

1                                   **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2   IN THE MATTER OF DISH  
3   NETWORK DERIVATIVE  
4   LITIGATION.

5   JACKSONVILLE POLICE AND FIRE  
6   PENSION FUND,

7                                   Appellant,

8   vs.

9   GEORGE R. BROKAW; CHARLES  
10   M. LILLIS; TOM A. ORTOLF;  
11   CHARLES W. ERGEN; CANTEY M.  
12   ERGEN; JAMES DEFRANCO;  
13   DAVID K. MOSKOWITZ; CARL E.  
14   VOGEL; THOMAS A. CULLEN;  
15   KYLE J. KISER; AND R. STANTON  
16   DODGE,

17                                   Respondents.

SUPREME COURT No. 69012

SUPREME COURT No. 69729

Electronically Filed  
May 26 2016 03:28 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

**MOTION FOR LEAVE TO  
REDACT PORTIONS OF  
APPELLANT'S OPENING BRIEF  
AND TO SEAL PORTIONS OF  
THE APPENDIX**

18   **I.     INTRODUCTION**

19           Plaintiff-Appellant Jacksonville Police & Fire Pension Fund ("Appellant")  
20   respectfully submits this motion for leave to redact portions of its opening brief and to  
21   seal portions of the appendix. Appellant's brief cites to and discusses, and the  
22   appendix contains, certain documents and information (the "Confidential  
23   Information") that, although part of the record on appeal, are not public. (*See*  
24   Plaintiff's Opening Appellate Brief ("Op. Br.") at 13, 18, 23, 24, 30, 32-34, 50, and  
25   n.6; *see also* Joint Appendix at JA001571, JA001607, JA001956, JA002404,  
26   JA003098, JA004453, JA004613, JA005675, JA005868, JA006228, JA006460,  
27   JA006512, JA009499, JA009553, JA010002). The parties agree that the Confidential  
28   Information should remain nonpublic for the duration of the appeal.<sup>1</sup>

          The parties entered into two confidentiality agreements (the "Agreements")  
during the course of proceedings in the District Court: (1) a Stipulated Confidentiality

<sup>1</sup>       The parties have agreed that certain documents that were sealed and/or redacted  
in the District Court and included in the appendix at [Vol. 30 JA007346-57, Vol. 30  
JA007468, Vol. 31 JA007502, Vol. 31 JA007535-43, Vol. 32 JA007769-72, Vol. 34  
JA008245], may now be unsealed and used publicly.

Agreement and Protective Order that the District Court entered on October 21, 2013 to govern discovery in connection with Appellant's motion for preliminary injunctive relief and (2) a Stipulation and Protective Order that the District Court entered on March 30, 2015<sup>2</sup> to govern discovery in connection with the Special Litigation Committee's Motion to Defer to its Determination that the Claims Should be Dismissed (the "Motion to Defer"), which is the subject of the present appeal. Pursuant to each of the Agreements, the parties agreed to file and maintain under seal, and/or redact, certain Confidential Information (as defined in the Agreements). In addition, the record below contains sealed transcripts from proceedings in the United States Bankruptcy Court.

**II. THE REDACTED AND SEALED INFORMATION SHOULD REMAIN REDACTED AND/OR SEALED**

SRCR 3(4) provides that:

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

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

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

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

\* \* \*

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

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<sup>2</sup> Collectively attached hereto as **Exhibit 1**.

1 See SRCR3(4).

2 Here, redacting portions of Appellant's brief and sealing portions of the  
3 appendix are warranted under SRCR 3(4)(a), (b), (c), and (h), because the brief and  
4 appendix will contain, discuss, and cite to information designated Confidential under  
5 the court-ordered Agreements, as well as information ordered sealed by a federal  
6 court. In addition, the Court's public policy favoring redaction weighs in favor of  
7 allowing redaction of the brief and sealing portions of the appendix rather than filing  
8 Appellant's brief and appendix entirely under seal.

9 **III. CONCLUSION**

10 Based upon the foregoing, Appellant respectfully moves the Court for an order  
11 permitting the public version of its opening brief on appeal to be filed in redacted  
12 form and to seal certain portions of the Appendix. Appellant will also file with the  
13 Court and provide to all parties a nonpublic version of its brief and copies of all  
14 exhibits unsealed and unredacted.

15 DATED this 25 day of May, 2016.

16 **McDONALD CARANO WILSON**

17  
18 By: /s/ Jeff Silvestri

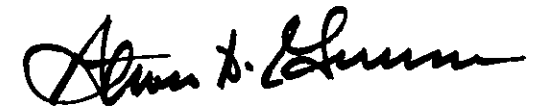
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# **EXHIBIT 1**

# **EXHIBIT 1**



CLERK OF THE COURT

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21 CANTEY M. ERGEN, DAVID K. MOSKOWOTZ, and

22 CARL E. VOGEL

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

Case No.: A-13-686775-B

Dept. No.: XI

IN RE DISH NETWORK CORPORATION  
DERIVATIVE LITIGATION

**STIPULATED CONFIDENTIALITY  
AGREEMENT AND PROTECTIVE  
ORDER**

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

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

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

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

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

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

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

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

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

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

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



- a. Store and maintain such Confidential Information in a secure manner, within their exclusive possession and control;
- b. Take all measures reasonably necessary to maintain the confidentiality of such Confidential Information; and
- c. Not permit or participate in, directly or indirectly, the unauthorized production, disclosure, or use of such Confidential Information.

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

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

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

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

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

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

this action);

(b) A Defendant, or officers, directors, and employees of a Defendant deemed reasonably necessary by counsel for the Defendant to aid in the defense, or settlement of this action;

(c) Outside experts or consultants (together with their clerical and secretarial staff) retained by counsel for a party to assist in the prosecution, defense, or settlement of this action, to the extent reasonably necessary to perform their work in connection with this action, provided, however, that no such expert or consultant shall be employed or retained by, or otherwise working for, any party (other than the Defendants and their affiliates) in connection with the proceedings captioned *In re: LightSquared Inc., et al.*, Case No. 12-12080 (SCC), pending in the United States Bankruptcy Court for the Southern District of New York;

(d) Clerical and data processing personnel, including third party vendors, involved in the production, reproduction, organizing, filing, coding, cataloging, converting, storing, retrieving, and review of Discovery Material, to the extent reasonably necessary to assist a party or its counsel in these proceedings;

(e) This Court and its staff and any other court, tribunal or dispute resolution officer duly appointed, chosen or assigned in connection with this action;

(f) Court reporter(s) and videographers(s) employed in this action;

(g) A witness or person or non-party appearing at a deposition in this action (including his or her counsel), subject to the terms of Section 4;

(h) The original source of the Confidential Information (its author), and any addressee(s) or recipient(s) of communications or material that is designated as Confidential Information, including but not limited to addressee(s) or recipient(s) of confidential e-mail communications and/or confidential correspondence;

(i) Any other person as to whom the parties in writing agree or that the Court in this action designates; and

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

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

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

1 form Attachment A affixed to this Stipulation and Order.

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

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

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

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

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

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

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

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

- 15 (a) To apply to information lawfully obtained by a party from any non-party to this  
16 litigation, if that non-party had the right to disclose such information subsequent to  
17 the production of information by the Producing Party, subject to and in accordance  
18 with Section 10 herein; or
- 19 (b) To apply to information or other materials that have been or become part of the  
20 public domain by publication or otherwise and not due to any unauthorized act or  
21 omission on the part of a Receiving Party; or
- 22 (c) To apply to information or other materials that, under law, have been declared to be  
23 in the public domain.

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

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

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

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

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

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



1 Information is used or referenced in any pretrial Court proceeding in this action, it shall not lose its  
2 confidential status through such use, and the party using or referring to such Confidential  
3 Information shall take all reasonable steps to maintain its confidentiality during such use or  
4 reference, including without limitation, requesting that the Court seal any transcript or portion(s)  
5 thereof with respect to such proceeding. Nothing in this Protective Order, or designations of  
6 confidentiality hereunder, shall in any way affect the treatment of Confidential Information at the  
7 trial of this action. Should the Producing Party desire that Confidential Information be treated as  
8 confidential at trial, the Producing Party must make an appropriate request to the Court for such  
9 treatment at the time set forth by the Court for consideration of motions *in limine* or at such other  
10 time as directed by the Court.

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

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

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

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

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



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

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

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

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

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

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

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

18. **Other Actions And Proceedings.** If a Receiving Party (a) is subpoenaed in another action or proceeding, (b) is served with a demand in another action or proceeding in which it is a party, or (c) is served with any legal process by one not a party to this Stipulation and Order, seeking Discovery Materials that were produced or designated as containing Confidential Information pursuant to this Stipulation and Order, the Receiving Party shall forward the subpoena, demand or legal process by hand, email or facsimile transmission to counsel for the Producing Party within five (5) business days of receipt of such subpoena, demand or legal process or such shorter notice as may be required to provide the Producing Party with the opportunity to object to the immediate production of the requested Discovery Materials to the extent permitted by law. Should the person seeking access to the Confidential Information take action against the Receiving Party or anyone else covered by this Stipulation and Order to enforce such a subpoena, demand or other legal process, the Receiving Party shall respond by setting forth the existence of this Stipulation and Order. The Producing Party is solely responsible for intervening to object or seek a limitation of such subpoena, demand or other legal process. The Receiving Party agrees that it will provide its best efforts to cooperate fully with any effort by the Producing Party to object to or limit such disclosure of Confidential Information. In no event shall this stipulation be interpreted to impose a requirement on the Receiving Party to defy a final, non-appealable Court order in any

1 action.

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

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

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

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

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

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

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

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

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

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

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

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

1 DATED this \_\_\_\_\_ day of October, 2013.

2  
3 By: \_\_\_\_\_  
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5 Michael D. Navratil, Esq.  
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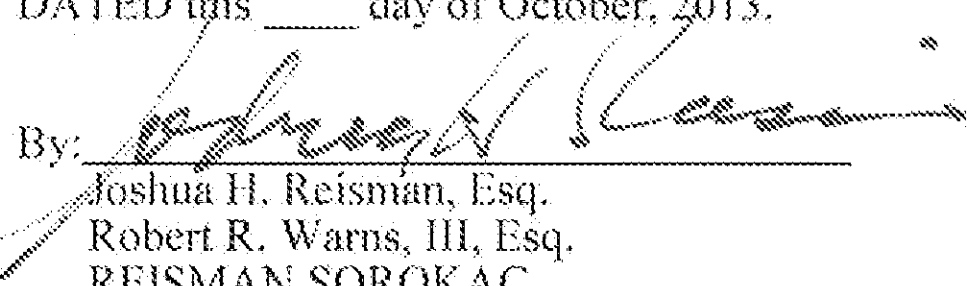
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1 DATED this 11<sup>th</sup> day of October, 2013.

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38 *Corporation and Defendant Tom A.*  
39 *Ortolf*

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DATED this \_\_\_\_\_ day of October, 2013.

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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 Stipulated Confidentiality Agreement and Protective Order is GRANTED.

Dated this 16 day of October, 2013.

  
DISTRICT COURT JUDGE

Prepared and submitted by:

By:

  
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CANTEY M. ERGEN, DAVID K.  
MOSKOWOTZ, and CARL E. VOGEL

FORM ATTACHMENT "A"  
CONFIDENTIALITY AGREEMENT

I, \_\_\_\_\_, do hereby acknowledge and agree as follows:

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

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

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
[Name, Address, Telephone Number]

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

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

IN RE DISH NETWORK CORPORATION  
DERIVATIVE LITIGATION

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

**STIPULATION AND  
PROTECTIVE ORDER**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 3. The SLC, its members and counsel shall not be required to produce for the  
26 Motion to Defer any documents that are properly protected from disclosure as attorney work  
27 product of counsel for the SLC, other than the Protected Documents, including, without  
28

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

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

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

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

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

DATED this 27 day of March, 2015

By: 

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DATED this \_\_\_\_ day of March, 2015

By: \_\_\_\_\_

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DATED this \_\_\_\_ day of March, 2015

By: \_\_\_\_\_

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and Cantey M. Ergen*

DATED this \_\_\_\_ day of March, 2015

By: \_\_\_\_\_

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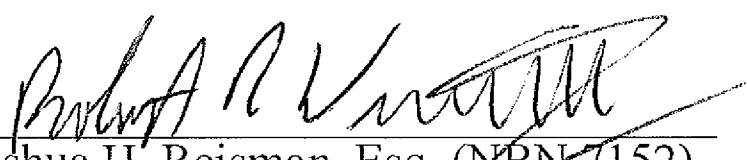
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DATED this \_\_\_\_ day of March, 2015

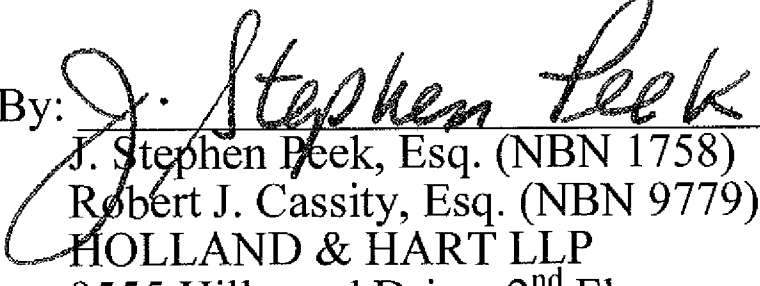
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DATED this 27<sup>th</sup> day of March, 2015

By:

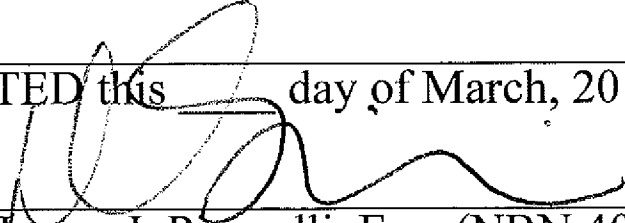
  
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	Wilmington, DE 19801 <i>Attorneys for the Special Litigation Committee of Dish Network Corporation</i>
DATED this      day of March, 2015  By:  James J. Pisanelli, Esq. (NBN 4027) Debra J. Spinelli, Esq. (NBN 9695) PISANELLI BICE PLLC 400 South 7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

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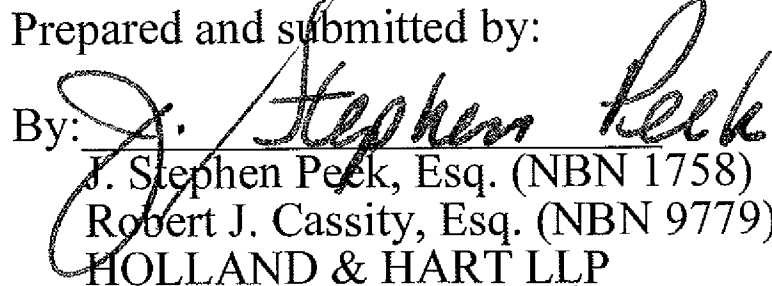
**PROTECTIVE ORDER**

Having considered the foregoing and finding good cause appearing,  
IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the foregoing  
Stipulation and Protective Order is GRANTED.

Dated this \_\_\_\_ day of March, 2015

  
DISTRICT COURT JUDGE

Prepared and submitted by:

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