 to the Annual Report on Form 10-K of DISH Network Corporation for the year ended December 31, 2013, Commission File No. 0-26176).
- 24* Power of Attorney authorizing R. Stanton Dodge as signatory for Charles W. Ergen, George R. Brokaw, James DeFranco,

Cantey M. Ergen, Steven R. Goodbarn, Charles M. Lillis, David K. Moskowitz, Tom A. Ortolfo and Carl E. Vogel (incorporated by reference to Exhibit 24 to the Annual Report on Form 10-K of DISH Network Corporation for the year ended December 31, 2013, Commission File No. 0-26176).

- 31.1* Section 302 Certification of Chief Executive Officer with respect to the 10-K (incorporated by reference to Exhibit 31.1 to the Annual Report on Form 10-K of DISH Network Corporation for the year ended December 31, 2013, Commission File No. 0-26176).
- 31.2* Section 302 Certification of Chief Financial Officer with respect to the 10-K (incorporated by reference to Exhibit 31.2 to the Annual Report on Form 10-K of DISH Network Corporation for the year ended December 31, 2013, Commission File No. 0-26176).
- 31.3☐ Section 302 Certification of Chief Executive Officer with respect to this 10-K/A.
- 31.4☐ Section 302 Certification of Chief Financial Officer with respect to this 10-K/A.
- 32.1* Section 906 Certification of Chief Executive Officer with respect to the 10-K (incorporated by reference to Exhibit 32.1 to the Annual Report on Form 10-K of DISH Network Corporation for the year ended December 31, 2013, Commission File No. 0-26176).
- 32.2* Section 906 Certification of Chief Financial Officer with respect to the 10-K (incorporated by reference to Exhibit 32.2 to the Annual Report on Form 10-K of DISH Network Corporation for the year ended December 31, 2013, Commission File No. 0-26176).

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- 101* The following materials from the Annual Report on Form 10-K of DISH Network Corporation for the year ended December 31, 2013, filed on February 21, 2014, formatted in eXtensible Business Reporting Language (“XBRL”): (i) Consolidated Balance Sheets, (ii) Consolidated Statements of Operations and Comprehensive Income (Loss), (iii) Consolidated Statement of Changes in Stockholders’ Equity (Deficit), (iv) Consolidated Statements of Cash Flows, and (v) related notes to these financial statements (incorporated by reference to Exhibit 101 to the Annual Report on Form 10-K of DISH Network Corporation for the year ended December 31, 2013, Commission File No. 0-26176).

☐ Filed herewith.

* Incorporated by reference.

** Constitutes a management contract or compensatory plan or arrangement.

*** Certain portions of the exhibit have been omitted and separately filed with the Securities and Exchange Commission with a request for confidential treatment.

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SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this Amendment No. 1 on Form 10-K/A to be signed on its behalf by the undersigned, thereunto duly authorized.

DISH NETWORK CORPORATION

By: /s/ Robert E. Olson

AA0423

001342

Date: April 29, 2014

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Joseph P. Clayton</u> Joseph P. Clayton	President and Chief Executive Officer and Director (Principal Executive Officer)	April 29, 2014
<u>/s/ Robert E. Olson</u> Robert E. Olson	Executive Vice President and Chief Financial Officer (Principal Financial and Accounting Officer)	April 29, 2014
<u>*</u> Charles W. Ergen	Chairman	April 29, 2014
<u>*</u> George R. Brokaw	Director	April 29, 2014
<u>*</u> James DeFranco	Director	April 29, 2014
<u>*</u> Cantey M. Ergen	Director	April 29, 2014
<u>*</u> Steven R. Goodbarn	Director	April 29, 2014
<u>*</u> Charles M. Lillis	Director	April 29, 2014
<u>*</u> David K. Moskowitz	Director	April 29, 2014
<u>*</u> Tom A. Ortolf	Director	April 29, 2014
<u>*</u> Carl E. Vogel	Director	April 29, 2014

* By: /s/ R. Stanton Dodge
R. Stanton Dodge
Attorney-in-Fact

CERTIFICATION OF CHIEF EXECUTIVE OFFICER
Section 302 Certification

I, Joseph P. Clayton, certify that:

1. I have reviewed this Amendment No. 1 to the Annual Report on Form 10-K of DISH Network Corporation; and
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report.

Date: April 29, 2014

/s/ Joseph P. Clayton

President and Chief Executive Officer

CERTIFICATION OF CHIEF FINANCIAL OFFICER
Section 302 Certification

I, Robert E. Olson, certify that:

1. I have reviewed this Amendment No. 1 to the Annual Report on Form 10-K of DISH Network Corporation; and
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report.

Date: April 29, 2014

/s/ Robert E. Olson

Executive Vice President and Chief Financial Officer

COURT'S
EXHIBIT
2
A686775
1-12-15

1 **AFFT**
BRIAN W. BOSCHEE, ESQ. (NBN 7612)
2 E-mail: bboschee@nevadafirm.com
WILLIAM N. MILLER, ESQ. (NBN 11658)
3 E-mail: wmiller@nevadafirm.com
HOLLEY, DRIGGS, WALCH,
4 PUZEY & THOMPSON
400 South Fourth Street, Third Floor
5 Las Vegas, Nevada 89101
Telephone: 702/791-0308
6 *Liaison Counsel for Plaintiffs*

7 MARK LBOVITCH, ESQ. (admitted *Pro hac vice*)
JEROEN VAN KWAWEGEN, ESQ. (admitted *Pro hac vice*)
8 ADAM D. HOLLANDER, ESQ. (admitted *Pro hac vice*)
BERNSTEIN LITOWITZ BERGER
9 & GROSSMANN LLP
1285 Avenue of the Americas
10 New York, New York 10019
Telephone: 212/554-1400
11 *Lead Counsel for Plaintiffs*

12 **DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**

14
15 IN RE DISH NETWORK CORPORATION
16 DERIVATIVE LITIGATION

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

17 **AFFIDAVIT OF BRIAN W. BOSCHEE IN**
18 **SUPPORT OF PLAINTIFF'S**
19 **OPPOSITION TO SLC'S MOTION TO**
20 **DEFER TO ITS DETERMINATION**
21 **THAT THE CLAIMS SHOULD BE**
22 **DISMISSED**

Date of Hearing: January 12, 2015
Time of Hearing: 10:30 a.m.

23 STATE OF NEVADA)
24 COUNTY OF CLARK)

25 I, Brian W. Boschee, declare as follows:

26 1. I am a partner of the law firm Holley, Driggs, Walch, Puzey, & Thompson, Co-
27 Counsel for Plaintiff in the above-captioned action. I submit this Affidavit in Support of
28 Plaintiff's Opposition To SLC's Motion To Defer To Its Determination That The Claims Should

1 Be Dismissed. This affidavit is made on information and belief and I have personal knowledge
2 of the information set forth below and could competently testify to the same if required by the
3 Court.

4 2. After the SLC submitted its Report, it conveyed to the Court and the parties its
5 intent to move to dismiss based upon standing grounds. At all times during those calls, and
6 during the follow-up conversations and email correspondence, the SLC proceeded as if the
7 instant Motion to Defer was a Motion to Dismiss, and the SLC pushed to consolidate the hearing
8 on its Motion, which everyone understood to be a Motion to Dismiss. Based upon that
9 understanding, the parties worked out a briefing schedule, and the SLC made clear that it would
10 oppose any request for discovery prior to consideration of its Motion. Attached hereto as
11 **Exhibit 1** is a true and correct copy of email correspondence between counsel in this action. As
12 the Court can see, in the email dated November 7, 2014, beginning at 7:36 p.m., counsel for the
13 SLC made it clear that the SLC would oppose Plaintiff's ability to seek discovery prior to the
14 instant hearing on the SLC's Motion to Defer. The next day, on November 8, 2014 at 8:32 a.m.,
15 counsel for the SLC confirmed that understanding. This was also consistent with the conference
16 calls that counsel had with the Court regarding the pending Motions to Dismiss and the SLC's
17 Motion to Defer.

18 3. In the Reply to Plaintiff's Opposition to the SLC's Motion to Defer, the SLC
19 argues that the Plaintiff did not request the ability to conduct discovery, which is a misstatement
20 of what actually transpired and is inconsistent with the SLC's Motion actually being a Motion to
21 Dismiss, which is what the SLC has always represented it to be.

22 4. Plaintiff does not believe that an Affidavit setting forth the discovery Plaintiff
23 would seek with respect to the SLC's Report and Motion to Defer because these are not
24 summary judgment proceedings. However, due to the fact that the SLC raised the issue, below is
25 a list of the discovery Plaintiff will seek should the Court deny the SLC's Motion to Defer:

- 26 (a) All documents relating to the Board's decision to form the SLC.
27 (b) All documents concerning the power, authority, mandate, and/or budget of the
28 SLC.

1 (c) All documents concerning the nomination, vetting, and appointment of each
2 member of the SLC, including all documents considered by the Board and/or its advisors in
3 assessing the independence of the members of the SLC.

4 (d) All documents concerning any business relationships, personal relationships or
5 any other ties, connections, affiliations or confluence of interests between any member of the
6 SLC and the Company or any member of the SLC and any of the Individual Defendants.

7 (e) All documents concerning the SLC's identification, vetting, selecting, and
8 retaining advisors and legal counsel, including, without limitation, assessment of facts and law
9 concerning the independence of those advisors and legal counsel.

10 (f) All documents gathered, generated, reviewed, presented to, or relied upon by the
11 SLC and/or its counsel in connection with the SLC's investigation;

12 (g) All deposition or witness interview transcripts, notes, or any similar record of
13 witness statements;

14 (h) Any report or other document reflecting or memorializing the SLC's investigation,
15 recommendations, conclusions, and/or decisions in connection with its investigation.

16 (i) All documents reflecting any meetings, proceedings or other communications by
17 or among members of the SLC.

18 (j) All documents concerning the SLC's decision to move to dismiss this action.

19 (k) All documents reviewed, sent to, or sent from the SLC's members concerning the
20 termination of the Lightsquared bid on January 7, 2014.

21 (l) All documents concerning Defendant Ortolf's decision to disband the STC,
22 including all communications to or from Ortolf concerning the disbanding of the STC and any
23 documents the Ortolf relied upon.

24 (m) All documents concerning the SLC's decision to reject plaintiff's demand.

25 (n) All communications between the Ergens and the Brokaws concerning any non-
26 Board related meeting between members of the Ergen and Brokaw family.

27
28

1 (o) Plaintiff would also seek to depose the members of the SLC, the members of the
2 Board, as well as possible other depositions of third-parties that the Plaintiff cannot specifically
3 identify until it has the information articulated above.

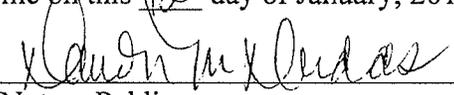
4 5. Had the Plaintiff believed that the Motions, and specifically the SLC Motion to
5 Defer, were premised upon NRCP 56, this Affidavit would have been submitted in furtherance of
6 NRCP 56(f) with Plaintiff's Opposition. It was not submitted with the Opposition because all of
7 the parties understood from the communications and correspondence that these Motions were
8 actually premised upon NRCP 12.

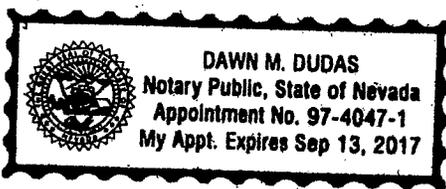
9 I declare under penalty of perjury under the laws of the State of Nevada that the
10 foregoing is true and correct.

11 Dated this 12 day of January, 2015.


BRIAN W. BOSCHEE, ESQ.

14 SUBSCRIBED AND SWORN TO before
15 me on this 12 day of January, 2015.

16 
Notary Public



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27
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EXHIBIT 1

EXHIBIT 1

Will Miller

From: Jeroen van Kwawegen <jeroen@blbglaw.com>
Sent: Sunday, January 11, 2015 10:38 PM
To: Brian Boschee; Will Miller
Subject: FW: DISH - Conference Call with Judge Gonzalez

On 11/8/14, 8:32 AM, "Flinn, Barr" <bflinn@ycst.com> wrote:

>As I said in my prior email, you do not need to agree to our view of
>the world however correct it may be. Steve will send you the
>stipulation with the paragraph that you want deleted deleted. And yes,
>if you seek discovery, we will move, because, among other possible
>reasons, our agreement to proceed on this schedule is premised upon the
>notion that you will not be seeking discovery.

>

>Have a nice weekend.

>

>Barr

>

>C. Barr Flinn

>Partner

>Young Conaway Stargatt & Taylor, LLP

>Rodney Square

>1000 North King Street

>Wilmington, DE 19801

>P 302.571.6692

>F 302.576.3292

>bflinn@ycst.com

>

>

>

>

>

>-----Original Message-----

>From: Mark Lebovitch [mailto:MarkL@blbglaw.com]

>Sent: Friday, November 07, 2014 8:24 PM

>To: Flinn, Barr

>Cc: Mundiya, Tariq; Debra Spinelli; Steve Peek; Brian Boschee; Rugg,

>Jeffrey S.; Frawley, Brian T.; Bob Cassity; Josh Reisman

>(JReisman@rsnvlaw.com); James Pisanelli; Jeroen van Kwawegen; Adam

>Hollander; Burton, Emily; Braun, Bruce R.; Johannes, Tyler G.; DiRisio,

>Matthew L.; Will Miller; Valerie Larsen

>Subject: Re: DISH - Conference Call with Judge Gonzalez

>

>This is a scheduling order. If we seek discovery, seek a protective
>order. But asking us to agree to your view of the world is a nonstarter.

>

>Mark Lebovitch, Esq.
>Bernstein Litowitz Berger
> & Grossmann LLP
>1285 Ave. of the Americas
>New York, New York 10019
>Tel: 212-554-1519

>
>
>> On Nov 7, 2014, at 7:36 PM, Flinn, Barr <bflinn@ycst.com> wrote:
>>
>> It is the usual motion filed by an SLC following its report. It will
>>seek the dismissal of the claims, but as you know, it is not a
>>pleadings motion. It is based upon the independence of the SLC and its
>>report. For these motions, there are elements akin to summary judgment
>>(with summary judgment like burdens on independence and thoroughness
>>of investigation) and potentially evidentiary hearing elements. We
>>will argue that the motion should be granted, based upon the existing
>>record and without an evidentiary hearing. If we are unsuccessful,
>>there will be an evidentiary hearing. Under the language I proposed,
>>you would not get discovery for the former, and you will reserve your
>>right to seek discovery for the latter. You may not agree to the procedure that I
>>have just described, and you do not have to agree. Now, do you have
>>comments on my proposed language for the stipulation, which I thought
>>captured your position perfectly?

>>
>> Thanks
>>
>> Barr
>>
>> C. Barr Flinn
>> Partner
>> Young Conaway Stargatt & Taylor, LLP
>> Rodney Square
>> 1000 North King Street
>> Wilmington, DE 19801
>> P 302.571.6692
>> F 302.576.3292
>> bflinn@ycst.com

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>>
>>
>>
>> -----Original Message-----
>> From: Mark Lebovitch [mailto:MarkL@blbglaw.com]
>> Sent: Friday, November 07, 2014 7:22 PM
>> To: Flinn, Barr
>> Cc: Mundiya, Tariq; Debra Spinelli; Steve Peek; Brian Boschee; Rugg,
>>Jeffrey S.; Frawley, Brian T.; Bob Cassity; Josh Reisman
>>(JReisman@rsnvlaw.com); James Pisanelli; Jeroen van Kwawegen; Adam
>>Hollander; Burton, Emily; Braun, Bruce R.; Johannes, Tyler G.;
>>DiRisio, Matthew L.; Will Miller; Valerie Larsen

>> Subject: Re: DISH - Conference Call with Judge Gonzalez

>>

>> Barr, thanks for the suggestion. The thing is that you are choosing
>>to call this a motion to dismiss. If this is granted, then we are
>>done, subject to appeal. If it is not granted, then isn't the motion a
>>dead letter, and either the court will not want to hear from the SLC
>>anymore, or will let you move for summary judgment following discovery?

>>

>> Mark Lebovitch, Esq.
>> Bernstein Litowitz Berger
>> & Grossmann LLP
>> 1285 Ave. of the Americas
>> New York, New York 10019
>> Tel: 212-554-1519

>>

>>

>>> On Nov 7, 2014, at 7:08 PM, Flinn, Barr <bflinn@ycst.com> wrote:

>>>

>>> How about the following language for the stip?

>>>

>>> "Plaintiff does not seek and has agreed not to seek discovery in
>>>advance of the hearing of the motion on December 15. However, if the
>>>motion is not granted based upon the record made before the hearing,
>>>the plaintiff reserves all rights, including all rights to seek
>>>discovery, concerning the motion and the SLC reserves all rights,
>>>including the right to oppose such discovery, concerning the motion."

>>>

>>> Thanks

>>>

>>> Barr

>>>

>>> C. Barr Flinn
>>> Partner
>>> Young Conaway Stargatt & Taylor, LLP Rodney Square
>>> 1000 North King Street
>>> Wilmington, DE 19801
>>> P 302.571.6692
>>> F 302.576.3292
>>> bflinn@ycst.com

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>>>

>>>

>>> -----Original Message-----

>>> From: Mark Lebovitch [mailto:MarkL@blbglaw.com]

>>> Sent: Friday, November 07, 2014 6:25 PM

>>> To: Flinn, Barr

>>> Cc: Mundiya, Tariq; Debra Spinelli; Steve Peek; Brian Boschee; Rugg,

>>>Jeffrey S.; Frawley, Brian T.; Bob Cassity; Josh Reisman

>>>(JReisman@rsnlaw.com); James Pisanelli; Jeroen van Kwawegen; Adam

>>>Hollander; Burton, Emily; Braun, Bruce R.; Johannes, Tyler G.;

>>>DiRiso, Matthew L.; Will Miller; Valerie Larsen
>>> Subject: Re: DISH - Conference Call with Judge Gonzalez

>>>
>>> That is not what you wrote and not exactly what Steve said to Brian.
>>>I don't want to always be so aggressive, but it seems like this is
>>>the only time we can get a straight answer. It is not about rhetoric
>>>and tone, it is that your proposal was worded to say we are why you
>>>are rushing your motion and that the price of us rushing you is that
>>>we don't get discovery ever.

>>>
>>> Whether or not that was your intent, when we try to be forthright
>>>and call Steve to get clarification, his answer was not sufficient to
>>>give us clarity or comfort. If we make clear in the stipnthat we are
>>>simply agreeing to go forward without discovery between now and
>>>December 15 but we otherwise reserve all arguments and all of our
>>>rights, all is fine.

>>>
>>> Mark Lebovitch, Esq.
>>> Bernstein Litowitz Berger
>>> & Grossmann LLP
>>> 1285 Ave. of the Americas
>>> New York, New York 10019
>>> Tel: 212-554-1519

>>>
>>>
>>> On Nov 7, 2014, at 5:38 PM, Flinn, Barr
>>><bflinn@ycst.com<mailto:bflinn@ycst.com>> wrote:

>>>
>>> Mark, as I have said, you really need to tone it down. There is no
>>>scam. You have said and you say again below that you are not seeking
>>>discovery for purposes of the December 15 hearing of our motion. It
>>>therefore should not be hard for you to document that in the
>>>stipulation. We insist on that much since it makes no sense to have
>>>an expedited briefing schedule and hearing if you will be seeking
>>>discovery in the meantime to oppose the motion. There is no time for
>>>that. Of course, if upon hearing our motion, her Honor concludes
>>>that she cannot defer to the SLC and dismiss the claims without
>>>discovery; so be it. You have now made clear that, if the Court does
>>>not grant our motion based upon the pre-December 15 record, you want
>>>to reserve the right to seek discovery. I think we can accommodate
>>>you on that so long as it is clear that we are not conceding that you
>>>are entitled to discovery. We would agree to concede only that you
>>>reserve the right to seek discovery.

>>>
>>> Mark, if you want discovery to prepare for the argument of our
>>>motion on December 15, you need to say so. But, if you do, there
>>>will not be time before the briefing leading to the December 15
>>>argument to get that done, even if we agree to do it. If you want
>>>discovery to respond to the motion, and we agree that you should have
>>>whatever discovery you propose, we will need to push off the schedule
>>>to allow for that to occur.

>>>

>>> Please let us know how you want to proceed.

>>>

>>>

>>> C. Barr Flinn

>>> Partner

>>> Young Conaway Stargatt & Taylor, LLP Rodney Square

>>> 1000 North King Street

>>> Wilmington, DE 19801

>>> P 302.571.6692

>>> F 302.576.3292

>>> bflinn@ycst.com<mailto:bflinn@ycst.com>

>>>

>>>

>>>

>>>

>>> From: Mark Lebovitch [mailto:MarkL@blbglaw.com]

>>> Sent: Friday, November 07, 2014 4:13 PM

>>> To: 'Mundiya, Tariq'; Debra Spinelli

>>> Cc: Steve Peek; Brian Boschee; Rugg, Jeffrey S.; Frawley, Brian T.;

>>> Bob Cassity; Flinn, Barr; Josh Reisman

>>> (JReisman@rsnvlaw.com<mailto:JReisman@rsnvlaw.com>); James Pisanelli;

>>> Jeroen van Kwawegen; Adam Hollander; Burton, Emily; Braun, Bruce R.;

>>> Johannes, Tyler G.; DiRisio, Matthew L.; Will Miller; Valerie Larsen

>>> Subject: RE: DISH - Conference Call with Judge Gonzalez

>>>

>>> Stop. Are you really incapable of doing a simple stip without

>>> trying to scam us? We did not insist on you making this motion and

>>> we are most definitely NOT waiving any future rights to discovery

>>> that we have here. We opposed you filing the motion entirely, on the

>>> basis that it is procedurally improper. That said, since the Court

>>> is letting you file it, we are not expecting to conduct discovery before December 15.

>>> We have never suggested as much and you don't need language in any

>>> stip on that point, since the court understood that point quite clearly.

>>> Our position has always been that the SLC should not get any

>>> credence, that it should be rejected for a million reasons not even

>>> requiring any discovery, and that if for some reason the Court is not

>>> going to reject the SLC right away on December 15, which it should,

>>> at the very very least, any resolution of the SLC's substantive

>>> effort to shield Ergen & Co. from any accountability here must await discovery.

>>>

>>> So don't go filing anything that distorts what was said or our

>>> position. Delete that paragraph and we can proceed. Thanks.

>>>

>>> From: Mundiya, Tariq [mailto:tmundiya@willkie.com]

>>> Sent: Friday, November 07, 2014 1:39 PM

>>> To: Debra Spinelli

>>> Cc: Steve Peek; Brian Boschee; Rugg, Jeffrey S.; Frawley, Brian T.;

>>> Bob Cassity; Flinn, Barr; Mark Lebovitch; Josh Reisman

>>> (JReisman@rsnvlaw.com<mailto:JReisman@rsnvlaw.com>); James Pisanelli;

>>> Jeroen van Kwawegen; Adam Hollander; Burton, Emily; Braun, Bruce R.;

>>> Johannes, Tyler G.; DiRisio, Matthew L.; Will Miller; Valerie Larsen

>>> Subject: Re: DISH - Conference Call with Judge Gonzalez

>>>

>>> We are ready to sign. I gave Josh corrections to the sig page though.

>>>

>>>

>>> On Nov 7, 2014, at 1:37 PM, Debra Spinelli

>>><dls@pisanellibice.com<mailto:dls@pisanellibice.com>> wrote:

>>> Steve -

>>>

>>> We are happy to sign, but can you please update my firm's address to:

>>>

>>> Pisanelli Bice PLLC

>>> 400 South 7th Street, Suite 300

>>> Las Vegas, Nevada 89101

>>>

>>> Thanks,

>>> Debbie

>>>

>>>

>>> From: Steve Peek [mailto:S.Peek@hollandhart.com]

>>> Sent: Friday, November 07, 2014 10:31 AM

>>> To: Brian Boschee; Rugg, Jeffrey S.; Debra Spinelli

>>> Cc: Frawley, Brian T.; Bob Cassity; Mundiya, Tariq; Flinn, Barr;

>>>Mark Lebovitch; Josh Reisman

>>>(JReisman@rsnlaw.com<mailto:JReisman@rsnlaw.com>); James Pisanelli;

>>>Jeroen van Kwawegen; Adam Hollander; Burton, Emily; Braun, Bruce R.;

>>>Johannes, Tyler G.; DiRisio, Matthew L.; Will Miller; Valerie Larsen

>>> Subject: RE: DISH - Conference Call with Judge Gonzalez

>>>

>>> Brian/Mark:

>>>

>>> Please see the email from my assistant reporting her call from the

>>>Court regarding the stipulation. The court is pressing us for the

>>>stipulation and wants it today.

>>>

>>> Steve

>>>

>>> From: Brian Boschee [mailto:bboschee@nevadafirm.com]

>>> Sent: Thursday, November 06, 2014 4:24 PM

>>> To: Rugg, Jeffrey S.; Steve Peek; Debra Spinelli

>>> Cc: Frawley, Brian T.; Bob Cassity; Mundiya, Tariq; Flinn, Barr;

>>>Mark Lebovitch; Josh Reisman

>>>(JReisman@rsnlaw.com<mailto:JReisman@rsnlaw.com>); James Pisanelli;

>>>Jeroen van Kwawegen; Adam Hollander; Burton, Emily; Braun, Bruce R.;

>>>Johannes, Tyler G.; DiRisio, Matthew L.; Will Miller; Valerie Larsen

>>> Subject: RE: DISH - Conference Call with Judge Gonzalez

>>>

>>> Hold off on that Jeff. I haven't reviewed the substance, but I

>>>immediately noticed that the signature block for us is wrong (wrong

>>>firm name and Mike doesn't work here anymore). Also, Jeremy no

>>>longer works at BLBG.

>>>

>>> Brian Boschee

>>> Holley Driggs Walch Puzey & Thompson
>>> 400 S 4th Street
>>> Third Floor
>>> Las Vegas NV 89101
>>> (702) 791-0308
>>> bboschee@nevadafirm.com<mailto:bboschee@nevadafirm.com>
>>>
>>> From: Rugg, Jeffrey S. [mailto:JRugg@BHFS.com]
>>> Sent: Thursday, November 06, 2014 4:13 PM
>>> To: 'Steve Peek'; Debra Spinelli
>>> Cc: Frawley, Brian T.; Brian Boschee; Bob Cassity; Mundiya, Tariq;
>>> Flinn, Barr; Mark Lebovitch; Josh Reisman
>>> (JReisman@rsnlaw.com<mailto:JReisman@rsnlaw.com>); James Pisanelli;
>>> Jeroen van Kwawegen; Adam Hollander; Burton, Emily; Braun, Bruce R.;
>>> Johannes, Tyler G.; DiRisio, Matthew L.; Will Miller; Valerie Larsen
>>> Subject: RE: DISH - Conference Call with Judge Gonzalez

>>>
>>> Steve,
>>>
>>> Signed color scan attached. Are you sending a runner or do you want
>>> us to mail?

>>>
>>> Regards,
>>> Jeffrey
>>>
>>> Jeffrey Rugg
>>> Brownstein Hyatt Farber Schreck, LLP
>>> 100 North City Parkway, Suite 1600
>>> Las Vegas, NV 89106
>>> 702.464.7011 tel
>>> 954.494.6675 cell
>>> JRugg@BHFS.com<mailto:JRugg@BHFS.com>

>>>
>>> From: Steve Peek [mailto:SPEek@hollandhart.com]
>>> Sent: Thursday, November 06, 2014 4:05 PM
>>> To: Debra Spinelli
>>> Cc: Frawley, Brian T.; Brian Boschee; Bob Cassity; Mundiya, Tariq;
>>> Flinn, Barr; Mark Lebovitch; Rugg, Jeffrey S.; Josh Reisman
>>> (JReisman@rsnlaw.com<mailto:JReisman@rsnlaw.com>); James Pisanelli;
>>> Jeroen van Kwawegen; Adam Hollander; Burton, Emily; Braun, Bruce R.;
>>> Johannes, Tyler G.; DiRisio, Matthew L.; Will Miller; Valerie Larsen
>>> Subject: RE: DISH - Conference Call with Judge Gonzalez

>>>
>>> Counsel:
>>>
>>> Thank you all for responding and approving the December 15 hearing
>>> date. I am attaching for your review, approval and signature a
>>> Stipulation re Briefing Schedule. Please let me know if you all
>>> approve.

>>>
>>> Steve
>>>

>>> From: Debra Spinelli [mailto:dls@pisanellibice.com]
>>> Sent: Thursday, November 06, 2014 3:49 PM
>>> To: Steve Peek
>>> Cc: Frawley, Brian T.; Brian Boschee; Bob Cassity; Mundiya, Tariq;
>>> Flinn, Barr; Mark Lebovitch; Rugg, Jeffrey S.; Josh Reisman
>>> (JReisman@rsnlaw.com<mailto:JReisman@rsnlaw.com>); James Pisanelli;
>>> Jeroen van Kwawegen; Adam Hollander; Burton, Emily; Braun, Bruce R.;
>>> Johannes, Tyler G.; DiRisio, Matthew L.; Will Miller; Valerie Larsen
>>> Subject: Re: DISH - Conference Call with Judge Gonzalez

>>>
>>> Steve-
>>> We are on board as well.
>>> Thanks,
>>> Debbie

>>>
>>> Sent from my iPhone

>>>
>>> On Nov 6, 2014, at 3:45 PM, Steve Peek
>>> <SPeek@hollandhart.com<mailto:SPeek@hollandhart.com>> wrote:
>>> Thanks Brian. We have everyone on board with December 15 except
>>> Pisanelli Bice and their co-counsel. Jim/Debbie/Bruce????

>>>
>>> From: Frawley, Brian T. [mailto:FrawleyB@sullcrom.com]
>>> Sent: Thursday, November 06, 2014 3:41 PM
>>> To: Steve Peek; Brian Boschee; Bob Cassity; Mundiya, Tariq; 'Debra
>>> Spinelli'; Flinn, Barr; 'Mark Lebovitch'; Rugg, Jeffrey S.; Josh
>>> Reisman (JReisman@rsnlaw.com<mailto:JReisman@rsnlaw.com>); James
>>> Pisanelli; Jeroen van Kwawegen; Adam Hollander; Burton, Emily; Braun,
>>> Bruce R.; Johannes, Tyler G.; DiRisio, Matthew L.; Will Miller
>>> Cc: Valerie Larsen
>>> Subject: Re: DISH - Conference Call with Judge Gonzalez

>>>
>>> Okay with the director defendants

>>>
>>> From: Steve Peek
>>> Sent: Thursday, November 6, 2014 6:35 PM
>>> To: Brian Boschee; Bob Cassity; Mundiya, Tariq; 'Debra Spinelli';
>>> Flinn, Barr; 'Mark Lebovitch'; Rugg, Jeffrey S.; Josh Reisman
>>> (JReisman@rsnlaw.com<mailto:JReisman@rsnlaw.com>); Frawley, Brian
>>> T.; James Pisanelli; Jeroen van Kwawegen; Adam Hollander; Burton,
>>> Emily; Braun, Bruce R.; Johannes, Tyler G.; DiRisio, Matthew L.; Will
>>> Miller
>>> Cc: Valerie Larsen
>>> Subject: RE: DISH - Conference Call with Judge Gonzalez

>>>
>>>
>>>
>>> We received an inquiry this morning from the court asking us the
>>> status of a stipulation. I have drafted a stipulation but I have not
>>> circulated it because, with the exception of Josh Reisman, no one has
>>> responded to my email asking if each of the parties was agreeable to
>>> a hearing date of December 15. May I please have a response to the

>>>email below asking if a hearing date of December 15 on all the
>>>Motions to Dismiss and the SLC's proposed motion is acceptable to all counsel.

>>>

>>>

>>>

>>> Counsel:

>>>

>>>

>>>

>>> Brian Boschee and I have met and conferred on a briefing schedule
>>>and a hearing date on the SLC's Motion for Judgment Dismissing the
>>>Claims

>>>("Motion") to be filed on November 17, 2014. We have reached
>>>tentative agreement on the briefing schedule and we propose that this
>>>new Motion and the other four Motions to Dismiss filed by the defendants and the
>>>SLC be heard on Monday, December 15, 2014. Is this hearing date
>>>acceptable to all counsel? Please let me know so that I can
>>>circulate a stipulation for the briefing schedule with a hearing date.

>>>

>>>

>>>

>>> Steve

>>>

>>>

>>>

>>> -----Original Message-----

>>>

>>> From: Brian Boschee [mailto:bboschee@nevadafirm.com]

>>>

>>> Sent: Wednesday, October 29, 2014 5:10 PM

>>>

>>> To: Bob Cassity; Mundiya, Tariq; 'Debra Spinelli'; Flinn, Barr;
>>>'Mark Lebovitch'

>>>

>>> Cc: Rugg, Jeffrey S.; Josh Reisman

>>>(JReisman@rsnlaw.com<mailto:JReisman@rsnlaw.com>); Frawley, Brian

>>>T.; James Pisanelli; Steve Peek; Jeroen van Kwawegen; Adam Hollander;

>>>Burton, Emily; Braun, Bruce R.; Johannes, Tyler G.; DiRisio, Matthew

>>>L.; Kutinac, Daniel; Will Miller

>>>

>>> Subject: RE: DISH - Conference Call with Judge Gonzalez

>>>

>>>

>>>

>>> Everyone,

>>>

>>>

>>>

>>> Attached please find a short status report that we

>>>just filed (and delivered a courtesy copy of to the Court, which I

>>>guess we are doing again now by copying Dan) with respect to tomorrow

>>>morning's call.

>>>
>>>
>>>
>>> Brian Boschee
>>>
>>> Holley Driggs Walch Puzey & Thompson
>>>
>>> 400 S 4th Street
>>>
>>> Third Floor
>>>
>>> Las Vegas NV 89101
>>>
>>> (702) 791-0308
>>>
>>> bboschee@nevadafirm.com<mailto:bboschee@nevadafirm.com>

>>>
>>>
>>>
>>>
>>>
>>>

>>> -----Original Message-----

>>>

>>> From: Bob Cassity [mailto:BCassity@hollandhart.com]

>>>

>>> Sent: Tuesday, October 28, 2014 1:20 PM

>>>

>>> To: Brian Boschee; Mundiya, Tariq; 'Debra Spinelli'; Flinn, Barr;
>>>'Mark Lebovitch'

>>>

>>> Cc: Rugg, Jeffrey S.; Josh Reisman

>>>(JReisman@rsnlaw.com<mailto:JReisman@rsnlaw.com>); Frawley, Brian

>>>T.; James Pisanelli; Steve Peek; Jeroen van Kwawegen; Adam Hollander;

>>>Burton, Emily; Braun, Bruce R.; Johannes, Tyler G.; DiRisio, Matthew

>>>L.; Kutinac, Daniel

>>>

>>> Subject: DISH - Conference Call with Judge Gonzalez

>>>

>>>

>>>

>>> All--

>>>

>>> Dan Kutinac returned my voice message and I attempted to patch in

>>>all of those who had requested to join the call earlier this morning

>>>(as I informed them I would when Dan returned the call), although a

>>>couple people (Brian and Debbie) were unavailable. Dan was only

>>>available for a few minutes due to the CityCenter trial but indicated

>>>that the judge would be available either tomorrow (10/29) or Thursday

>>>(10/30) morning at 8:00 a.m. (PDT) for the parties to have a

>>>conference call with the Court.

>>>

>>> Please note that Dan asked me to copy him on the correspondence with

>>>counsel so the Court could calendar the conference call once the
>>>parties confirm their availability (so he is copied here).

>>>

>>> Our preference would be Thursday morning at 8:00 a.m. for a
>>>conference call. Please respond to let us know your availability.

>>>

>>> Thanks.

>>>

>>>

>>>

>>> Robert J. Cassity

>>>

>>> Partner

>>>

>>> Holland & Hart LLP

>>>

>>> 9555 Hillwood Dr., 2nd Floor

>>>

>>> Las Vegas, Nevada 89134

>>>

>>> Phone (702) 669-4600

>>>

>>> Fax (702) 669-4650

>>>

>>> bcassity@hollandhart.com<mailto:bcassity@hollandhart.com>

>>>

>>>

>>>

>>>

>>>

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>>>privileged. If you believe that this email has been sent to you in
>>>error, please reply to the sender that you received the message in
>>>error; then please delete this e-mail. Thank you.

>>>

>>>

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>>>

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>>>

>>> *****

>>> ***

>>>

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>>> *****

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>

>

>

HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134

1 **SAO**
J. Stephen Peek
2 Nevada Bar No. 1758
Robert J. Cassity
3 Nevada Bar No. 9779
HOLLAND & HART LLP
4 9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
5 Phone: (702) 669-4600
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6
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555 17th Street, Suite 3200
8 Denver, Co 80202
Phone: (303) 295-8085
9 Fax: (303) 975-5395

10 David C. McBride (*Pro Hac Vice*)
Robert S. Brady (*Pro Hac Vice*)
11 C. Barr Flinn (*Pro Hac Vice*)
YOUNG, CONWAY, STARGATT & TAYLOR, LLP
12 Rodney Square
1000 North King Street
13 Wilmington, DE 19801
Phone: (302) 571-6600
14 Fax: (302) 571-1253

15 *Attorneys for the Special Litigation Committee*
of Dish Network Corporation

17 **DISTRICT COURT**
CLARK COUNTY, NEVADA

18 IN RE DISH NETWORK CORPORATION
19 DERIVATIVE LITIGATION

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

21 **STIPULATION AND**
PROTECTIVE ORDER

23
24 WHEREAS, on July 25, 2014, plaintiff Jacksonville Police and Fire Pension Fund
25 ("Jacksonville") filed the Verified Second Amended Shareholder Derivative Complaint of
26 Jacksonville Police and Fire Pension Fund Pursuant to Rule 23.1 of the Nevada Rules of Civil
27 Procedure ("Second Amended Complaint") purporting to assert claims on behalf of DISH
28 Network Corporation ("DISH") against certain DISH directors and officers;

Error!

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 “Rule56(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

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

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.

1 C. All parties to this litigation reserve any rights or arguments they may have
2 as to whether Jacksonville may discover or use the Protected Documents in this litigation
3 for some other purpose.
4

5 DATED this 27 day of March, 2015

6 By: 
7 Jeffrey S. Rugg, Esq. (NBN 10978)
8 Mazimilien D. Fetaz, Esq. (NBN 12737)
9 BROWNSTEIN HYATT FARBER
10 SCHRECK, LLP
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15 SULLIVAN & CROMWELL LLP
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17 New York, NY 10004
18 *Attorneys for Director Defendants*

DATED this ____ day of March, 2015

By: _____
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18 DATED this ____ day of March, 2015

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By: _____
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1 C. All parties to this litigation reserve any rights or arguments they may have
2 as to whether Jacksonville may discover or use the Protected Documents in this litigation
3 for some other purpose.
4

5 DATED this ____ day of March, 2015

6 By:
7 Jeffrey S. Rugg, Esq. (NBN 10978)
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5 DATED this 26th day of March, 2015

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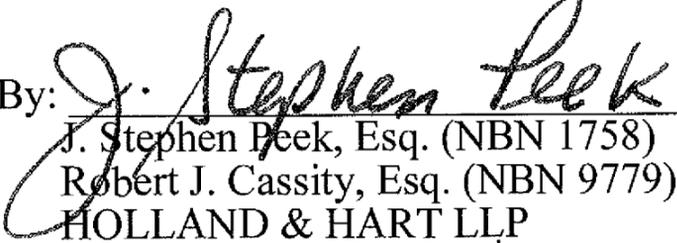
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18 DATED this ___ day of March, 2015

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DATED this 27th day of March, 2015

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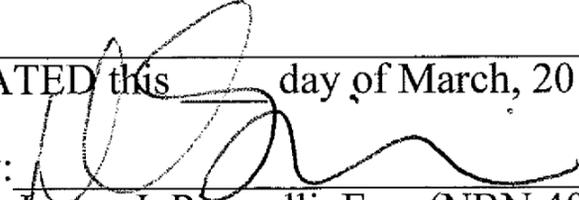
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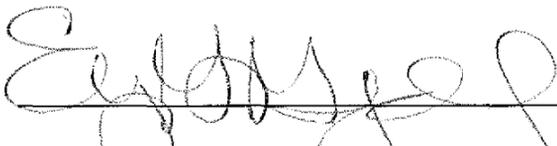
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PROTECTIVE ORDER

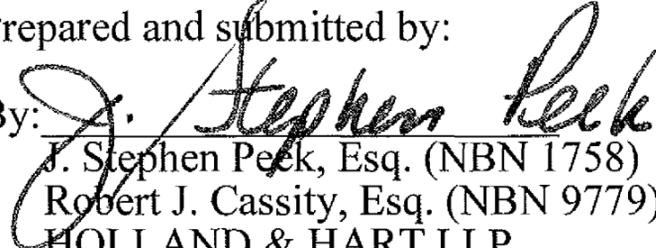
Having considered the foregoing and finding good cause appearing,

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:

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