cast a reasonable doubt on the board's judgment in approving it. So the Court has noted demand excusal under this prong of Aronson is reserved for extreme cases where the transaction is so egregious that it could not have been the product of good faith. That's the Postorivo case. Sorry. Trouble pronouncing that. Or it was so extreme that it warrants further review.

THE COURT: So extreme. Is it equivalent to the waste standard?

MR. NACHBAR: It's not entirely clear. But I'm just -- this is what the Supreme Court said in Tremont.

THE COURT: So extreme. But that's not what they said in Aronson; right? So it's only particularized pleading of an extreme breach of fiduciary duty?

MR. NACHBAR: I think --

THE COURT: That's like, do you take seriously, like, Lyondell. I would be candid with you all in a way that maybe upset my betters in Dover. I don't take seriously the adverb completely in that case. I take very seriously the knowingly. I think a three-quarters, complete, injurious knowing breach of fiduciary duty under Revlon is probably sufficient.

The fact that you didn't finish the job, it's an odd -- well, like, we did it. We like -- you know, we could have completely eviscerated the stockholders to the tune of 100 bucks. That would be the complete loss. But we knowingly breached our duty -- fiduciary duty -- and only took away $80 of the value. Therefore it's not a complete breach because we could have taken this other step that would have been a complete breach, therefore exculpated under Lyondell. I don't take Lyondell to mean that. I take that completely to be a kind of rhetorical emphasis.

In some of these cases, what are we getting at? Where if I find -- I harbor serious doubt, based on the particularized facts, that this was a transaction that was fair to the company and that would have been approved in the absence of the presence of a very influential stockholder, if I conclude that particularized facts provoke that inference and that the independent directors -- the otherwise independent directors would not have acted this way with respect to a noncontrol transaction, would not have approved it, and that this transaction was unduly -- there's a suspicion it was unduly fair to Riggio, at the expense of Barnes & Noble, that I let it go because it's not extreme, because it could have been even worse, because it's not the most shocking thing that -- because, at the summary judgment stage, I might completely grant your argument, once I had the facts, because I realize the plausibility of putting these two businesses together, even though that plausibility has existed since the companies went public? That's what I'm trying to get at.

MR. NACHBAR: I think the filter there in what the courts are trying to get at is that we don't lightly undo the business judgment of boards. So, for the second prong to be implicated, there has to be some pretty extreme facts. Fertitta -- if I'm pronouncing it correctly -- is a pretty good example. They add a merger agreement. 39 percent stockholder bid 21. Then he dropped it to 17. Then he dropped it to 13. Then he went out into the market and he got 57 percent of the stock without paying a control premium, all while the board sat by and did nothing.

What they ultimately did is they released them from the merger agreement, in sort of the final insult, so he didn't have to pay the 15 million-dollar reverse termination fee for not going through with the merger agreement while he did his street sweep to get control without a premium. You know, you can understand why somebody would say that's not the product of a valid business judgment. We don't have similar facts here. We don't have remotely similar facts.

The allegations -- really, the ones that the plaintiffs sort of most focus on, is they say that the committee ignored negative information about College Booksellers, didn't quantify -- or thought there were synergies and didn't quantify the threat to College Booksellers from e-commerce or eBooks.

There's no basis for any allegation that the committee or the voting directors regarded synergies as an intended benefit of this transaction. The record shows the contrary. They knew early on that synergies weren't what was going to drive this.

Similarly, the complaint alleges that College Booksellers was not growing, but the plaintiffs' own allegations show the opposite. Same-store sales growth was consistent. It was as low as 1 percent for the fiscal year ended April 30, 2009, in the midst of the worst recession in 80 years. So actually it was growing.

But, more importantly, there is no basis for plaintiffs' claim that the committee failed to take these alleged negative facts into account when negotiating the purchase price. There's no allegation, for example, that companies in this line of business historically sold for ten times EBITDA. This company faced unique threats, but somebody paid ten times EBITDA anyway. That would be a particularized allegation.

You know, put differently, any acquisition could be favorable at the right price, unfavorable at the wrong price. We're on a motion to dismiss, but the record that plaintiffs have incorporated show that that this is a good price. The Credit Suisse report that they trumpet --

THE COURT: I'm -- in the interest of time, I read the Credit Suisse report. I don't know that it does you any good.

MR. NACHBAR: This was at four times EBITDA. That's a low multiple. Obviously, if this company were growing at 15 percent per year and faced no threats and had tremendous synergies, might have been six times EBITDA, might have been eight times EBITDA. It wouldn't have been four. That's the point.

It's a low-priced transaction. Credit Suisse says that. The reason that it was done at a low price is precisely because the committee did take the negative facts into account.

Plaintiffs next say that paying half the purchase price in notes was an unnecessary expense that enriched the Riggios. Again, this is nothing more than an effort to second-guess the board. Fully drawing one's credit facilities in a volatile economy is not necessarily a winning strategy. It's one that the committee here chose to avoid. In fact, the record that is before the Court shows that Mr. Riggio wanted significantly more cash -- 470 million. That's Waesco Affidavit Exhibit 11. The committee pushed back. It reduced the overall price, but it also reduced the cash component by $130 million. That wasn't Mr. Riggio forcing the board to do something. That was the board forcing Mr. Riggio to do something. So the fact that there's more notes and less cash is something that cuts in favor of the independence and functioning of the committee, not against it.

THE COURT: Yeah. Although I've seen cases -- I had a case where someone asked -- the fact that the controller asked for an outrageous price, the people said, "Well, see, we approved a less outrageous price."

MR. NACHBAR: The only evidence here is that the price is not only not outrageous, it's inexpensive. Four times EBITDA. You know, people can have reasonable differences of opinion as to whether long-term strategically this makes sense or not. Those are the types of things that I think business judgment comes into play.

But I don't think reasonable people can disagree about whether it was a high price to pay for these assets. It's four times EBITDA. It simply is not a high price. You know, Credit Suisse, who they rely on, expressly says it's a favorable price. It's 30 percent accretive to earnings in the short-term. They question the long-term soundness of the strategy. You know, time will tell if they're right or if the committee is right and the board is right. But that's business judgment.

THE COURT: Mr. Riggio did it as a favor?

MR. NACHBAR: No. I mean, I think Mr. Riggio did it because he's a 31 percent stockholder of Barnes & Noble and he wants to see Barnes & Noble succeed. And he felt that putting these two together at this time made economic sense. And I think he got a low price for College Booksellers. There's no question about that. If it succeeds in the long run, Mr. Riggio will profit enormously, as will all the other stockholders. If it proves not to be a favorable transaction in the long run, Mr. Riggio will suffer along with everyone else.

THE COURT: With whatever the transactional situation is in his bank account.

MR. NACHBAR: Sure. But there's no allegation and no claim of any particularized claim that the price that was ultimately paid was a high price for this. It wasn't. I mean, again, the only record we had shows that it was a very, very low price. Again, you know, four times EBITDA. 30 percent accretive. 30 to 35 percent accretive immediately. That's not overpaying for an asset. You know, strategically, is it a good asset for this company to acquire? You know, time will tell. But that's a business judgment.

THE COURT: I don't want to cut you short. On the other hand, I think you have -- do you have friends who want to talk about the other directors?

MR. NACHBAR: I do, and I will yield to them.

THE COURT: Thank you, Mr. Nachbar. I appreciate it.

MR. RIEDER: Good afternoon, Your Honor. I'm Eric Rieder from Bryan Cave. And as Mr. Nachbar indicated, I represent the nonvoting directors -- that's Leonard and Stephen Riggio and Lawrence Zilavy. I'm not going to address Rule 23, except to say we join in Mr. Nachbar's arguments concerning why demand is not excused here.

I just want to address the Rule 12(b)(6) issues with respect to the claims against the nonvoting directors. There are multiple claims against them, but I think there's one important question to focus on, which is this. About the case against the Riggios and Mr. Zilvay, what did they do? What are they alleged to have done in this amended complaint? I think the answer is nothing that states a claim against them.

THE COURT: Even as to Leonard Riggio?

MR. RIEDER: That's correct. When you

look at the complaint, and what it is that's really alleged about Mr. Riggio, it doesn't fit within the categories of liability that they're seeking to invoke here. And in some sense this is really shown by even the cases that the plaintiffs cite.

The Fertitta case that Mr. Nachbar mentioned, or the LNR case, those are cases -- those are the closest analogies in the view of the plaintiffs that they have. Those are cases where the alleged controller did much more than simply propose a transaction with the corporation and then say, "I've got to abstain, allow a special committee to be appointed and have that special committee function," which is really the only inference to be drawn from the facts pleaded here.

THE COURT: In your view, if a controller proposes, you know, buy a quarter of -- he says a quarter million, I want a quarter billion. Special committee set up. Controller says, you know, I have my negotiators to do it. Negotiates it down to 225. All I did was negotiate it. I stepped back. The facts suggest that the special committee is a joke. It didn't really study it. It made no economic sense to do it. Then so long as the controller, all he did was put this price on the table, agree to the thing, he's not liable even if the transaction is substantively unfair?

MR. RIEDER: That introduces an element: the special committee is a joke. That isn't present here.

THE COURT: But you introduced a stark argument under 12(b)(6), which I think would revolutionize the classic paradigm of addressing interested transactions. I always thought, when you were interested, unless ultimately the business judgment rule applies to protect the transaction, if the transaction is unfair to the company and thus unduly beneficial to you, the difference between what was fair and not comes out of your hide. And it's not a matter of your subjective good faith. It's just: we just didn't even allow these kind of transactions. And it's an indulgence to allow them. And if they're tainted by a fiduciary breach, you got to pay back the difference.

MR. RIEDER: But --

THE COURT: Now you're telling me, because Mr. Riggio stepped aside and all he did was negotiate this, even though he's the major strategic thinker at Barnes & Noble, he's scot clear.

MR. RIEDER: Well, there are other elements, though. The fact is that what the complaint doesn't plead is a failed independent process. That's the variable that's missing. And it's present in the cases that they cite. Some specific allegation that the alleged controller actually interfered with or got involved in or controlled the independent process. And that really isn't pleaded in the complaint.

I mean, when you look at the paragraphs that the plaintiffs cite where they do purport to say they made specific allegations that Mr. Riggio controlled the process, but when you look at those --

THE COURT: I am not -- look, there's a lot about this complaint that is loose, like the whole part about the committee couldn't say no. It's not really buttressed in the complaint. In case you're concerned, I read the complaint. I marked it all up. Even read the earlier one, until I realized that I was reading the wrong one and then I read all the changes. So I read all that.

But you made a fairly stark argument that even Len Riggio -- I conclude, for example, that

I harbor a doubt that the special committee process was effective. You say Len Riggio didn't do anything. He's out. Is that right?

MR. RIEDER: Well, where I would -- what I would argue is that the complaint doesn't plead a basis to infer that the special committee process was not effective.

THE COURT: Okay. So that's an argument you share with Mr. Nachbar.

MR. RIEDER: Correct. That's an important element here.

THE COURT: Then let's -- I don't want -- I've spent -- I'm willing always to spend a lot of time. But we spent a lot of time doing that. What is it you distinctly want to say -- for example, tell me about Stephen Riggio. Why does it make sense that the CEO can say, you know, "The way I'll deal with this situation is, rather than giving any strategic advice, it's my bro. He wants to propose this icky situation. I can just get out of hot water by not being in the management pot."

MR. RIEDER: Well, the whole idea of abstention presupposes that senior executives or senior people at companies can and should abstain in these situations.

THE COURT: Here is the problem, I guess. In the ordinary situation, when there's an abstention by the CEO, the CEO is still on the hook. Your first argument would say that he wasn't. Like the classic ex-abstention mode is Len Riggio who doesn't vote on the transaction. But he didn't really abstain in the sense that he's actually on the other side of the transaction. What you have here with Steve Riggio is, "I'm just going to go away for this." Right? He is the CEO. Can the CEO just decide to go away?

MR. RIEDER: I think, if we look at most of the interested party cases, at least some of them involve CEOs or a counterparty.

THE COURT: Don't you understand -- that's what I went through. Most of those cases where the CEO doesn't vote, pretty sure it's because he's interested. What you're saying is, there's some sort of safe harbor here for being the bro of the interested party, even when you're the CEO, if you just simply step aside. When there's an affirmative aspect of the duty of loyalty that involves -- that's why I never really understand the people that understand the relationship of loyalty and care. You have a duty to try to exercise your duty of care; right? If you don't even try, it's a loyalty problem.

If he can't stand by and watch the train wreck, if it's a preventable situation, by arguing I just needed to take myself out of the equation, what does it mean to be the chief executive officer of a company that's engaging in a half billion dollar transaction and to just take yourself entirely out of the process?

MR. RIEDER: Well, I think my understanding of the law is that there are situations in which people, who aren't directors, may encounter potential situations where they might arguably have an interest, and that the remedy for that is to abstain. That's sometimes done in the case of CEOs when they're a counterparty. It might be done with outside directors who are appointed by a counterparty.

THE COURT: You get the big salary, you get the best office. Somehow I doubt Steve Riggio ever had the best office. Quite. I have a suspicion as who does. It's probably fairly regularly held. But he had the second coolest office there. With the second coolest office in a chief managerial role, doesn't there come some unique responsibilities?

MR. RIEDER: If there's some basis to believe that the special committee process isn't working, that the special committee with its financial advisors, accounting advisors, legal advisors, wholly independent can't function, that's a different issue. But here --

THE COURT: See --

MR. RIEDER: The abstention is coupled --

THE COURT: When we get to the special committee, that's why the importance -- why advisors are so critical. But advisors are decidedly the second best thing to the normal source of information for directors. And the normal source of information is management. You know, now you took away the founder, you took away the chairman, you took away Mr. Zilvay. Bryan Cave, your firm. Your firm went to the other side?

MR. RIEDER: Again --

THE COURT: That's just the reality, sir. It's not a criticism. It's a reality. Your firm went to the other side and it was allowed to do so. What you're asking me to do now -- I said, if it's all purchase and business judgment rule under 12(b)(6), everybody gets out. What I'm asking you about is a situation where it's not that, where I find that I've got some real concerns about the process. And your briefs indicate that Steve Riggio gets out because he just gets this safe harbor for an ordinary refusal. Right?

MR. RIEDER: I don't think it's an ordinary refusal. He abstained, as was appropriate, when confronted with a potentially interested party transaction. And the company -- the rest of the board independently functioned.

THE COURT: So if I have serious doubts about whether the business judgment rule -- I can say at this stage that, under 12(b)(6), I just throw it out. Does Steve Riggio stay in?

MR. RIEDER: The Steve -- with Steve Riggio and Lawrence Zilavy, they're actually in a somewhat different position because they are not on the other side of the transaction.

THE COURT: Well, no. That is actually not true in the Zilavy sense. Zilavy was a fiduciary duty of Bookstores. Right?

MR. RIEDER: Of the College Bookstores

company. He was employed by the College Bookstores company.

THE COURT: So he's on both sides of the transaction in a professional role. I have a hard time inferring that the $85 million in bonuses came out of College Bookstores, excluded Mr. Zilvay, given his high-ranking status.

MR. RIEDER: But, he's not a party to the transaction. If Mr. Riggio chose to include him in the bonus group, that's a different issue. It's not something that he -- it's alleged that he had before him the prospect at the time of the abstention, or at the time of the board process.

In any case, he and Stephen Riggio abstained. That's the kind of conduct that the law should reward on the part of directors in this situation. And given the absence of anything more, there is no basis for liability against them. It's not -- the plaintiffs come back and argue, "Well, there are cases that say it's not a per se absolute bar and there may be exceptions to the law that we cite concerning nonparticipation." And I think Vice Chancellor Jacobs addressed that in the Tri-Star case. There could be an exception, if it were alleged that a director purported to abstain, and formally abstained, but meanwhile took part in the process in some way, or engaged in a conspiracy to actually engage in the process that he's purporting to abstain from.

But as was the case in Tri-Star, there are really no allegations of that here.

THE COURT: So what did Steve Riggio do? He went and sat in his office and played with, you know, fancy toys from the electronic company store that he got, or something like that, while this all was going on?

MR. RIEDER: He was the CEO of the company. He had many responsibilities. He abstained from this process.

THE COURT: Okay.

MR. RIEDER: Now, the abstention, under the law that we cite -- and there really are no contrary cases cited in opposition that abstention defeats the claim of under the duty of care or duty of loyalty against them. And as we've already touched on, when you really look at the complaint, the claims against Mr. Riggio fare no better. In the sense that to trigger the kind of review that the plaintiffs --

THE COURT: This could be unfair. I

could find, after a trial, that no -- that, frankly, folks operating in a market-tested environment would have paid 20 percent less -- likely wouldn't have even done the deal at all but would have paid 20 percent less. But Mr. Riggio, he's just -- because he just put it on the table, just a good guy, given an opportunity to buy something to the folks. If it's unfair, you know, life's unfair and Riggio gets to keep the 20 percent excess.

MR. RIEDER: The plaintiffs don't get there -- don't get to that trial -- unless they can plead some basis to infer that unfairness from the facts they pleaded.

THE COURT: I get that. But see -- remember, I just had -- you got a really good team here, and one of the finest members of our bar just argued longer than the entire both sides get in a Supreme Court hearing; right? You got over an hour. I believe it was almost an hour and a half. And we just went through that.

I'm asking you an isolated legal question. Assume I find that there's enough suspicion here that this was not an effective process. Does your client, Mr. Leonard Riggio, get out at this stage?

MR. RIEDER: I mean, I've said that the special committee and the lack of pleadings to that are an important part of the argument if that fails --

THE COURT: If that fails --

MR. RIEDER: -- then the argument fails.

THE COURT: Okay. Which is if I -- if it is the case that there is concern about the effectiveness of the special committee process as a cleansing mechanism, then Mr. Riggio, as all interested directors have always been under Delaware law, at risk in the end if there is a fairness inquiry of paying the difference between what the Court finds is fair and what was paid back because he's the interested party? Right?

MR. RIEDER: Where I would take issue with you is only in this respect. You said "if you have concerns." I think the question is, do the plaintiffs plead enough to circumvent the demand requirement and do they plead enough to get past 12(b)(6)?

THE COURT: I'm trying to isolate your

argument. In that respect, your argument is no different than what we went over with Mr. Nachbar. And Mr. Riggio's fate at the pleading stage just rises and falls with those same arguments; right?

MR. RIEDER: Correct.

THE COURT: Okay. What I'm trying to get at is the distinction. Not that I want to short-circuit this. I don't think I can be fairly accused of that, given the amount of time we're spending. I don't want to go over that ground again. I was trying to make sure you're not making some broader doctrinal shift about the fact that controllers get to walk away, or interested parties get to walk away simply because they didn't do some sort of overt act of coercion.

MR. RIEDER: Well, my argument is focused on Rule 12(b)(6) and why the complaint doesn't state a claim. That's really -- I think on the issue of waste, that claim clearly fails for the reasons Mr. Nachbar mentioned.

Let me just briefly touch on claims asserted against the nonvoting directors, not presently involving the other directors. There is an aiding and abetting of breach of fiduciary duty.

THE COURT: You don't even have to address that.

MR. RIEDER: And there is also the unjust enrichment claim. That's only against Mr. Riggio. The issue there is that there is a written contract here and unjust enrichment doesn't apply.

THE COURT: There's more, isn't there? There's a whole body of rules we just talked about that goes over -- the fact is that, if you are an interested director and the transaction is tainted by fiduciary breaches, then you are the warrantor of fairness and you have to give back the excess gain? And if it turns out, under that body of law, that you can't upset the contract, then there's no gap to be filled by unjust enrichment? Right? Isn't the entire fairness doctrine designed to prevent unjust enrichment by interested parties?

MR. RIEDER: Well, I think that's part of the purpose there.

THE COURT: I know we like to layer claims because it's really interesting and stuff like that. What I'm saying is, I don't believe -- I understand your argument and I don't think you need to press the point. I understand it.

MR. RIEDER: Beyond that, I think we just come back to the point that the complaint fails to state a claim against them, when you really look at what's alleged against these defendants.

THE COURT: Okay. Here's what I suggest, gang. I do not want to sit -- this is an important thing. We are up against lunch time. Would you like to take a half hour and come back at 1:05? You may have to go to the delicious Dunkin' Donuts downstairs, but you can cool your head and come back with the plaintiffs and then we'll finish up. I just hate -- one, our reporter -- everybody needs a break. Some of you may not who are inhuman. Those of us who are human need a break at this point. Might as well take a half hour. You can go down and do whatever and then come back. We can take a longer break if people want. I figure people may want to take something shorter. I really will do what everybody's preference is.

MS. TIKELLIS: I'm fine with a half hour.

THE COURT: Does that work for you? Why don't we just do a half hour then.

(Luncheon recess was had at 12:33 p.m.)

(Reconvened at 1:12 p.m.)

THE COURT: You may proceed, Miss Tikellis.

MS. TIKELLIS: Thank you, Your Honor. We've been here and I know this is a little unusual because Your Honor has so much background about Barnes & Noble. If you would like me just to proceed, or if there are areas Your Honor is interested in my addressing.

THE COURT: No. I think you should proceed. I guess one of the things on my mind is why are there so many kind of loose allegations here and what is the real attack on the financial fairness of this transaction that this complaint mounts?

MS. TIKELLIS: Why don't I address that point. I'm going to proceed and I'm prepared to make the argument. We believe with respect to the second prong of Aronson that entire fairness does apply, that there is precedent for applying that analysis in situations outside of the squeeze-out merger. So we've analyzed it, Your Honor, under the unfair dealing and the unfair price. I think I wasn't quite sure I caught what Your Honor said to Mr. Nachbar, but I know that Mr. Nachbar was referring to the Credit Suisse report, which I don't know how he takes comfort in. Your Honor said you read it.

THE COURT: I read parts of it. I'm increasingly getting more persnickety about devoting my limited mental capacities to reading volumes of documents that are not incorporated in complaints.

MS. TIKELLIS: I understand.

THE COURT: I think I looked at the front page or something.

MS. TIKELLIS: I think the Credit Suisse was referred to, I believe, in our complaint. Miss Cramer will get me the reference. There were some snippets that Mr. Nachbar relied on. But I think if Your Honor looks at it --

THE COURT: It says "Deal looks good on paper."

MS. TIKELLIS: Exactly. Exactly. I don't think that that helps on fair price, and I think that's the only attempt that defendants have made in their papers to say that the price is fair.

THE COURT: What do you say about why the price is unfair?

MS. TIKELLIS: A number of things. Let me start with this. I want to start with this because, if there's a difference and we're all talking about ranges of fairness and this and that, and at this point of the pleadings, I think it's a little unfair to ask us to engage in a battle of the experts. But say we can agree on some range. The first point of our contention is the note. That's an 80 million-dollar difference, regardless of whatever the price is, fair, not fair. There's an 80 million-dollar payment on top of that price, whether it's fair, unfair, whatever.

In addition to the cash paid, the transaction consisted of 250 million in seller notes. And according to the 8K that was filed in August of 2009, the notes were comprised of the following. The senior subordinated note in the principal amount of 100 million, payable in full on December 15, 2010, with interest of 8 percent per annum.

Second, a junior subordinated note in the principal amount of 150 million, payable in full on the fifth anniversary of the closing of the acquisition, with interest of 10 percent per annum, payable on the unpaid principal amount. Based on these note terms alone, Mr. Riggio stands to receive an additional $80 million. That's our first point.

Our second point is the impact. And I want to note for the record -- and it will be on the record -- that Mr. Nachbar was very candid. He told Your Honor that there's been a big change in landscape. And our second contention is the impact of the emerging technologies was not factored into Greenhill & Co.'s analysis.

THE COURT: What your friends say is, "Well, it wasn't mathematically baked into the projections." But that doesn't mean that the committee didn't consider it. They just didn't quantify the effect of it on the projections for a bookstore's performance, because they didn't think it could be reduced to a number, as I understand it.

MS. TIKELLIS: I think that's what they point to. I'm not sure where they get it. I'm looking at the documents that were provided in the 220 case. And it's very clear that -- and they make -- what's important here is they make this argument about reliance on Greenhill. And because they relied on Greenhill, they're entitled to some protection. But Greenhill is not the one that said we can't estimate it. It was Mr. Riggio's people.

THE COURT: That's because they're the ones doing the projections; right?

MS. TIKELLIS: They're the ones doing the projections. They weren't baked in. And basically, the special committee, the board relied --

THE COURT: Is it your allegation they were actually baked into the projections for this other company?

MS. TIKELLIS: Yes. And I think that, from the board minutes that we've seen -- I mean, it's the same time period. This is March of 2009. And Barnes & Noble is purchasing the Fictionwise, one of the largest ebook sellers in the United States. In connection with that purchase, the board was provided with detailed estimates of the digital growth -- book growth. So they not only knew that there was going to be an impact when they were going to buy Fictionwise. They had their advisors, and they considered what is going to be the impact and give us some estimate of that. That wasn't done here.

Our other point that goes to unfair price. Very early on -- and I think Your Honor put your finger on it -- there are people that have sat on this board for a long time. And Mr. Riggio -- and we have the minutes from December 18th, 2007 -- Mr. Riggio -- and I don't think those minutes were included in the affidavit that defendants submitted, but they're referenced in our complaint. It was Mr. Riggio that proposed the purchase. No one has ever suggested that before. And when he suggested it to the board, he said, "So now let's talk about the synergies and the growth that this combination is going to bring to Barnes & Noble." So let's talk about the synergies and the growth.

The transaction clearly had to be negotiated without regard to synergies and growth. In fact, the special committee disregarded the advice from its advisors. The transaction provided little or no synergies and disregarded Barnes & Noble's College, missed projections for fiscal 2007, 2008, and the projection for dismal growth in 2010.

In Greenhill's first presentation to the special committee, the committee was told that a number of potential synergy opportunities had already been leveraged, and it was unclear whether there was any synergy potential left.

The CFO, though, of Barnes & Noble

would later confirm: "Synergy's just really not what this transaction's about." Likewise, the special committee ignored the missed projections for fiscal year 2008. They missed revenues by 80 million. Net income was lower by 20 percent. For fiscal 2009, again, revenues missed by 150 million, net income by 25 percent, and a forecasted drop in profitability in 2010.

The defendants -- and Your Honor heard them -- tried to blame the general poor economy. But Barnes & Noble's own CFO, Mr. Lombardi, recognized -- Your Honor probably knows this, it's in this record, too, from the prior trial that related to Barnes & Noble -- Mr. Lombardi recognizes, as early as July 2008, when the Borders situation came about, that the industry of Barnes & Noble College was a steadily declining retail marketplace.

THE COURT: Where does it say this in the complaint?

MS. TIKELLIS: Paragraph 49. Am I right? Yes. Paragraph 49.

So we have complaints about the note that go to unfair price. We have complaints about the lack of consideration of the emerging technology. And we also have --

THE COURT: Isn't the argument that the College Bookstores business is more than -- is different bricks and mortar? You have the ability to -- there's going to be, even with respect to eBooks, there's going to be a place where people are going to go -- if you actually need to get your student at a university, you have to get your reading for physics. He might be doing it electronically. But there's still going to be a place where that's available and it's going to be the College Bookstores.

MS. TIKELLIS: Probably. In near term I suspect that's right. I've gone to the Kindle. And I apologize to the Ninth Street Bookstore, but the Kindle has now come out with the large Kindle. Students will be downloading --

THE COURT: Don't you have a conflict of interest representing Barnes & Noble and you're not using the Nook?

MS. TIKELLIS: I'm not doing the Nook. Yes. Not the Nook. You know, I would agree with Your Honor: it's not going to be unlimiting totally.

THE COURT: Must be going for a nerd niche because kindle has probably weakened up. I can't see Mr. Walsh, who is like -- you know, you could go 100 days without food or water and still probably trek the Alps. Can't say, "Got my Nook here." Just sounds a little odd.

Mr. Nachbar potentially. Rohrbacher for sure. But Mr. Walsh? No.

Isn't it arguably a different platform because they do have this kind of built-in constituency?

MS. TIKELLIS: A different platform?

THE COURT: Than Borders.

MS. TIKELLIS: Yeah. I don't think you can make that an apples and apples comparison. I would agree with that.

THE COURT: Isn't that what you say? You used the "not looking at Borders" as an example of why they couldn't rationally look at this; right?

MS. TIKELLIS: I think it was more of a recognition. I'm sorry if I said it that way. My point was more that there was a recognition in-house at Barnes & Noble, as early as July 2008, that this was a declining market. And I think I read maybe in Your Honor's opinion that there was some discussion where Mr. Burkle and Mr. Riggio at some point over purchasing Borders or a piece of it, and I think Mr. Riggio had the same type of observation there, and I think that led to some context. But that's another case.

My point was, in-house, they certainly saw that and recognized it in 2008. I hope that answered Your Honor's question.

THE COURT: So it's principally the note and the fact that this was -- what Mr. Nachbar says is, in some ways, you're attacking the strategy. Like, why did they double down on retail; right?

MS. TIKELLIS: Well, that's what he says. I think this is -- I think this is all about timing. And some people -- I never seem to be in the right place at the right time. I suspect Mr. Riggio has good luck on that. I've looked at past transactions he's done. I think he's a smart guy. He's got -- he owns all of Barnes & Noble College. Yeah, people may say, well, why? He's 31 percent stockholder of Barnes & Noble Bookstore. Why would he want to buy this dog? Why would he want to do this? Well, my answer to that is, he's getting out. He's getting out with his money and he's spreading the risk, going forward with the rest of the public stockholders.

I'm prepared to -- one thing I would like, if Your Honor doesn't have any more inquiries on that aspect, I wanted to talk a little bit about the special committee.

THE COURT: Yes. Please do.

MS. TIKELLIS: Your Honor had raised with Mr. Nachbar, maybe at the beginning of the hearing, "Gee, I wonder, why, when plaintiffs' counsel saw my opinion, why didn't they amend their complaint?" I have an answer. And we thought about it. Mr. Berry and I talked about it. But we had already amended under the 15(aaa). We were aware of Your Honor's opinion. We thought that there were some points that could be made and would apply to our case in terms of interestedness, and particularly Mr. Del Giudice. I don't know if I'm saying that correctly. But we thought it was Your Honor's opinion it was in the public domain. It was certainly something we took notice of, and Your Honor can take notice of. And quite frankly, to engage in another motion to amend or -- which is where we would have been. We had already had a big go-around with Cravath on whether or not we had to move to amend on 15(aaa) the last time. They finally relented and said, "Go ahead and amend your complaint."

That's a long way of saying yes, we recognize we didn't do it and, for some practical reasons, we do not have in our complaint the same detail.

THE COURT: I guess what Mr. Nachbar reminded me of, it may go both ways. You have some things that are stronger for you than perhaps -- I mean, was that part of the equation? That it gets stronger as to Mr. Del Giudice, potentially weaker as to others? Like you have a specific allegation about close personal friendships. I think close and frequent socializing with Dillard.

MS. TIKELLIS: Correct.

THE COURT: What's the basis for that? Confidential caddy informant at an exclusive New Jersey based golf club regularly covers the every Tuesday 10 a.m. tee time for these two, or something like that? Did they share a cigar locker at an upscale steakhouse? I guess they may still have the lockers. You just can't use them anymore.

MS. TIKELLIS: They'll find me the source.

By the way, Your Honor, I was the losing party in the Beam case -- Martha Stewart case. I can tell you that I do believe that the allegations here with respect to interestedness are a lot stronger than in that case. And there were -- and at the time I thought they were strong enough. Both courts disagreed with me and basically said, just, you know, mere friendship without anything more is not going to be enough to do it. And I think we've alleged a lot more here.

THE COURT: What is the more, like, with respect to Mr. Dillard? Is it the close -- is it the close friendship, plus the length of service?

MS. TIKELLIS: Plus the length of service. Plus the fact -- and we do believe, and I think if you look at the cases of Cysive and other cases in this court -- I believe Mr. Riggio, if you get beyond the mathematical equation, he's a controlling stockholder. And I think that there's a history here. I'm not just pointing to related transactions. There's a history here, Your Honor. And just 2007, 2006, and 2007 alone -- and this has not been disputed -- $1 billion of Barnes & Noble's money has been spent and being directed to

Mr. Riggio's other businesses.

THE COURT: That doesn't mean that those transactions weren't fair to Barnes & Noble.

MS. TIKELLIS: No, it doesn't. But it does mean that all the freighting business goes to Mr. Riggio's company. All other businesses go. And they point to things like, well, they're at market prices. Well, there are ranges in market prices. And when we say that there are available lower and discounted prices -- to tell me there's market prices doesn't dispute that. The point is that there is a pattern. I'm not saying that's the only connection. But I think, to take friendship, service in isolation, sitting by and saying, okay, instead of being more competitive with what companies you're dealing with, you have to look at them collectively. It doesn't make sense not to.

THE COURT: Well, that's a sort of separate -- his controlling status and what it is about Dillard is the length of service, the friendship, and what you're saying is a pattern of running this company as essentially a family controlled company by inner company transactions, other sorts of things?

MS. TIKELLIS: Correct. Correct. I think, as Your Honor rightfully noted earlier today in these proceedings, I think that it is telling that -- with the long service of some of these board members -- that this transaction was never raised before. And it was only initiated by Mr. Riggio. And Miss Miller -- you know, Your Honor had one case that dealt with the poison pill. This is a different case. This is a different fact. We had the same people. But you've got to look at their roles in connection with what they're being asked to do. And I don't think you can just put one on top of the other.

I really thought about it and I said, I don't know if I'm going to be able to convince Vice Chancellor Strine to hear anything more on Miss Miller, because I read Your Honor's opinion and you said her service was pretty distant. She's had the cooling off period and, you know, I just don't see it, or at least I don't see it in this context.

THE COURT: I didn't see it in the context. But my job is to keep thinking and to deal with this case. And it's a different sort of situation.

MS. TIKELLIS: Agreed.

THE COURT: I am concerned. Maybe it goes with what remaining hair I have. But that I increasingly -- gray has always been something I try to see and not avoid. What you have -- I mean, she was -- it has been a long time since she was technically his subordinate; right?

MS. TIKELLIS: I agree with that. Since 1997.

THE COURT: So, I mean, what is it about her? Except I think you do allege that she's a friend. You know, it really -- this idea that she's a protege of this dude --

MS. TIKELLIS: Exactly. He was her mentor. And even though her service, in terms of executive positions, may be back a bit in time, she's still reaping the reward of that.

THE COURT: One of the things you're saying is, this has been a fairly lucrative board to be an independent director on. But she's the CEO of Coach. Is that like a high leather goods kind of thing?

MS. TIKELLIS: Yes. I'm not saying that everything but -- you do well in one arena, you do well in another. It's all about what we all bill as professionals. And I think she's done that and done it with the help of Mr. Riggio.

I also think it's interesting -- and the 8K -- I talked to Your Honor a little bit about -- I'll call it the promise of Leonard Riggio that, boy, this combination will have synergies and growth. And I walked through the statistics, Your Honor, that it showed they missed a lot of projections, and they're not projecting growth and profitability.

Miss Miller -- I thought it was interesting, because I think it's Tab 1 to the affidavit that defendants submitted, and it's the 8K dated August 10th 2009. At page two, at the very bottom, Miss Miller tells -- as Your Honor knows, there's been very little transparency about this. It was structured so stockholders wouldn't vote on it. So they're stuck being told what special committee was charged to take care of their interest is going to tell them.

What does she tell the public stockholders? She tells the public stockholders that the B&N College purchase was an acquisition of a profitable and growing company at a very attractive valuation. I don't know how she says that, notwithstanding her direct knowledge that fiscal 2008 and 2009 projections were significantly missed and that the 2010 forecast was bleak.

THE COURT: She also says reuniting these has long been a top priority.

MS. TIKELLIS: Exactly.

THE COURT: Which I get could cut a few ways.

MS. TIKELLIS: Given all the points we talked about, even if the service itself was distanced, the rewards that come with that -- she sat on the special committee. The statement that they make to the stockholders that weren't asked to vote, and it wasn't structured for their vote for consideration. I think that, taken together at this stage, Your Honor -- and I think you said it right during Mr. Nachbar's argument -- it's not that the Court needs to definitively decide now that at this stage a pleading -- to raise a doubt about the independence of this chair, the special committee. I submit it does.

THE COURT: What about Monaco?

MS. TIKELLIS: I thought -- and I heard Mr. Nachbar and I must have missed it in the proceedings. I didn't see it. But if it's in there, Your Honor will see it in the transcript and Mr. Nachbar will point it out. I thought our allegations were pretty strong against her. I'm focusing again --

THE COURT: What was strong about it?

MS. TIKELLIS: The 15 years, again, of service.

THE COURT: So it's the years of service. It's the service on the comp committee.

MS. TIKELLIS: Service on the comp committee.

THE COURT: Which blew the options backdating issue; right?

MS. TIKELLIS: And she was removed. That was the remedial action. I believe they were all removed that sat on that committee.

THE COURT: I think there's an allegation of friendship later in the complaint.

MS. TIKELLIS: Right.

THE COURT: And then she was for Bill Bradley. Is it something you guys have against Bill Bradley that you think, if you're for Bill Bradley, inadequate judgment? He's a pretty sound guy, I have to say.

MS. TIKELLIS: He's pretty tall, too.

THE COURT: He's definitely tall. He wasn't a tall NBA player, but he's tall -- he's no Lowell Weicker, but he's tall.

MS. TIKELLIS: In and of itself, Your Honor, I would say that's, come on. But you know what? We're trying to point -- and it's difficult, and even in a 220 demand we're not going to get documents that are going to show all these various things that people do outside of the boardroom. They're friendships, but also political connections and big fundraisers, and people that go beyond -- the point is, you got Mr. Riggio, Mr. Del Giudice -- and I'm looking at some fellow down here who told me that's how to pronounce it -- and Miss Monaco that are all -- the only one I know is Bill Bradley. There could be others. I haven't alleged that and I'm not telling Your Honor that.

I think it's just, again, the collective facts. And Mr. Nachbar said that there was a lot in the record about the compensation. And if it's there and if it's something different, Your Honor will take it into consideration. But I thought her allegations were pretty good with respect to why she was an impaired member of the committee. I'm looking through my notes to see if there's anything else that Your Honor raised or if you want to raise. I hate to just sit here --

THE COURT: How is this waste? Things can be unfair and not waste. Waste has been basically a transaction that no -- when you plead facts, a transaction that no person acting in good faith could conceive of as fair. Right? It's easy to think of a person in good faith conceiving that this should be done. Maybe it was too late. Maybe it should have been done earlier. They should have never been separate.

But be that as it may, sometimes things come less than optimal, but they're still the right thing to do under the circumstances.

MS. TIKELLIS: Right. I have two responses to that. One goes back to the conversation we all have been having today about the wisdom of getting in and the timing of this, which seems to be more to the benefit of Mr. Riggio than to Barnes & Noble and the stockholders.

But my second response is, as part and

parcel -- and I think I told Your Honor -- whether you look at this price, and we don't agree or we do agree, I think there is an 80 million-dollar lay on top of that. And I think that component is wasteful.

THE COURT: You don't look at the component. What you have to show is that the transaction, structured as it was, with the consideration coming partially in the form of cash and in the note, that that is such an outrageous transaction. Let's face it. No person acting in good faith could conceivably sanction it as fair.

Where in the complaint really is there any kind of pleading to that effect? I get the point. What you're saying is, there's a dollop of creme fraiche or the shave of truffle. And that might still be enough for an award; right? Eighty million dollars is not trifle. But waste is like a hinkiness factor. When you see something so ridiculous -- you don't know why it's so ridiculous, but on it's face it is ridiculous -- that you get to state a claim. I mean, it's not even clear to me why we have waste claims separate from fiduciary duty claims. What is a waste claim? But an example of a breach of fiduciary duty -- like you did something that was wasteful of corporate assets. Like you threw a party for the CEO's nieces. Bar mitzvah, bat mitzvah. You got the Flava Flav. And who is the dude who has the heart problems? Bandanna man? I forget. He's one of these hair rock guys. Bret Michaels. You got both of them. And it cost the company $5 million. So it's not like wasteful. It's an ascetic atrocity and you did it on the company dime; right?

MS. TIKELLIS: To answer Your Honor's question, other than the allegations we have that go to unfair price, we don't have anything separate and apart that would go to waste.

THE COURT: Aiding and abetting. What does it mean, if you are a fiduciary already and you knowingly assisted in other breach of fiduciary duty? Isn't it another way of saying you committed a breach of fiduciary duty?

MS. TIKELLIS: It is. And we're not pressing that count, Your Honor.

THE COURT: Like unjust enrichment. If it turns out that the transaction is ultimately a valid business judgment, such that the contract stands, how can you get a remedy for unjust enrichment when the controller isn't liable for breach of the fiduciary duty of loyalty?

MS. TIKELLIS: If he's not liable, you can't.

THE COURT: If he's not liable then you --

MS. TIKELLIS: If he's not liable you can, if all the other directors are also not liable.

THE COURT: What I'm saying is, if he's not liable for breach of fiduciary duty, the contract stands and you can't use unjust enrichment; right? I mean, isn't the entire -- isn't the whole idea of the interested party being on the hook essentially the way the common law corporations already specifically dealt with the possibility of unjust enrichment?

MS. TIKELLIS: In the context of entire fairness?

THE COURT: Yeah.

MS. TIKELLIS: Yeah. I think the reason our thinking on the unjust enrichment that if, for instance -- and I don't think this is the case. Your Honor found that everybody breached a duty but maybe it was -- everybody breached a duty. But because Mr. Riggio -- and if you follow our friend's argument here, he's off the hook because he took himself out of the mix and he didn't do anything. I don't believe that's the law and I don't believe that's what the facts show. Then we got a problem because he's got the goods. How do we get them back?

THE COURT: How about Steve Riggio. What did he do? What did Steve do? He already has to be the younger brother, and that's a hard enough role in life. And now you want to hold him liable when he abstained? You don't have any allegations of him injecting himself in this to put pressure on the committee or anything like that, do you?

MS. TIKELLIS: We don't have allegations that he's put pressure or interfered. I think, probably a fair reading of the allegations is, he excepted himself. He abdicated. He didn't join in.

THE COURT: You don't plead in those terms an abdication claim; right?

MS. TIKELLIS: No. And we don't have a specific fact against him that he interfered, unlike Mr. Riggio who, as Your Honor noted, you change hats. He goes from one side to the other side, and he's the negotiator for Barnes & Noble College.

THE COURT: And Zilavy? Is it Zilavy, Zilavy?

MS. TIKELLIS: We do not have any direct allegations of wrongdoing.

THE COURT: Actually now have links where you can get the transcript and it will have links of select audio highlights.

MS. TIKELLIS: Now, he will -- Mr. Zilvay, I mean -- he's a director of Barnes & Noble and he also stood to profit and benefit from the --

THE COURT: Am I to infer -- you're suggesting in the complaint that he was part of the bonus pool?

MS. TIKELLIS: Yes. Yes.

THE COURT: Why is this -- why would I Lynch this situation?

MS. TIKELLIS: Pardon me?

THE COURT: Why would I Kahn v. Lynch the world? Is it your position that every transaction with someone who is a controlling stockholder is under the Lynch standard, and therefore you can't ever get a claim dismissed at the pleading stage because, even if you used the majority of the minority vote, plus a special committee of Warren Buffett, Bill Gates and the reincarnation of Gandhi, that that wouldn't work?

MS. TIKELLIS: I think -- one thing I want to put on the record. I don't think we ever said, and certainly didn't intend to say, that just because we're saying entire fairness applies that all of a sudden, poof, we get to live, and, poof, demand is excused. We're not saying that. We know we need to show. If entire fairness is going to apply, and I think it can apply, and the Chancellor applied it recently in a case, Monroe versus Carlson, and that was not a squeeze-out, I think that's precedent for applying it in this purchase of an asset -- a substantial asset. We pled our unfair dealing. We pled our unfair --

THE COURT: That's what I was going to say. Is it that the entire fairness standard -- I guess the Supreme Court has used the ab initio word. I call it from the get-go. That's more a Mayberry R.F.D. version of it. If it's an interested situation, and even on it's face it looks like a majority of the people who approved are independent, if the plaintiff can plead facts which suggest that the independent approval process is tainted, then that can invoke the entire fairness standard, particularly under -- when you get to this Technicolor doctrine, even in a situation where there's nobody conflicted, it says you don't have to plead damages. If you prove a breach, there's some sort of burden to show no damages. In a situation with a controller or another interested party, if you plead that the approval process, which would invoke the business judgment standard, is tainted, then the entire fairness standard can come into play. Is that what you're suggesting?

MS. TIKELLIS: Yes.

THE COURT: That means that Lynch doesn't apply. What I mean is, that's not a formal invocation of Lynch. Lynch says from the get-go, or ab initio, in a particular context, the entire fairness rubric is the rubric. And even if you have both cleansing mechanisms together -- the committee and the vote -- you still don't leave the land of entire fairness. And if the plaintiffs show substantively that the transaction is mispriced, then they win, which means that's why no one's ever -- I know there's an academic -- she wrote something about how every one of you in the Delaware bar for a generation missed the meaning of Lynch and that Morris Nichols and Richards Layton and Potter Anderson have had low hanging dismissal to be picked by their out-of-town counsel and themselves in Lynch cases and have just failed to recognize that they could just smack these things out under 12(b)(6) so easily. I don't really think that's the case. I think people read the case. Look, wait a minute, if all we get is a burden shift from a preponderance standard, we're still in fairness land and courts can't at the complaint stage deal with fairness. You're not saying we're in that rubric, or are you pushing that point?

Essentially, whenever you have someone called a controlling stockholder, it does not matter what the transaction is. It could be simply the use of the company car. It could be anything like that. You could have -- you start with entire fairness and you end with a fairness of inquiry. It's just a question of who has the burden and it's never a question of the business judgment rule applying.

MS. TIKELLIS: No, I'm not saying that. I don't think you can build in that kind of a blanket rule. As Your Honor said today several times -- and I agree -- texture is really what we're looking at in a lot of these factual situations.

THE COURT: Do you have anything else?

MS. TIKELLIS: Nothing, if Your Honor has nothing more.

THE COURT: Mr. Nachbar.

MR. NACHBAR: Just very briefly a couple of discrete points.

Your Honor asked about fairness and is the transaction fair. On this record it is. We've got low multiples. I didn't hear plaintiffs --

THE COURT: Where does the complaint say it's a multiple?

MR. NACHBAR: It incorporates the Credit Suisse report which says it's a low multiple. I didn't hear plaintiffs say anything to the contrary.

THE COURT: If I incorporate the Credit Suisse report, it said this is a dumb, bad deal.

MR. NACHBAR: It does say that.

THE COURT: If I incorporate it, how does it help you?

MR. NACHBAR: Because that's a business judgment that people are entitled to make about whether, in the long run, this is strategically good or strategically bad. It's not a high price. It's a low price. Credit Suisse says that and says that in words of one syllable.

THE COURT: We also note that Len Riggio has had good timing on past purchases and his decision to sell the College Bookstores here has to raise a red flag. He had kept the College Bookstores private until now. At a time when it cuts Mr. Riggio's exposure by about half, it doubles the technology exposure for the rest of BKS stockholders.

MR. NACHBAR: Sure. That's their view of the strategic -- the long-term strategic benefit or detriment.

THE COURT: I think it's an understated way of saying I think it's the kind of smelly deal that is so strategically fallen, that it seems to be the product of Len Riggio trying to diversify his wealth profile by sloughing off Bookstores on to the public company, over which he maintains a good amount of control, at a time when it's favorable for him to do so, and that it increases the risk profile for the public company in a big way that seems to be difficult to rationally understand.

MR. NACHBAR: Again, it's a question

of price. If they had paid a dollar for it, we wouldn't be having this discussion.

THE COURT: You can buy a lot of things. I'm sure you can buy -- at fair market value you could have bought horse-drawn carts in 1912. But if you were Ford Motor Company and you bought at fair value the leading cart manufacturer and it turned out to be owned by Henry Ford, that people might think that that's odd; right? Buying pong, I'm sure, has some fair value to it. But it may not make any sense; right?

MR. NACHBAR: Again, it's a question of price. I mean, there are a lot of people --

THE COURT: Unlike the paradynamic business judgment rule case, we can ignore the reality of the conflict of interest. I mean, I get the business judgment rule. I agree, it's cool. I would hate to be a judge in a world without it because it would be crazy to sit around and like fault people at Coca-Cola because they did the New Coke. This would be crazy.

On the other hand, if they did the New Coke and it turned out that the CEO had come up with some idea and had patented the name New Coke and sold it to the board, I think that would be seen as a different situation; right?

MR. NACHBAR: Yes. But on the fairness of price, Your Honor asked about the record. Again, these are low multiples. That's undisputed. The plaintiffs don't contend otherwise. The transaction is significantly accretive. That's an undisputed objective fact.

Finally, there's a financial advisor who gave financial advice. It's an independent advisor. This isn't McMillan where, you know, Len Riggio went out and lined up the financial advisor or hired them, interfered with them, spoke to them. None of those allegations exist. And they gave a fairness opinion. And directors are entitled to rely on that. So there is absolutely nothing in this record to indicate that the price was unfair.

Should you be in this business?

THE COURT: How about the note allegation?

MR. NACHBAR: I was going to get to that next. Thank you.

That I find to be extremely curious. Again, we've got a record on that. It's Exhibit 5 to the Waesco affidavit. We've got --

THE COURT: This is incorporated in the complaint?

MR. NACHBAR: It is.

THE COURT: How?

MR. NACHBAR: It's minutes that are referred to in the complaint.

THE COURT: For this purpose?

MR. NACHBAR: For the purpose of talking about what the board did and when it did it. Yes. So it's part of it. The plaintiffs haven't challenged any aspect of the Waesco affidavit or its exhibits. And we were very careful to only put in things that were expressly referenced in the complaint.

Page four talks about Mr. Steinman, who I believe is Greenhill, right at the bottom, "Mr. Steinman then discussed the committee -- with the Committee Greenhill's view of current market interest rates and other financial terms for similar debt. He noted, in Greenhill's view, that the 8% and 12% interest rates used in Greenhill's presentation to the Committee were materially lower than the interest rates that the Company would have to pay if it issued senior and subordinated debt respectively to third parties in the current environment."

Okay. That's the financial advice they got.

THE COURT: Where is that incorporated into the complaint?

MR. NACHBAR: We can find it.

THE COURT: I don't think it is. A key paragraph of the complaint is 50 or 51 amended. It says they had a revolving credit line with an interest rate currently less than 5 percent and already had a revolver lower than that.

MR. NACHBAR: Sure. They could have drawn down their entire credit line and could have been left with no credit line and no cushion. Those are business judgments that people make.

Moreover, Riggio didn't want the notes. Again, the record is undisputed.

THE COURT: It's not a record. I mean, it's not.

MR. NACHBAR: Okay. The complaint.

THE COURT: I understand this doctrine. I mean, we've been very assiduous, I think, about looking at the entire things of disclosure claims and how you're characterizing documents. The Supreme Court's admonished us about how we use things outside the record. You know, I've been submitted about 400, 500 pages of stuff. I'm supposed to now go back and say these minutes are right and the complaint that pleads that this is above what they could have got out of it is just wrong?

MR. NACHBAR: No. But the plaintiffs can't have it both ways. They can't make a Section 220 demand, get minutes that say there was a fairness opinion, and then plead that there was no fairness opinion.

THE COURT: Well, they didn't plead that there was no fairness opinion.

MR. NACHBAR: I understand that. But they pled, for instance, that these notes were, you know, an outrageous giveaway to Mr. Riggio, essentially. Well, the fact of the matter is, they were on interest terms that were better than the company could have gotten from a third-party. And the other minutes that they also incorporate show that Riggio didn't want the notes. He wanted cash. You know, if this is -- you know, cash is king. People want cash for obvious reasons.

And what he wanted was $470 million of cash and $150 million of notes. I think he would take all cash if he could get it. And that was bargained for. The company said, "More notes, less cash." So I don't understand how that could possibly be pled to be a giveaway to Mr. Riggio. It's a giveaway that Mr. Riggio didn't want.

THE COURT: Now I have to get into the ask of Riggio?

MR. NACHBAR: Well, I think --

THE COURT: How can I do that?

MR. NACHBAR: I think, if the plaintiffs are going to plead that these notes were a giveaway to Mr. Riggio, I think the Court can take cognizance of the very documents that they put before the Court that they incorporated in their complaint that show objectively that Mr. Riggio was asking for less notes and more cash. The allegation is, you should have paid cash. And by paying notes instead of cash, you gave him an extra $80 million. It's $80 million he didn't want. He didn't ask for it. He asked for the opposite.

THE COURT: And where is this specifically incorporated?

MR. NACHBAR: Again --

THE COURT: On this point?

MR. NACHBAR: We can get that to you. I don't have that at my fingertips because it wasn't challenged by the other side. We can get it. It's in the complaint. We wouldn't have put it in the affidavit otherwise.

THE COURT: I know it's probably referenced in the complaint -- the document -- but that is not -- I don't believe they were relying upon this document -- that their allegation is lifted from this document.

MR. NACHBAR: Again, they referenced things about the meeting at which --

THE COURT: Didn't they also say, for example, you could have given him stock; right?

MR. NACHBAR: They did say that.

THE COURT: The reason they didn't do that is they didn't want to invoke Revlon duties; right?

MR. NACHBAR: I don't know. They say he's already a controlling stockholder.

THE COURT: We went through that before.

MR. NACHBAR: Right. Again, I'm not sure how you can have it both ways.

THE COURT: You can. In a world where -- again, we're not in second grade math.

MR. NACHBAR: Right. Well, there is just no basis for the allegation that the notes were somehow a benefit to Mr. Riggio and the objective facts that the plaintiffs themselves have put before the Court show it was a detriment. It's something that he bargained not to have.

The last point I would like to address very briefly is the "why now" point. As Your Honor pointed out in the press release, this was said to be -- at least what the press release shows -- a long desired combination. But what made it, in addition to the just general need to diversify that the company perceived, there's another factor that I -- that is in the press release I should have said on the opening, and, that is, that these companies were beginning to compete in a way that they hadn't previously.

The bookstore -- the bricks and mortar store on the college campus -- doesn't really compete with the bricks and mortar store in the shopping mall. Once you get into a world of e-commerce, and you're talking about web sites, the College Booksellers website competes directly with the Barnes & Noble website. And so what I think was perceived over time was, as more and more of the sales took place over the Internet and through e-commerce, there was more and more direct competition between the two companies, in a way that historically hadn't been the case.

THE COURT: They do compete. The reality is, you probably wouldn't open a Barnes & Noble retail store for the public company in West Philly because, if Barnes & Noble is running the Penn bookstore, you probably wouldn't do that; right?

MR. NACHBAR: I'm not sure about that. I think they sell very -- to some extent different things. They serve different markets.

THE COURT: I said in West Philly. Why would you do it within five blocks when you can get -- you know, if you're hungry for prose, my sense is you can get them both. If you're hungry for a latte poured in a book store, you can get them in both; right? Can you get the Nook in both?

MR. NACHBAR: But if you're hungry for Judith Krantz or somebody, you might get that at one and not the other.

THE COURT: Sadly, College Bookstores are not entirely high-minded.

MR. NACHBAR: But I think, if you looked at the inventory and you went through the shelves of a Barnes & Noble at the shopping mall and the Barnes & Noble at University of Pennsylvania, I would certainly hope they would be different. And they are different --

THE COURT: At certain schools they sell beer bongs.

MR. NACHBAR: Yes, I'm sure they do. A lot of campuses are contained. West Philly is an exception. Most college campuses aren't quite like Penn's.

But when you get into e-commerce --

THE COURT: This would be a good opportunity. I pointed out to Mr. Nachbar and his adversary in another case, Mr. Heyman, that TV shows come up, perhaps as you get a Community episode on Thursday night, about a Barnes & Noble college bookstore at the Community campus, if you've seen that. But we had a Kentucky Fried Chicken case and I was watching -- it was Community. And they had a show about -- the whole theme was about competing with another community college by doing a space lab. But the space lab was of a previous era and it was the Kentucky Fried Chicken lab. So it could be a new opportunity.

MR. NACHBAR: I did watch that episode, albeit not with Mr. Heyman, regrettably.

But anyway, these companies were beginning to compete in a way that they hadn't before. That was another impetus.

THE COURT: Isn't this the thing? For a judge it can be a situation where someone is making a perfectly good argument, but just in the wrong procedural setting?

MR. NACHBAR: Look, that's what Your Honor has to decide.

THE COURT: I'm just very far afield from what is within this complaint.

MR. NACHBAR: Well, no. But, again, the complaint incorporates the press release announcing this transaction. That's what the company said when it announced the transaction. It's Exhibit 1 to the declaration. If Your Honor feels it's a good argument in the wrong procedural setting, Your Honor will tell us that and we'll move on to the next procedural setting.

THE COURT: I just know, in the context of cases -- the Supreme Court has been very clear. When you look at a disclosure claim, you can look at the entire proxy statement. If they're unfairly characterizing that -- on the other hand, when you look at, well, oh, they cited for their disclosure statement the proxy thing, that means they have to incorporate the stuff about what happened. No. That's different. Right?

MR. NACHBAR: Right. But I think what was being alleged there -- and I actually litigated that case -- Santa Fe Burlington Northern -- there was an allegation -- a specific allegation that the price was unfair and disclosure allegations. Not my side, but our co-client, Santa Fe, put in the whole proxy statement and asked the Court to accept as true allegations that the transaction was fair, et cetera. And the Supreme Court said no, that was erroneous. And the case was remanded -- reversed and remanded on that ground.

But I think it's different here because these -- what we have here are conclusory allegations that really don't have fact support. When you actually -- like the note, for example -- and when you actually look at objective facts, not things as to fairness, which is subjective, but what did Mr. Riggio ask for in the transaction, that's an objective fact. He asked for more cash and less notes. That's just the fact. I think the other side needs to deal with that.

That's my only point.

THE COURT: But that objective fact has never been pled in the complaint?

MR. NACHBAR: I think it is pled in the complaint because it's in a document that's incorporated by reference.

THE COURT: Okay.

MR. NACHBAR: Thank you, Your Honor.

MR. RIEDER: Your Honor, I want to come back to the facts that are pleaded in the complaint and plaintiffs' argument. They allege in their argument that Mr. Riggio acted to coerce -- that's the word they use -- to coerce the board into approving the transaction. They say in the complaint, a specific and detailed allegation evidencing his control over the board and the transaction process. That's what they argue. And that's the burden that they effectively acknowledge. They have to state a claim against him. And consistent with that, they cite authority where there were allegations of that nature against allegedly controlling defendants.

Now, we've not only seen plaintiffs' counsels' brief, but we've heard their argument. And there's still no specific allegations of alleged ways in which he controlled or interfered. I heard one conclusory comment that he wore two hats or interfered, but no examples of that during argument. And there really are none in the complaint. And absent that, simply inferring his control from sort of the overall circumstances or karma of the case does not state a claim.

THE COURT: Karma? What do you mean by karma?

MR. RIEDER: The aura. What I heard --

THE COURT: The aura of his retaining control of the trademarks? That's an aura?

MR. RIEDER: But that doesn't go --

THE COURT: The billion dollars of intercompany transactions between Barnes & Noble and companies controlled by Mr. Riggio in the two years prior to the transaction? That's karma?

MR. RIEDER: It does not go to the control over --

THE COURT: Mr. Riggio putting in place, when he left as CEO, his brother, and then his brother, the key officer of the company, stepping aside, which I assume is -- you know -- is part of the idea of the Hippocratic oath: "Do no harm." Of course, if you've got an affirmative duty to care for something, doing no harm when someone else is injuring it is not much of an answer to whether one's fulfilling one's duties.

MR. RIEDER: The record, though, shows that in fact Mr. Riggio has nurtured this company. And indeed he retains a very large interest in the company. So both factually, and from an interest point of view, he has every incentive to preserve the value of this company.

THE COURT: I suppose, if you put aside what he received for his shares, he has every interest. That would always be the case, then, in interested transactions where someone owned equity. Right?

MR. RIEDER: Well, maintaining a large

stake in the company is consistent with his interest in preserving the value of the company. That's right.

The key point here is the absence of any real allegations that he exercised control. And even today, even after that was discussed at some length during defense counsel's argument, there has still been no specific responses to that argument. And under the burden, as they articulated in their papers, as they argued it here, and under the case law they cite, that it is their burden to specify some conduct. And they haven't done that.

THE COURT: Even if the transaction was substantively unfair, the cleansing mechanism did not work, so long as your client didn't strongarm the ineffective special committee, he would not be liable for the unfair result? We went over this before. Are you asking me to make new law of that kind? That's never been the law with respect to interested parties in transactions in Delaware that I'm aware of.

MR. RIEDER: But there is no showing here -- there are no allegations that would say --

THE COURT: Why did he not think of this ten years ago? Tell me why he kept them separate? I don't really get it, except it was potentially good for him. Maybe it will be explained to me why, in 2009, it suddenly became a good idea to put them together.

Now, I'm pointed to something I should read, where I should take comfort in, where Miss Miller said this has long been the goal, which would suggest it has long been the goal of these other folks. Mr. Riggio is only willing to do it when it was a good deal for him.

MR. RIEDER: Again, the issue here today is the sufficiency of the plaintiffs' complaint and whether or not they allege enough to state a claim under Rule 12(b)(6).

THE COURT: That's why I'm asking you doctrinally. Len Riggio teed up in his self-interest. And so long as he doesn't coerce the special committee -- if it's an unfair deal, an unwise deal that benefits him at the expense of the company -- he's off scot-free, so long as he didn't, you know, break their arms.

MR. RIEDER: But where the special committee freely functioned, where it had financial advisors --

THE COURT: We went through that

before. Then you're just essentially reiterating Mr. Nachbar's argument.

MR. RIEDER: My point is that there is no basis to conclude, as the complaint is pleaded, that the transaction is unfair in any way.

THE COURT: Okay.

MR. RIEDER: Just one additional point. With respect to the Stephen Riggio and Lawrence Zilavy, there's been no demonstration of any requirement under Delaware, or any other law, that would require potentially interested defendants -- interested directors in their situation to not abstain.

THE COURT: Wait. To not abstain. If Barnes & Noble is about to go off a cliff, is the CEO entitled to abstain from efforts to involve himself in the situation? Is his, "I have declared myself Switzerland," is that an invariable safe harbor for the chief executive officer of a Delaware public company?

MR. RIEDER: It's a good hypothetical. But the circumstance pleaded here is not Barnes & Noble going off a cliff. It's Barnes & Noble creating a committee with high quality advisors to question independence and ability, and allowing that process to function.

THE COURT: We're back to whether the cleansing device works or not. Right?

MR. RIEDER: Well --

THE COURT: And when the committee's been deprived of the advice of the chief executive officer, the disinterested advice of the chairman has allowed counsel for the company to switch sides? It's okay. CEO's free, scot and clear, if it turns out that this was unfair because he stepped aside.

MR. RIEDER: He abstained in a principal manner --

THE COURT: He abstained from a vote. His day-to-day job is to be the key dude. This is a half billion dollar -- this is the biggest transaction that Barnes & Noble made in the last decade; right?

MR. RIEDER: It may well be.

THE COURT: A larger one? You know a larger one? Your firm has been involved with the company for a number of years. Is there a larger one?

MR. RIEDER: I can't think of one right now. The situation here is that the company was not abandoned in the way that the hypothetical posits.

The company was under the care and representation of an independent committee --

THE COURT: Why isn't he, just like his brother, dependent on that?

MR. RIEDER: Well, with respect to Steve Riggio, there's not even a conclusory statement that he in any way controlled this process.

THE COURT: That's not the point I'm saying. I hope to gosh that people who are CEOs of Delaware companies realize they have an affirmative duty to try to exercise the duty of loyalty and to care for the company. Not just to not do harm. Try to get your compensation package approved, even by the weakest compensation committee, where you say basically "I do no harm. I'm in office. I'm in the corner. I got classical and new age music and I've got decaffeinated beverages and I sit in there and I don't really talk to the lower level employees, thus I can't say anything that would invoke any employment law. I say please and thank you to everybody. I hold the elevator and I'm not a problem. So I'm an ideal executive. There's no harm." Right? That's not your job. You have actually a job to do something. And what you're telling me is that the younger brother just took himself out. And that is a safe harbor for him; right?

MR. RIEDER: It's a safe harbor in the sense that a director in that position to abstain from participation in the transaction. And he did that. And the additional facts posited of abandonment do not obtain here because the company had a process that vigorously and effectively enabling -- represented by Greenhill, an independent law firm, an independent accounting firm -- that vigorously and ably protected the company's interests.

THE COURT: Thank you.

MR. RIEDER: Thank you, Your Honor.

THE COURT: Miss Tikellis, anything else?

MS. TIKELLIS: No. If Your Honor doesn't have any questions, thank you.

THE COURT: Well, this is an odd one. It is. It's an odd situation. I'm a big believer in not making ridged doctrinal decisions based on oddments unless one has the full context. You can end up messing up the law. You end up doing reputational harm potentially to people whose situation you don't fully understand because of the nature of the limited record, and you can also end up foreclosing remedies that should be available to stockholders if you do that.

I am comfortable, actually, disposing of the motion to dismiss right now. There's a few easy issues and there's a few noneasier issues, and I've been thinking about all of them for a while. The easiest issues, let -- me just start with aiding and abetting.

NYMEX is a NY MEX. Sounds like a new kind of cuisine. It's a thin crust -- the pizza -- chopped with a lot of chilies. NYMEX is one of the cases that has the basic elements and talks about you have to have a fiduciary relationship, a breach of the fiduciary duty, and knowing participation by a nonfiduciary defendant to state a claim. Well, if these folks -- if folks here knowingly participated in the breach of fiduciary duty, they committed a breach of fiduciary duty. They didn't aid and abet. They are fiduciaries. And they either breached those duties or not.

There's no room -- I mean, sometimes there's useful redundancy. We talked about the knowing and completely in line Del., which I think was an emphasis of, when there's a 102(b)(7) case and there's a third-party deal, you've got to show a loyalty problem. It's like -- I had a case a few years ago about indemnified hold harmless and how hold harmless meant something different than indemnify. You can't frankly find the phrase "hold harmless" without its friend "indemnify and on the front." They're married. They have not been torn asunder. The aiding and abetting claims, it just doesn't lie in this circumstance against folks who are directors of Barnes & Noble. It's dismissed.

Count IV, which is the waste claim is also dismissed.

Citigroup, Brehm v. Eisner, other kinds of cases, stand for the proposition that waste is basically -- the exchange has to be so one-sided that no business person of ordinary sound judgment could conclude that the corporation has received adequate consideration. It's a very difficult standard for plaintiffs to meet. And this is a pleading stage. But the plaintiffs haven't come close to a showing called waste. Waste is a form of breach of fiduciary duty. But you really have to show essentially that you got no consideration, or it's just so outrageously obvious that there was inadequate consideration. That's not pled here.

And I do think in our law there's a distinction. It's something that could be determined to be substantively unfair and outright waste. Those are not the same things. I'm not even sure our good lawyers in the plaintiffs bar would want them to be the same thing. If it were, it would really be good for defense lawyers, I think. But the waste claim is out.

Likewise, Count V, which is the count against Mr. Leonard Riggio for unjust enrichment, is out. I think the point there is, as the defendants point out, usually you don't use unjust enrichment when there's a contract. Right? The contract subcovers the matter.

Now, I think there was a little -- there's another layer of analysis that I would sort of add to the defendants' analysis. Here it's not the usual case, like where you brought in sort of a general equity case, or something where somebody throws unjust enrichment in a situation where people are third parties and you point to the contract and say, "Wait. If you took under the contract, it's not unjust enrichment. The specific dealings of the parties cover it. There's no room for gap-filling." Here it's actually there's another layer to the analysis that precludes the plaintiffs' claims. It's not just that there's a contract. There's an equitable -- there's an equitable common law way of avoiding the contract that supposedly provide the unjust enrichment, which is, if the contract is tainted by breaches of fiduciary duty, it can be set aside in equity or there can be damages in equity for breach of fiduciary duty.

The entire fairness standard is obviously part of the common law of corporations way of dealing with the fact that interested transactions raise real concerns. They used to be entirely prohibited. But they're tolerated by -- in certain circumstances subject to the accountability mechanism of the fiduciary duty of loyalty. And the notion that the fairness standard ultimately applies and is not met, that the fiduciary who was benefitted at the expense of the corporation is on the hook to make up the difference, and thus the duty of loyalty extracts from that fiduciary any excess gain.

In other words, if the transaction's

not tainted by fiduciary duty, the contract stands and there's no room for unjust enrichment, and there's no need to backup the analysis of the contract with any gap-filling device because you already have that. That's what the fiduciary overlay is. So the unjust enrichment claim against Mr. Riggio is gone.

So we get to the tough part; right? Sort of do 12(b)(6), go to 23.1 now, and probably go back to 12(b)(6). The first question is demand excusal case. It's a derivative case. Everybody argues that the Aronson standard applies. I was wondering whether we were going to get any board change issues. We didn't. And you got the two-prong test. The first prong is whether the majority of the board is independent and disinterested. The second is whether, by particularized pleading, the plaintiffs have pled a breach of fiduciary duty. There's a relationship between the two and it's actually explained in Aronson that you can be less -- you know, there's a lot of concern about structural bias. We can be a little less aggressive about addressing that because we have the safety valve of the second prong.

Now, the first prong is kind of interesting here. Obviously you've got three directors, I think, who the defendants concede would have to be considered not independent. You got Leonard Riggio, who is clearly interested. Stephen Riggio, there's no claim he can act independently of his brother. Zilavy can't act independently of Leonard Riggio. And I believe it's fairly pled that he took benefits from the transaction. Honestly, even if he didn't take benefits, he was an officer and manager of Bookstores. He's conflicted.

And you get to Mr. Del Giudice. I'm going to admit that I can't unknow what I know. And I take judicial notice of the fact that Mr. Del Giudice runs an investment fund, that Mr. Riggio has been a large investor in that fund. And I stick by what my concern was in the other case. I could not at a pleading stage deem him not independent. In fairness to defendants here, that's not part of this complaint. I can't unknow it, though, and it really wasn't susceptible -- it's not really not an objective fact. It is. It's not something like how often did he kick off. It's a reality of an economic relationship.

The other stuff in the complaint about Bill Bradley. Everybody is beating up on Bill. I kind of like Bill. That doesn't really do it for me. But it's this other thing. Then you get to form. Then you get to hard.

Questions. Miller. I did have the other case. In that situation involving that context, I did not think that any burden had been met to show she was not independent. As some people probably recall about that, I was very careful not to give anybody their Unocal extra boost for independence. I decided that case and I expressly did not rely upon any material enhancement for the independence of the board. I was very careful in that.

What I looked at is what they considered in that context, which I also very -- I won't say very carefully -- I clearly indicated was not the context in which the entire fairness standard was going to apply. This was not a direct conflict of interest transaction with Riggio, and it was different. I was hesitant, and appropriately so, I think, to make a rule about former managers. And I was also operating under some fairly severe time pressure. And Miss Miller's role was not very prominent. It just wasn't.

Here she's the chair of the committee.

And I have to say, I find it -- it says something -- I think it is unwise for people to fail to admit that they're human and that their own experiences inform their judgment when making common law and applying common law. I think that many of one's most important relationships in life are not familial. Family is wonderful. It's critical. But so are other people, particularly people with whom you've had an incredibly close and important professional and personal relationship with continuously over a generation. When someone has mentored you, when someone has helped build you into who you are, and when you were their protege and you've derived all kinds of material benefits, both financial, but even more in terms of the personal development and other things you have, to be able to put that aside, I confess, I think, I find that personally -- there are a large number of people to whom I owe a lot personally and who I would never pretend -- it would not be on my mind who they are when I'm bargaining with them about a half billion dollar transaction, or something clearly material to that. This is way, way, way material to Len Riggio. Hugely so.

Miss Miller is not just a former

Table of Contents

Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS – Continued

In addition to the dishNET branded satellite broadband service, we also offer wireline voice and broadband services under the dishNET brand as a competitive local exchange carrier to consumers living in a 14-state region (Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington and Wyoming). Our dishNET branded wireline broadband service provides download speeds of up to 20 Mbps.

We primarily bundle our dishNET branded services with our DISH branded pay-TV service, to offer customers a single bill, payment and customer service option, which includes a discount for bundled services. In addition, we market and sell our dishNET branded services on a stand-alone basis.

DISH added approximately 61,000 net Broadband subscribers during the three months ended June 30, 2013 compared to the addition of approximately 11,000 net Broadband subscribers during the same period in 2012. This increase versus the same period in 2012 primarily resulted from higher gross new Broadband subscriber activations. During the three months ended June 30, 2013, DISH added approximately 79,000 gross new Broadband subscribers compared to the addition of approximately 21,000 gross new Broadband subscribers during the same period in 2012. This increase was driven by increased advertising related to the dishNET branded broadband services. Broadband services revenue was $47 million and $22 million for the three months ended June 30, 2013 and 2012, respectively, and 1.4% and 0.7% of our total "Subscriber-related revenue," respectively.

DISH added approximately 127,000 net Broadband subscribers during the six months ended June 30, 2013 compared to the addition of approximately 17,000 net Broadband subscribers during the same period in 2012. This increase versus the same period in 2012 primarily resulted from higher gross new Broadband subscriber activations. During the six months ended June 30, 2013, DISH added approximately 162,000 gross new Broadband subscribers compared to the addition of approximately 35,000 gross new Broadband subscribers during the same period in 2012. This increase was driven by increased advertising related to the dishNET branded broadband services. Broadband services revenue was $88 million and $42 million for the six months ended June 30, 2013 and 2012, respectively, and 1.3% and 0.6% of our total "Subscriber-related revenue," respectively.

"Net income (loss) attributable to DISH Network" for the three and six months ended June 30, 2013 was a loss of $11 million and income of $205 million, respectively, compared to income of $226 million and $586 million, respectively, for the same period in 2012. During the three months ended June 30, 2013, "Net income (loss) attributable to DISH Network" decreased primarily due to the impairment of the T2 and D1 satellites of $438 million, an increase in interest expense related to the issuance of debt in 2012 and the issuance and redemption of debt in 2013, and an increase in subscriber-related expenses. This decrease was partially offset by unrealized gains on our derivative financial instruments during 2013 compared to the same period in 2012 and the programming package price increase in February 2013. During the six months ended June 30, 2013, "Net income (loss) attributable to DISH Network" decreased primarily due to the impairment of the T2 and D1 satellites, an increase in subscriber-related expenses, subscriber acquisition costs and interest expense, partially offset by the programming package price increase in February 2013. In addition, the six months ended June 30, 2013 was favorably impacted by the unrealized gains on our derivative financial instruments and the six months ended June 30, 2012 was favorably impacted by a non-cash gain of $99 million related to the conversion of our DBSD North America 7.5% Convertible Senior Secured Notes due 2009 in connection with the completion of the DBSD Transaction. See Note 2 and Note 8 in the Notes to the Condensed Consolidated Financial Statements for further information.

Our ability to compete successfully will depend on our ability to continue to obtain desirable programming and deliver it to our subscribers at competitive prices, among other things. Programming costs represent a large percentage of our "Subscriber-related expenses" and the largest component of our total expense. We expect these costs to continue to increase, especially for local broadcast channels and sports programming. Going forward, our margins may face pressure if we are unable to renew our long-term programming contracts on favorable pricing and other economic terms. In addition, increases in programming costs could cause us to increase the rates that we charge our subscribers, which could in turn cause our existing Pay-TV subscribers to disconnect our service or cause potential new Pay-TV subscribers to choose not to subscribe to our service. Additionally, our gross new Pay-TV subscriber activations and Pay-TV churn rate may be negatively impacted if we are unable to renew our long-term programming contracts before they expire or if we lose access to programming as a result of disputes with programming suppliers.

Table of Contents

Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS – Continued

As the pay-TV industry has matured, we and our competitors increasingly must seek to attract a greater proportion of new subscribers from each other's existing subscriber bases rather than from first-time purchasers of pay-TV services. Some of our competitors have been especially aggressive by offering discounted programming and services for both new and existing subscribers. In addition, programming offered over the Internet has become more prevalent as the speed and quality of broadband networks have improved. Significant changes in consumer behavior with regard to the means by which they obtain video entertainment and information in response to digital media competition could materially adversely affect our business, results of operations and financial condition or otherwise disrupt our business.

While economic factors have impacted the entire pay-TV industry, our relative performance has also been driven by issues specific to DISH. In the past, our Pay-TV subscriber growth has been adversely affected by signal theft and other forms of fraud and by operational inefficiencies at DISH. To combat signal theft and improve the security of our broadcast system, we completed the replacement of our security access devices to re-secure our system during 2009. We expect that additional future replacements of these devices will be necessary to keep our system secure. To combat other forms of fraud, we continue to expect that our third party distributors and retailers will adhere to our business rules.

While we have made improvements in responding to and dealing with customer service issues, we continue to focus on the prevention of these issues, which is critical to our business, financial position and results of operations. We implemented a new billing system as well as new sales and customer care systems in the first quarter 2012. To improve our operational performance, we continue to make significant investments in staffing, training, information systems, and other initiatives, primarily in our call center and in-home service operations. These investments are intended to help combat inefficiencies introduced by the increasing complexity of our business, improve customer satisfaction, reduce churn, increase productivity, and allow us to scale better over the long run. We cannot, however, be certain that our spending will ultimately be successful in improving our operational performance.

We have been deploying receivers that utilize 8PSK modulation technology and receivers that utilize MPEG-4 compression technology for several years. These technologies, when fully deployed, will allow more programming channels to be carried over our existing satellites. Many of our customers today, however, do not have receivers that use MPEG-4 compression and a smaller but still significant number of our customers do not have receivers that use 8PSK modulation. We may choose to invest significant capital to accelerate the conversion of customers to MPEG-4 and/or 8PSK to realize the bandwidth benefits sooner. In addition, given that all of our HD content is broadcast in MPEG-4, any growth in HD penetration will naturally accelerate our transition to these newer technologies and may increase our subscriber acquisition and retention costs. All new receivers that we purchase from EchoStar have MPEG-4 technology. Although we continue to refurbish and redeploy MPEG-2 receivers, as a result of our HD initiatives and current promotions, we currently activate most new customers with higher priced MPEG-4 technology. This limits our ability to redeploy MPEG-2 receivers and, to the extent that our promotions are successful, will accelerate the transition to MPEG-4 technology, resulting in an adverse effect on our acquisition costs per new subscriber activation.

From time to time, we change equipment for certain subscribers to make more efficient use of transponder capacity in support of HD and other initiatives. We believe that the benefit from the increase in available transponder capacity outweighs the short-term cost of these equipment changes.

To maintain and enhance our competitiveness over the long term, we introduced the Hopper® set-top box, that a consumer can use, at his or her option, to view recorded programming in HD in multiple rooms. We recently introduced the Hopper set-top box with Sling, which promotes a suite of integrated features and functionality designed to maximize the convenience and ease of watching TV anytime and anywhere, which we refer to as DISH Anywhere™ that utilizes, among other things, online access and Slingbox "placeshifting" technology. In addition, the Hopper with Sling has several innovative features that a consumer can use, at his or her option, to watch and record television programming through certain tablet computers and combines program-discovery tools, social media engagement and remote-control capabilities through the use of certain tablet computers. There can be no assurance that these integrated features and functionality will positively affect our results of operations or our gross new Pay-TV subscriber activations.

Table of Contents

Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS – Continued

On May 22, 2013, we launched a promotion whereby qualifying new Pay-TV subscribers may choose either an Apple® iPad® 2 or programming credits when they lease a Hopper with Sling set-top box and subscribe to America's Top 120, DishLATINO Plus or a higher programming package and commit to a two-year contract ("the iPad promotion").

During the second quarter 2012, the four major broadcast television networks filed lawsuits against us alleging, among other things, that the PrimeTime Anytime™ and AutoHop™ features of the Hopper set-top box infringe their copyrights. Subsequently, Fox has alleged that the Hopper Transfers™ feature of our second generation Hopper set-top-box infringes its copyrights. In the event a court ultimately determines that we infringe the asserted copyrights, we may be subject to, among other things, an injunction that could require us to materially modify or cease to offer these features. See Note 12 in the Notes to our Condensed Consolidated Financial Statements for further information.

Blockbuster

On April 26, 2011, we completed the Blockbuster Acquisition for a net purchase price of $234 million. Blockbuster primarily offers movies and video games for sale and rental through multiple distribution channels such as retail stores, by-mail, the blockbuster.com website and the BLOCKBUSTER On Demand® service. The Blockbuster Acquisition is intended to complement our core business of delivering high-quality video entertainment to consumers. We are promoting our new Blockbuster offerings including the Blockbuster@Home™ service which provides movies, games and TV shows through Internet streaming, mail and in-store exchanges and online. This offering is only available to DISH subscribers.

During the three months ended June 30, 2013, Blockbuster operations contributed $121 million in revenue and $5 million in operating loss compared to $253 million in revenue and $13 million in operating loss for the same period in 2012. The decrease in revenue during the three months ended June 30, 2013 primarily related to the deconsolidation of Blockbuster UK on January 16, 2013 and Blockbuster domestic store closings during 2013 and 2012. During the first quarter 2013, we closed approximately 150 domestic retail stores and during the second quarter 2013, we closed approximately 200 stores, leaving us with approximately 450 domestic retail stores as of June 30, 2013. We currently plan to close approximately 100 additional domestic retail stores during the next three months.

During the six months ended June 30, 2013, Blockbuster operations contributed $301 million in revenue and $4 million in operating loss compared to $587 million in revenue and less than $1 million in operating income for the same period in 2012. The decrease in revenue during the six months ended June 30, 2013 primarily related to the deconsolidation of Blockbuster UK on January 16, 2013 and Blockbuster domestic store closings during 2013 and 2012, discussed above.

We continue to evaluate the impact of certain factors, including, among other things, competitive pressures, the ability of significantly fewer Blockbuster domestic retail stores to continue to support corporate administrative costs, and other issues impacting the store-level financial performance of our Blockbuster domestic retail stores. These factors, or other reasons, could lead us to close additional Blockbuster domestic retail stores. In addition, to reduce administrative expenses, we moved the Blockbuster headquarters to Denver during June 2012.

Blockbuster Entertainment Limited and Blockbuster GB Limited, our Blockbuster operating subsidiaries in the United Kingdom (collectively, the "Blockbuster UK Operating Entities"), entered into administration proceedings in the United Kingdom on January 16, 2013 (the "Administration"). Administrators were appointed by the English courts to sell or liquidate the assets of the Blockbuster UK Operating Entities for the benefit of their creditors. Since we no longer exercise control over operating decisions for the Blockbuster UK Operating Entities, we were required to deconsolidate our Blockbuster entities in the United Kingdom (collectively, "Blockbuster UK") on January 16, 2013. As a result of the Administration, we wrote down the assets of Blockbuster UK to their estimated net realizable value on our Consolidated Balance Sheets as of December 31, 2012, and we recorded a charge to "Cost of sales - equipment, merchandise, services, rental and other" of $21 million during the year ended December 31, 2012 on our Consolidated Statements of Operations and Comprehensive Income (Loss).

Table of Contents

Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS – Continued

As of December 31, 2012, we had intercompany receivables due from Blockbuster UK of approximately $37 million that were previously eliminated in consolidation on our Consolidated Balance Sheets. As a result of deconsolidation of Blockbuster UK on January 16, 2013, the intercompany receivables are no longer eliminated in consolidation. We believe we will not receive the entire amount for these intercompany receivables in the Administration and accordingly, we recorded a $25 million impairment charge related to these intercompany receivables, to adjust these amounts to their estimated net realizable value for the year ended December 31, 2012. This impairment charge was recorded in "Other, net" within "Other Income (Expense)" on our Consolidated Statements of Operations and Comprehensive Income (Loss) and the resulting liability was recorded in "Other accrued expenses" on our Consolidated Balance Sheets as of December 31, 2012. In total, we recorded charges described above of approximately $46 million on a pre-tax basis on our Consolidated Statements of Operations and Comprehensive Income (Loss) for the year ended December 31, 2012 related to the Administration.

As of December 31, 2012, Blockbuster UK had total assets and liabilities as follows (in thousands):

Cash	$	14,072
Trade accounts receivable		1,153
Inventory		34,937
Other current assets		10,243
Restricted cash and marketable securities		484
Property and equipment		186
Trade accounts payable		(13,081)
Intercompany payable		(36,676)
Deferred revenue and other		(1,369)
Other accrued expenses		(9,949)
Total net assets	$	—

Upon deconsolidation on January 16, 2013, the above amounts were combined into one net asset and the intercompany receivables of $37 million, net of the impairment liability of $25 million described above, were recorded in "Other noncurrent assets, net" on our Condensed Consolidated Balance Sheets as a component of our investment in Blockbuster UK.

On March 25, 2013, Gordon Brothers Europe purchased certain assets and assumed certain liabilities of the Blockbuster UK Operating Entities through the Administration. As a result, we recorded an additional $2 million impairment charge related to the intercompany receivables, to adjust these amounts to their estimated net realizable value. This impairment charge was recorded in "Other, net" within "Other Income (Expense)" on our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss) for the three months ended March 31, 2013. In total, as of June 30, 2013, we have recorded charges of approximately $48 million on a pre-tax basis related to the Administration. The proceeds that we actually receive from the Administration and the actual impairment charge may differ from our estimates.

For the three and six months ended June 30, 2012, Blockbuster UK had $70 million and $140 million, respectively, of revenue and an operating loss of less than $1 million and $5 million, respectively. Upon deconsolidation on January 16, 2013, the revenue and expenses related to the operations of Blockbuster UK are no longer recorded in our Condensed Consolidated Financial Statements.

Wireless Spectrum

In 2008, we paid $712 million to acquire certain 700 MHz wireless spectrum licenses, which were granted to us by the FCC in February 2009 subject to certain interim and final build-out requirements. On March 2, 2012, the FCC approved the transfer of 40 MHz of AWS-4 wireless spectrum licenses held by DBSD North America, Inc. ("DBSD North America") and TerreStar Networks, Inc. ("TerreStar") to us. On March 9, 2012, we completed the acquisition of 100% of the equity of reorganized DBSD North America (the "DBSD Transaction") and substantially all of the assets of TerreStar (the "TerreStar Transaction"), pursuant to which we acquired, among other things, certain satellite assets and wireless spectrum licenses held by DBSD North America and TerreStar. The total consideration to acquire the DBSD North America and TerreStar assets was approximately $2.860 billion. The financial results of DBSD North America and TerreStar are included in our results beginning March 9, 2012.

Table of Contents

Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS – Continued

We generated less than $1 million of revenue for each of the three months ended June 30, 2013 and 2012 from our wireless segment and $1 million and less than $1 million of revenue for the six months ended June 30, 2013 and 2012, respectively, from our wireless segment. In addition, we incurred operating losses of $525 million and $18 million for the three months ended June 30, 2013 and 2012, respectively, and operating losses of $543 million and $26 million for the six months ended June 30, 2013 and 2012, respectively. The three and six months ended June 30, 2013 included a $438 million impairment charge for the T2 and D1 satellites, $53 million of additional depreciation expense related to the accelerated depreciable lives of certain assets designed to support the TerreStar Mobile Satellite Service ("MSS") business, which ceased operations during the second quarter 2013, and $18 million of legal and financial advisory fees related to our proposed merger with Sprint Corporation ("Sprint"). See Note 7 in the Notes to the Condensed Consolidated Financial Statements for further information.

We incur general and administrative expenses associated with certain satellite operations and regulatory compliance matters from our wireless spectrum assets. We also incur depreciation and amortization expenses associated with certain assets of DBSD North America and TerreStar. As we review our options for the commercialization of this wireless spectrum, we may incur significant additional expenses and may have to make significant investments related to, among other things, research and development, wireless testing and wireless network infrastructure.

Operational Liquidity

Like many companies, we make general investments in property such as satellites, set-top boxes, information technology and facilities that support our overall business. However, since we are primarily a subscriber-based company, we also make subscriber-specific investments to acquire new subscribers and retain existing subscribers. While the general investments may be deferred without impacting the business in the short-term, the subscriber-specific investments are less discretionary. Our overall objective is to generate sufficient cash flow over the life of each subscriber to provide an adequate return against the upfront investment. Once the upfront investment has been made for each subscriber, the subsequent cash flow is generally positive.

There are a number of factors that impact our future cash flow compared to the cash flow we generate at a given point in time. The first factor is how successful we are at retaining our current subscribers. As we lose subscribers from our existing base, the positive cash flow from that base is correspondingly reduced. The second factor is how successful we are at maintaining our subscriber-related margins. To the extent our "Subscriber-related expenses" grow faster than our "Subscriber-related revenue," the amount of cash flow that is generated per existing subscriber is reduced. The third factor is the rate at which we acquire new subscribers. The faster we acquire new subscribers, the more our positive ongoing cash flow from existing subscribers is offset by the negative upfront cash flow associated with new subscribers. Finally, our future cash flow is impacted by the rate at which we make general investments and any cash flow from financing activities.

Our subscriber-specific investments to acquire new subscribers have a significant impact on our cash flow. While fewer subscribers might translate into lower ongoing cash flow in the long-term, cash flow is actually aided, in the short-term, by the reduction in subscriber-specific investment spending. As a result, a slow down in our business due to external or internal factors does not introduce the same level of short-term liquidity risk as it might in other industries.

Availability of Credit and Effect on Liquidity

The ability to raise capital has generally existed for us despite the weak economic conditions. Modest fluctuations in the cost of capital will not likely impact our current operational plans.

Future Liquidity

4 1/4% Senior Notes due 2018

On April 5, 2013, we issued $1.2 billion aggregate principal amount of our five-year, 4 1/4% Senior Notes due April 1, 2018 at an issue price of 100%. Interest accrues at an annual rate of 4 1/4% and is payable semi-annually in cash in arrears on April 1 and October 1 of each year, commencing on October 1, 2013.

Table of Contents

Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS – Continued

5 1/8% Senior Notes due 2020

On April 5, 2013, we issued $1.1 billion aggregate principal amount of our seven-year, 5 1/8% Senior Notes due May 1, 2020 at an issue price of 100%. Interest accrues at an annual rate of 5 1/8% and is payable semi-annually in cash in arrears on May 1 and November 1 of each year, commencing on November 1, 2013.

Wireless Spectrum

On March 2, 2012, the FCC approved the transfer of 40 MHz of AWS-4 wireless spectrum licenses held by DBSD North America and TerreStar to us. On March 9, 2012, we completed the DBSD Transaction and the TerreStar Transaction, pursuant to which we acquired, among other things, certain satellite assets and wireless spectrum licenses held by DBSD North America and TerreStar. The total consideration to acquire the DBSD North America and TerreStar assets was approximately $2.860 billion.

On February 15, 2013, the FCC issued an order, which became effective on March 7, 2013, modifying our AWS-4 licenses to expand our terrestrial operating authority. The FCC's order of modification has imposed certain limitations on the use of a portion of this spectrum, including interference protections for other spectrum users and power and emission limits that we presently believe could render 5 MHz of our uplink spectrum (2000-2005 MHz) effectively unusable for terrestrial services and limit our ability to fully utilize the remaining 15 MHz of our uplink spectrum (2005-2020 MHz) for terrestrial services. These limitations could, among other things, impact the ongoing development of technical standards associated with our wireless business, and may have a material adverse effect on our ability to commercialize these licenses. The new rules also mandate certain interim and final build-out requirements for the licenses. By March 2017, we must provide terrestrial signal coverage and offer terrestrial service to at least 40% of the aggregate population represented by all of the areas covered by the licenses (the "AWS-4 Interim Build-out Requirement"). By March 2020, we must provide terrestrial signal coverage and offer terrestrial service to at least 70% of the population in each area covered by an individual license (the "AWS-4 Final Build-out Requirement"). If we fail to meet the AWS-4 Interim Build-out Requirement, the AWS-4 Final Build-out Requirement will be accelerated by one year, from March 2020 to March 2019. If we fail to meet the AWS-4 Final Build-out Requirement, our terrestrial authorization for each license area in which we fail to meet the requirement will terminate. In addition, the FCC has adopted rules for a spectrum band that is adjacent to our AWS-4 licenses, known as the "H Block." Depending on the outcome of the standard-setting process for the H Block, the rules that the FCC adopted could further impact the remaining 15 MHz of our uplink spectrum (2005-2020 MHz), which may have a material adverse effect on our ability to commercialize the AWS-4 licenses. See Note 8 in the Notes to the Condensed Consolidated Financial Statements for further information.

In 2008, we paid $712 million to acquire certain 700 MHz wireless spectrum licenses, which were granted to us by the FCC in February 2009. These licenses mandate certain interim and final build-out requirements. By June 2013, we must provide signal coverage and offer service to at least 35% of the geographic area in each area covered by each individual license (the "700 MHz Interim Build-out Requirement"). By the end of our license term (June 2019), we must provide signal coverage and offer service to at least 70% of the geographic area in each area covered by each individual license (the "700 MHz Final Build-out Requirement"). We have recently notified the FCC of our plans to commence signal coverage in select cities within certain of these areas, but we have not yet developed plans for providing signal coverage and offering service in all of these areas. If we fail to meet the 700 MHz Interim Build-out Requirement, the term of our licenses will be reduced, from June 2019 to June 2017, and we could face possible fines and the reduction of license area(s). On June 12, 2013, we filed a request with the FCC for an extension of the 700 MHz Interim Build-out Requirement. We cannot predict the timing or outcome of any FCC action on our extension request. If we fail to meet the 700 MHz Final Build-out Requirement, our authorization for each license area in which we fail to meet the requirement will terminate.

We will need to make significant additional investments or partner with others to, among other things, finance the commercialization and build-out requirements of these licenses and our integration efforts including compliance with regulations applicable to the acquired licenses. Depending on the nature and scope of such commercialization, build-out, and integration efforts, any such investment or partnership could vary significantly. There can be no assurance that we will be able to develop and implement a business model that will realize a return on these

Table of Contents

Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS – Continued

spectrum licenses or that we will be able to profitably deploy the assets represented by these spectrum licenses, which may affect the carrying value of these assets and our future financial condition or results of operations.

EXPLANATION OF KEY METRICS AND OTHER ITEMS

Subscriber-related revenue. "Subscriber-related revenue" consists principally of revenue from basic, premium movie, local, HD programming, pay-per-view, Latino and international subscription television services, broadband services, equipment rental fees and other hardware related fees, including fees for DVRs, fees for broadband equipment, equipment upgrade fees and additional outlet fees from subscribers with receivers with multiple tuners, advertising services, fees earned from our in-home service operations and other subscriber revenue. Certain of the amounts included in "Subscriber-related revenue" are not recurring on a monthly basis.

Equipment and merchandise sales, rental and other revenue. "Equipment and merchandise sales, rental and other revenue" principally includes the non-subsidized sales of DBS accessories to retailers and other third party distributors of our equipment domestically and to Pay-TV subscribers, as well as other hardware sales to Pay-TV subscribers related to the iPad promotion. Effective April 26, 2011, revenue from merchandise sold to customers including movies, video games and other items, and revenue from the rental of movies and video games and the sale of previously rented titles related to our Blockbuster segment are included in this category. Effective March 9, 2012, revenue related to our wireless segment is included in this category.

Equipment sales, services and other revenue — EchoStar. "Equipment sales, services and other revenue — EchoStar" includes revenue related to equipment sales, services, and other agreements with EchoStar.

Subscriber-related expenses. "Subscriber-related expenses" principally include programming expenses, which represent a substantial majority of these expenses. "Subscriber-related expenses" also include costs for pay-TV and broadband services incurred in connection with our in-home service and call center operations, billing costs, refurbishment and repair costs related to receiver systems, subscriber retention, other variable subscriber expenses and monthly wholesale fees paid to broadband providers.

Satellite and transmission expenses — EchoStar. "Satellite and transmission expenses — EchoStar" includes the cost of leasing satellite and transponder capacity from EchoStar and the cost of digital broadcast operations provided to us by EchoStar, including satellite uplinking/downlinking, signal processing, conditional access management, telemetry, tracking and control, and other professional services.

Satellite and transmission expenses — other. "Satellite and transmission expenses — other" includes executory costs associated with capital leases and costs associated with transponder leases and other related services. Effective March 9, 2012, expenses related to our wireless segment are included in this category.

Cost of sales - equipment, merchandise, services, rental and other. "Cost of sales - equipment, merchandise, services, rental and other" principally includes the cost of non-subsidized sales of DBS accessories to retailers and other third party distributors of our equipment domestically and to Pay-TV subscribers, as well as the cost of other hardware sales to Pay-TV subscribers related to the iPad promotion. Effective April 26, 2011, the cost of movies and video games including rental title purchases or revenue sharing to studios, packaging and online delivery costs and cost of merchandise sold including movies, video games and other items related to our Blockbuster segment are included in this category. In addition, "Cost of sales - equipment, merchandise, services, rental and other" includes costs related to equipment sales, services, and other agreements with EchoStar.

Subscriber acquisition costs. In addition to leasing receivers, we generally subsidize installation and all or a portion of the cost of our receiver systems to attract new Pay-TV subscribers. Our "Subscriber acquisition costs" include the cost of subsidized sales of receiver systems to retailers and other third party distributors of our equipment, the cost of subsidized sales of receiver systems directly by us to subscribers, including net costs related to our promotional incentives, costs related to our direct sales efforts and costs related to installation and acquisition advertising. In addition, our "Subscriber acquisition costs" include the cost of sales, direct sales efforts and costs related to installations associated with our broadband services. We exclude the value of equipment capitalized under our lease program for new Pay-TV and Broadband subscribers from "Subscriber acquisition costs."

Table of Contents

Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS – Continued

Pay-TV SAC. Subscriber acquisition cost measures are commonly used by those evaluating companies in the Pay-TV industry. We are not aware of any uniform standards for calculating the "average subscriber acquisition costs per new Pay-TV subscriber activation," or Pay-TV SAC, and we believe presentations of Pay-TV SAC may not be calculated consistently by different companies in the same or similar businesses. Our Pay-TV SAC is calculated as "Subscriber acquisition costs," excluding "Subscriber acquisition costs" associated with our broadband services, plus the value of equipment capitalized under our lease program for new Pay-TV subscribers, divided by gross new Pay-TV subscriber activations. We include all the costs of acquiring Pay-TV subscribers (e.g., subsidized and capitalized equipment) as we believe it is a more comprehensive measure of how much we are spending to acquire subscribers. We also include all new Pay-TV subscribers in our calculation, including Pay-TV subscribers added with little or no subscriber acquisition costs.

General and administrative expenses. "General and administrative expenses" consists primarily of employee-related costs associated with administrative services such as legal, information systems, accounting and finance, including non-cash, stock-based compensation expense. It also includes outside professional fees (e.g., legal, information systems and accounting services) and other items associated with facilities and administration.

Litigation expense. "Litigation expense" primarily consists of legal settlements, judgments or accruals associated with certain significant litigation.

Interest expense, net of amounts capitalized. "Interest expense, net of amounts capitalized" primarily includes interest expense, prepayment premiums and amortization of debt issuance costs associated with our senior debt (net of capitalized interest), and interest expense associated with our capital lease obligations.

Other, net. The main components of "Other, net" are gains and losses realized on the sale and/or conversion of investments, impairment of marketable and non-marketable investment securities, unrealized gains and losses from changes in fair value of marketable and non-marketable strategic investments accounted for at fair value, unrealized gains and losses from changes in fair value of derivative financial instruments, and equity in earnings and losses of our affiliates.

Earnings before interest, taxes, depreciation and amortization ("EBITDA"). EBITDA is defined as "Net income (loss) attributable to DISH Network" plus "Interest expense, net of amounts capitalized" net of "Interest income," "Income tax (provision) benefit, net" and "Depreciation and amortization." This "non-GAAP measure" is reconciled to "Net income (loss) attributable to DISH Network" in our discussion of "Results of Operations" below.

"Pay-TV subscribers." We include customers obtained through direct sales, third party retailers and other third party distribution relationships in our Pay-TV subscriber count. We also provide pay-TV service to hotels, motels and other commercial accounts. For certain of these commercial accounts, we divide our total revenue for these commercial accounts by an amount approximately equal to the retail price of our DISH America programming package, and include the resulting number, which is substantially smaller than the actual number of commercial units served, in our Pay-TV subscriber count.

"Broadband subscribers." During the fourth quarter 2012, we elected to provide certain Broadband subscriber data. Each broadband customer is counted as one Broadband subscriber, regardless of whether they are also a Pay-TV subscriber. A subscriber of both our pay-TV and broadband services is counted as one Pay-TV subscriber and one Broadband subscriber.

Pay-TV average monthly revenue per subscriber ("Pay-TV ARPU"). We are not aware of any uniform standards for calculating ARPU and believe presentations of ARPU may not be calculated consistently by other companies in the same or similar businesses. We calculate Pay-TV average monthly revenue per Pay-TV subscriber, or Pay-TV ARPU, by dividing average monthly "Subscriber-related revenue," excluding revenue from broadband services, for the period by our average number of Pay-TV subscribers for the period. The average number of Pay-TV subscribers is calculated for the period by adding the average number of Pay-TV subscribers for each month and dividing by the number of months in the period. The average number of Pay-TV subscribers for each month is calculated by adding the beginning and ending Pay-TV subscribers for the month and dividing by two.

Table of Contents

Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS – Continued

Pay-TV average monthly subscriber churn rate ("Pay-TV churn rate"). We are not aware of any uniform standards for calculating subscriber churn rate and believe presentations of subscriber churn rates may not be calculated consistently by different companies in the same or similar businesses. We calculate Pay-TV churn rate for any period by dividing the number of Pay-TV subscribers who terminated service during the period by the average number of Pay-TV subscribers for the same period, and further dividing by the number of months in the period. When calculating Pay-TV churn rate, the same methodology for calculating average number of Pay-TV subscribers is used as when calculating Pay-TV ARPU.

Free cash flow. We define free cash flow as "Net cash flows from operating activities" less "Purchases of property and equipment," as shown on our Condensed Consolidated Statements of Cash Flows.

Table of Contents

Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS — Continued

RESULTS OF OPERATIONS

Three Months Ended June 30, 2013 Compared to the Three Months Ended June 30, 2012.

Statements of Operations Data	For the Three Months Ended June 30, 2013	2012	Variance Amount	%
	(In thousands)			
Revenue:				
Subscriber-related revenue	$ 3,456,536	$ 3,295,831	$ 160,705	4.9
Equipment and merchandise sales, rental and other revenue	140,611	270,257	(129,646)	(48.0)
Equipment sales, services and other revenue - EchoStar	8,986	5,678	3,308	58.3
Total revenue	3,606,133	3,571,766	34,367	1.0
Costs and Expenses:				
Subscriber-related expenses	1,924,020	1,823,665	100,355	5.5
% of Subscriber-related revenue	**55.7%**	**55.3%**		
Satellite and transmission expenses - EchoStar	125,706	107,082	18,624	17.4
% of Subscriber-related revenue	**3.6%**	**3.2%**		
Satellite and transmission expenses - Other	10,190	9,178	1,012	11.0
% of Subscriber-related revenue	**0.3%**	**0.3%**		
Cost of sales - equipment, merchandise, services, rental and other	76,783	130,061	(53,278)	(41.0)
Subscriber acquisition costs	434,536	406,642	27,894	6.9
General and administrative expenses	276,176	327,667	(51,491)	(15.7)
% of Total revenue	**7.7%**	**9.2%**		
Depreciation and amortization	300,474	299,119	1,355	0.5
Impairment of long-lived assets	437,575	—	437,575	*
Total costs and expenses	3,585,460	3,103,414	482,046	15.5
Operating income (loss)	20,673	468,352	(447,679)	(95.6)
Other Income (Expense):				
Interest income	43,843	20,204	23,639	*
Interest expense, net of amounts capitalized	(214,870)	(109,301)	(105,569)	(96.6)
Other, net	97,241	(7,448)	104,689	*
Total other income (expense)	(73,786)	(96,545)	22,759	23.6
Income (loss) before income taxes	(53,113)	371,807	(424,920)	*
Income tax (provision) benefit, net	38,039	(146,211)	184,250	*
Effective tax rate	**71.6%**	**39.3%**		
Net income (loss)	(15,074)	225,596	(240,670)	*
Less: Net income (loss) attributable to noncontrolling interest	(4,022)	(136)	(3,886)	*
Net income (loss) attributable to DISH Network	$ (11,052)	$ 225,732	$ (236,784)	*
Other Data:				
Pay-TV subscribers, as of period end (in millions)	14.014	14.061	(0.047)	(0.3)
Pay-TV subscriber additions, gross (in millions)	0.624	0.665	(0.041)	(6.2)
Pay-TV subscriber additions, net (in millions)	(0.078)	(0.010)	(0.068)	*
Pay-TV average monthly subscriber churn rate	1.67%	1.60%	0.07%	4.4
Pay-TV average subscriber acquisition cost per subscriber ("Pay-TV SAC")	$ 882	$ 800	$ 82	10.3
Pay-TV average monthly revenue per subscriber ("Pay-TV ARPU")	$ 80.90	$ 77.59	$ 3.31	4.3
Broadband subscribers, as of period end (in millions)	0.310	0.122	0.188	*
Broadband subscriber additions, gross (in millions)	0.079	0.021	0.058	*
Broadband subscriber additions, net (in millions)	0.061	0.011	0.050	*

EBITDA (in thousands)	$	422,410	$	760,159	$	(337,749)	(44.4)

* Percentage is not meaningful.

Table of Contents

Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS — Continued

Pay-TV subscribers. DISH lost approximately 78,000 net Pay-TV subscribers during the three months ended June 30, 2013, compared to the loss of approximately 10,000 net Pay-TV subscribers during the same period in 2012. The increase in the number of net Pay-TV subscribers lost versus the same period in 2012 resulted from lower gross new Pay-TV subscriber activations and an increase in our Pay-TV churn rate.

During the three months ended June 30, 2013, DISH added approximately 624,000 gross new Pay-TV subscribers compared to the addition of approximately 665,000 gross new Pay-TV subscribers during the same period in 2012, a decrease of 6.2%. Our gross new Pay-TV subscriber activations continue to be negatively impacted by increased competitive pressures, including aggressive marketing and discounted promotional offers. In addition, our gross new Pay-TV subscriber activations continue to be adversely affected by sustained economic weakness and uncertainty.

Our Pay-TV churn rate for the three months ended June 30, 2013 was 1.67% compared to 1.60% for the same period in 2012. Our Pay-TV churn rate was negatively impacted in part because we had a programming package price increase in the first quarter 2013 and did not during the same period in 2012. Churn continues to be adversely affected by increased competitive pressures, including aggressive marketing and discounted promotional offers. Our Pay-TV churn rate is also impacted by, among other things, the credit quality of previously acquired subscribers, our ability to consistently provide outstanding customer service, the aggressiveness of competitor subscriber acquisition efforts, and our ability to control piracy and other forms of fraud.

We have not always met our own standards for performing high-quality installations, effectively resolving subscriber issues when they arise, answering subscriber calls in an acceptable timeframe, effectively communicating with our subscriber base, reducing calls driven by the complexity of our business, improving the reliability of certain systems and subscriber equipment, and aligning the interests of certain third party retailers and installers to provide high-quality service. Most of these factors have affected both gross new Pay-TV subscriber activations as well as Pay-TV churn rate. Our future gross new Pay-TV subscriber activations and Pay-TV churn rate may be negatively impacted by these factors, which could in turn adversely affect our revenue growth.

Broadband subscribers. DISH added approximately 61,000 net Broadband subscribers during the three months ended June 30, 2013 compared to the addition of approximately 11,000 net Broadband subscribers during the same period in 2012. This increase versus the same period in 2012 primarily resulted from higher gross new Broadband subscriber activations. During the three months ended June 30, 2013, DISH added approximately 79,000 gross new Broadband subscribers compared to the addition of approximately 21,000 gross new Broadband subscribers during the same period in 2012. This increase was driven by increased advertising related to the dishNET branded broadband services.

Subscriber-related revenue. "Subscriber-related revenue" totaled $3.457 billion for the three months ended June 30, 2013, an increase of $161 million or 4.9% compared to the same period in 2012. The change in "Subscriber-related revenue" from the same period in 2012 was primarily related to the increase in Pay-TV ARPU discussed below. Included in "Subscriber-related revenue" was $47 million and $22 million of revenue related to our broadband services for the three months ended June 30, 2013 and 2012, respectively.

Pay-TV ARPU. Pay-TV ARPU was $80.90 during the three months ended June 30, 2013 versus $77.59 during the same period in 2012. The $3.31 or 4.3% increase in Pay-TV ARPU was primarily attributable to the programming package price increase in February 2013 and higher hardware related revenue, partially offset by a decrease in pay-per-view revenue.

Equipment and merchandise sales, rental and other revenue. "Equipment and merchandise sales, rental and other revenue" totaled $141 million for the three months ended June 30, 2013, a decrease of $130 million or 48.0% compared to the same period in 2012. This change was primarily related to the deconsolidation of Blockbuster UK on January 16, 2013 and Blockbuster domestic store closings during 2013 and 2012. See Note 9 in the Notes to the Condensed Consolidated Financial Statements for further information.

Table of Contents

Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS — Continued

Subscriber-related expenses. "Subscriber-related expenses" totaled $1.924 billion during the three months ended June 30, 2013, an increase of $100 million or 5.5% compared to the same period in 2012. The increase in "Subscriber-related expenses" was primarily attributable to higher pay-TV programming and retention costs and higher Broadband subscriber-related expenses due to the increase in our Broadband subscriber base. The increase in programming costs was driven by rate increases in certain of our programming contracts, including the renewal of certain contracts at higher rates. Included in "Subscriber-related expenses" was $33 million and $11 million of expense related to our broadband services for the three months ended June 30, 2013 and 2012, respectively. "Subscriber-related expenses" represented 55.7% and 55.3% of "Subscriber-related revenue" during the three months ended June 30, 2013 and 2012, respectively. The change in this expense to revenue ratio primarily resulted from higher programming costs, discussed above.

In the normal course of business, we enter into contracts to purchase programming content in which our payment obligations are generally contingent on the number of subscribers to whom we provide the respective content. Our programming expenses will continue to increase to the extent we are successful in growing our subscriber base. In addition, our "Subscriber-related expenses" may face further upward pressure from price increases and the renewal of long-term programming contracts on less favorable pricing terms.

Satellite and transmission expenses — EchoStar. "Satellite and transmission expenses — EchoStar" totaled $126 million during the three months ended June 30, 2013, an increase of $19 million or 17.4% compared to the same period in 2012. The increase in "Satellite and transmission expenses — EchoStar" is related to an increase in transponder capacity leased from EchoStar primarily related to the EchoStar XVI satellite, which was launched in November 2012 and QuetzSat-1, which commenced commercial operation at the 77 degree orbital slot in February 2013. This increase was partially offset by a decrease in transponder capacity leased from EchoStar primarily related to the expiration of the EchoStar VI lease in first quarter 2013. See Note 14 in the Notes to our Condensed Consolidated Financial Statements for further discussion.

Cost of sales — equipment, merchandise, services, rental and other. "Cost of sales — equipment, merchandise, services, rental and other" totaled $77 million for the three months ended June 30, 2013, a decrease of $53 million or 41.0% compared to the same period in 2012. This change was primarily related to the deconsolidation of Blockbuster UK on January 16, 2013 and Blockbuster domestic store closings during 2013 and 2012. See Note 9 in the Notes to the Condensed Consolidated Financial Statements for further information.

Subscriber acquisition costs. "Subscriber acquisition costs" totaled $435 million for the three months ended June 30, 2013, an increase of $28 million or 6.9% compared to the same period in 2012. This change was primarily attributable to the increase in Pay-TV SAC described below, partially offset by a decrease in our gross new Pay-TV subscriber activations during the period. Included in "Subscriber acquisition costs" was $37 million and $6 million of expenses related to our broadband services for the three months ended June 30, 2013 and 2012, respectively.

Pay-TV SAC. Pay-TV SAC was $882 during the three months ended June 30, 2013 compared to $800 during the same period in 2012, an increase of $82 or 10.3%. This increase was primarily attributable to increased advertising and equipment costs. Advertising costs were up $12 per activation reflecting increased brand spending related to the launch of our new Hopper with Sling set-top box in February 2013. Capitalized equipment costs increased $49 per activation, primarily due to an increase in the percentage of new subscriber activations with new Hopper receiver systems. In addition, the Hopper with Sling set-top box cost per unit is currently higher than the original Hopper set-top box.

During the three months ended June 30, 2013 and 2012, the amount of equipment capitalized under our lease program for new Pay-TV subscribers totaled $154 million and $132 million, respectively. This increase in capital expenditures under our lease program for new Pay-TV subscribers resulted primarily from the factors described above.

To remain competitive we upgrade or replace subscriber equipment periodically as technology changes, and the costs associated with these upgrades may be substantial. To the extent technological changes render a portion of our existing equipment obsolete, we would be unable to redeploy all returned equipment and consequently would realize less benefit from the Pay-TV SAC reduction associated with redeployment of that returned lease equipment.

Table of Contents

Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS — Continued

Our Pay-TV SAC calculation does not reflect any benefit from payments we received in connection with equipment not returned to us from disconnecting lease subscribers and returned equipment that is made available for sale or used in our existing customer lease program rather than being redeployed through our new customer lease program. During the three months ended June 30, 2013 and 2012, these amounts totaled $32 million and $36 million, respectively.

We have been deploying receivers that utilize 8PSK modulation technology and receivers that utilize MPEG-4 compression technology for several years. These technologies, when fully deployed, will allow more programming channels to be carried over our existing satellites. Many of our customers today, however, do not have receivers that use MPEG-4 compression and a smaller but still significant number do not have receivers that use 8PSK modulation. We may choose to invest significant capital to accelerate the conversion of customers to MPEG-4 and/or 8PSK to realize the bandwidth benefits sooner. In addition, given that all of our HD content is broadcast in MPEG-4, any growth in HD penetration will naturally accelerate our transition to these newer technologies and may increase our subscriber acquisition and retention costs. All new receivers that we purchase from EchoStar have MPEG-4 technology. Although we continue to refurbish and redeploy certain MPEG-2 receivers, as a result of our HD initiatives and current promotions, we currently activate most new customers with higher priced MPEG-4 technology. This limits our ability to redeploy MPEG-2 receivers and, to the extent that our promotions are successful, will accelerate the transition to MPEG-4 technology, resulting in an adverse effect on our SAC.

Our "Subscriber acquisition costs" and "Pay-TV SAC" may materially increase in the future to the extent that we transition to newer technologies, introduce more aggressive promotions, or provide greater equipment subsidies. See further discussion under *"Other Liquidity Items — Subscriber Acquisition and Retention Costs."*

General and administrative expenses. "General and administrative expenses" totaled $276 million during the three months ended June 30, 2013, a $51 million or 15.7% decrease compared to the same period in 2012. This decrease was primarily related to the deconsolidation of Blockbuster UK on January 16, 2013 and Blockbuster domestic store closings during 2013 and 2012, partially offset by $18 million of legal and financial advisory fees related to our proposed merger with Sprint. See Note 8 and Note 9 in the Notes to the Condensed Consolidated Financial Statements for further information.

Depreciation and amortization. "Depreciation and amortization" expense totaled $300 million during the three months ended June 30, 2013, a $1 million or 0.5% increase compared to the same period in 2012. The change in "Depreciation and amortization" expense was primarily due to $53 million of additional depreciation expense as a result of the accelerated depreciable lives of certain assets designed to support the TerreStar MSS business, which ceased operations during the second quarter 2013, and increased depreciation expense from equipment leased to subscribers primarily related to subscriber activations with new Hopper receiver systems. The second quarter 2012 was impacted by the $68 million of depreciation expense related to the 148 degree orbital location. See Note 7 in the Notes to the Condensed Consolidated Financial Statements for further discussion.

Impairment of long-lived assets. "Impairment of long-lived assets" of $438 million during the three months ended June 30, 2013 resulted from an impairment of the T2 and D1 satellites. See Note 7 in the Notes to the Condensed Consolidated Financial Statements for further information.

Interest income. "Interest income" totaled $44 million during the three months ended June 30, 2013, an increase of $24 million compared to the same period in 2012. This increase principally resulted from higher average cash and marketable investment securities balances during the three months ended June 30, 2013.

Interest expense, net of amounts capitalized. "Interest expense, net of amounts capitalized" totaled $215 million during the three months ended June 30, 2013, an increase of $106 million or 96.6% compared to the same period in 2012. This change primarily resulted from an increase in interest expense associated with the issuance of debt during 2012 and 2013, as well as the redemption of debt during the second quarter of 2013. Included in "Interest expense, net of amounts capitalized" for the three months ended June 30, 2013 was $30 million in premiums, interest expense and deferred financing costs related to the issuance and redemption of our 6 1/4% Senior Notes due 2023 and our 5% Senior Notes due 2017. See Note 10 in the Notes to the Condensed Consolidated Financial Statements for further information.

Table of Contents

Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS — Continued

Other, net. "Other, net" income totaled $97 million during the three months ended June 30, 2013, an increase of $105 million compared to the same period in 2012. This change principally resulted from unrealized gains of $76 million related to our derivative financial instruments that are indexed to the trading price of the common equity securities of Sprint during 2013 compared to the same period in 2012.

Earnings before interest, taxes, depreciation and amortization. EBITDA was $422 million during the three months ended June 30, 2013, a decrease of $338 million or 44.4% compared to the same period in 2012. EBITDA for the three months ended June 30, 2013 was negatively impacted by the $438 million impairment charge for the T2 and D1 satellites and was favorably impacted by the $76 million unrealized gain on our derivative financial instruments that are indexed to the trading price of the common equity securities of Sprint. The following table reconciles EBITDA to the accompanying financial statements.

	For the Three Months Ended June 30, 2013	For the Three Months Ended June 30, 2012
	(In thousands)	
EBITDA	$ 422,410	$ 760,159
Interest expense, net	(171,027)	(89,097)
Income tax (provision) benefit, net	38,039	(146,211)
Depreciation and amortization	(300,474)	(299,119)
Net income (loss) attributable to DISH Network	$ (11,052)	$ 225,732

EBITDA is not a measure determined in accordance with accounting principles generally accepted in the United States ("GAAP") and should not be considered a substitute for operating income, net income or any other measure determined in accordance with GAAP. EBITDA is used as a measurement of operating efficiency and overall financial performance and we believe it to be a helpful measure for those evaluating companies in the pay-TV industry. Conceptually, EBITDA measures the amount of income generated each period that could be used to service debt, pay taxes and fund capital expenditures. EBITDA should not be considered in isolation or as a substitute for measures of performance prepared in accordance with GAAP.

Income tax (provision) benefit, net. Our income tax benefit was $38 million during the three months ended June 30, 2013, compared to a $146 million provision during the same period in 2012. The change was primarily related to the decrease in "Income (loss) before income taxes" and the change in our effective tax rate. Our effective tax rate was favorably impacted by the recent audit settlement with the IRS related to periods prior to 2009.

Net income (loss) attributable to DISH Network. "Net income (loss) attributable to DISH Network" was a loss of $11 million during the three months ended June 30, 2013, a decrease of $237 million compared to income of $226 million for the same period in 2012. This decrease was primarily attributable to the changes in revenue and expenses discussed above.

Table of Contents

Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS — Continued

Six Months Ended June 30, 2013 Compared to the Six Months Ended June 30, 2012.

Statements of Operations Data	For the Six Months Ended June 30, 2013	For the Six Months Ended June 30, 2012	Variance Amount	Variance %
		(In thousands)		
Revenue:				
Subscriber-related revenue	$ 6,809,086	$ 6,520,296	$ 288,790	4.4
Equipment and merchandise sales, rental and other revenue	341,145	620,994	(279,849)	(45.1)
Equipment sales, services and other revenue - EchoStar	11,126	12,345	(1,219)	(9.9)
Total revenue	7,161,357	7,153,635	7,722	0.1
Costs and Expenses:				
Subscriber-related expenses	3,835,613	3,584,917	250,696	7.0
% of Subscriber-related revenue	**56.3%**	**55.0%**		
Satellite and transmission expenses - EchoStar	238,639	216,936	21,703	10.0
% of Subscriber-related revenue	**3.5%**	**3.3%**		
Satellite and transmission expenses - Other	20,438	20,857	(419)	(2.0)
% of Subscriber-related revenue	**0.3%**	**0.3%**		
Cost of sales - equipment, merchandise, services, rental and other	176,309	272,323	(96,014)	(35.3)
Subscriber acquisition costs	898,436	806,180	92,256	11.4
General and administrative expenses	546,620	703,842	(157,222)	(22.3)
% of Total revenue	**7.6%**	**9.8%**		
Depreciation and amortization	534,801	507,817	26,984	5.3
Impairment of long-lived assets	437,575	—	437,575	*
Total costs and expenses	6,688,431	6,112,872	575,559	9.4
Operating income (loss)	472,926	1,040,763	(567,837)	(54.6)
Other Income (Expense):				
Interest income	81,337	27,293	54,044	*
Interest expense, net of amounts capitalized	(376,256)	(247,314)	(128,942)	(52.1)
Other, net	106,981	102,834	4,147	4.0
Total other income (expense)	(187,938)	(117,187)	(70,751)	(60.4)
Income (loss) before income taxes	284,988	923,576	(638,588)	(69.1)
Income tax (provision) benefit, net	(89,386)	(337,854)	248,468	73.5
Effective tax rate	**31.4%**	**36.6%**		
Net income (loss)	195,602	585,722	(390,120)	(66.6)
Less: Net income (loss) attributable to noncontrolling interest	(8,944)	(320)	(8,624)	*
Net income (loss) attributable to DISH Network	$ 204,546	$ 586,042	$ (381,496)	(65.1)
Other Data:				
Pay-TV subscribers, as of period end (in millions)	14.014	14.061	(0.047)	(0.3)
Pay-TV subscriber additions, gross (in millions)	1.278	1.338	(0.060)	(4.5)
Pay-TV subscriber additions, net (in millions)	(0.042)	0.094	(0.136)	*
Pay-TV average monthly subscriber churn rate	1.57%	1.48%	0.09%	6.1
Pay-TV average subscriber acquisition cost per subscriber ("Pay-TV SAC")	$ 882	$ 773	$ 109	14.1
Pay-TV average monthly revenue per subscriber ("Pay-TV ARPU")	$ 79.72	$ 76.92	$ 2.80	3.6
Broadband subscribers, as of period end (in millions)	0.310	0.122	0.188	*
Broadband subscriber additions, gross (in millions)	0.162	0.035	0.127	*
Broadband subscriber additions, net (in millions)	0.127	0.017	0.110	*
EBITDA (in thousands)	$ 1,123,652	$ 1,651,734	$ (528,082)	(32.0)

* Percentage is not meaningful.

Table of Contents

Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS — Continued

Pay-TV subscribers. DISH lost approximately 42,000 net Pay-TV subscribers during the six months ended June 30, 2013, compared to the addition of approximately 94,000 net Pay-TV subscribers during the same period in 2012. The decrease versus the same period in 2012 resulted from an increase in our Pay-TV churn rate and lower gross new Pay-TV subscriber activations. Our Pay-TV churn rate for the six months ended June 30, 2013 was 1.57% compared to 1.48% for the same period in 2012. Our Pay-TV churn rate was negatively impacted in part because we had a programming package price increase in the first quarter 2013 and did not during the same period in 2012. During the six months ended June 30, 2013, DISH added approximately 1.278 million gross new Pay-TV subscribers compared to approximately 1.338 million gross new Pay-TV subscribers during the same period in 2012, a decrease of 4.5%. Our gross new Pay-TV subscriber activations continue to be negatively impacted by increased competitive pressures, including aggressive marketing and discounted promotional offers. In addition, our gross new Pay-TV subscriber activations continue to be adversely affected by sustained economic weakness and uncertainty.

Broadband subscribers. DISH added approximately 127,000 net Broadband subscribers during the six months ended June 30, 2013 compared to the addition of approximately 17,000 net Broadband subscribers during the same period in 2012. This increase versus the same period in 2012 primarily resulted from higher gross new Broadband subscriber activations. During the six months ended June 30, 2013, DISH added approximately 162,000 gross new Broadband subscribers compared to the addition of approximately 35,000 gross new Broadband subscribers during the same period in 2012. This increase was driven by increased advertising related to the dishNET branded broadband services.

Subscriber-related revenue. "Subscriber-related revenue" totaled $6.809 billion for the six months ended June 30, 2013, an increase of $289 million or 4.4% compared to the same period in 2012. The change in "Subscriber-related revenue" from the same period in 2012 was primarily related to the increase in Pay-TV ARPU discussed below. Included in "Subscriber-related revenue" was $88 million and $42 million of revenue related to our broadband services for the six months ended June 30, 2013 and 2012, respectively.

Pay-TV ARPU. Pay-TV ARPU was $79.72 during the six months ended June 30, 2013 versus $76.92 during the same period in 2012. The $2.80 or 3.6% increase in Pay-TV ARPU was primarily attributable to the programming package price increase in February 2013 and higher hardware related revenue.

Equipment and merchandise sales, rental and other revenue. "Equipment and merchandise sales, rental and other revenue" totaled $341 million for the six months ended June 30, 2013, a decrease of $280 million compared to the same period in 2012. This change was primarily related to the deconsolidation of Blockbuster UK on January 16, 2013 and Blockbuster domestic store closings during 2013 and 2012.

Subscriber-related expenses. "Subscriber-related expenses" totaled $3.836 billion during the six months ended June 30, 2013, an increase of $251 million or 7.0% compared to the same period in 2012. The increase in "Subscriber-related expenses" was primarily attributable to higher pay-TV programming and retention costs and higher Broadband subscriber-related expenses due to the increase in our Broadband subscriber base. The increase in programming costs was driven by rate increases in certain of our programming contracts, including the renewal of certain contracts at higher rates. Included in "Subscriber-related expenses" was $61 million and $21 million of expense related to our broadband services for the six months ended June 30, 2013 and 2012, respectively. "Subscriber-related expenses" represented 56.3% and 55.0% of "Subscriber-related revenue" during the six months ended June 30, 2013 and 2012, respectively. The change in this expense to revenue ratio primarily resulted from higher programming costs, discussed above.

Satellite and transmission expenses — EchoStar. "Satellite and transmission expenses — EchoStar" totaled $239 million during the six months ended June 30, 2013, an increase of $22 million or 10.0% compared to the same period in 2012. The increase in "Satellite and transmission expenses — EchoStar" is related to an increase in transponder capacity leased from EchoStar primarily related to the EchoStar XVI satellite, which was launched in November 2012 and QuetzSat-1, which commenced commercial operation at the 77 degree orbital slot in February 2013. This increase was partially offset by a decrease in transponder capacity leased from EchoStar primarily related to the expiration of the EchoStar VI lease in first quarter 2013.

Table of Contents

Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS — Continued

Cost of sales — equipment, merchandise, services, rental and other. "Cost of sales — equipment, merchandise, services, rental and other" totaled $176 million for the six months ended June 30, 2013, a decrease of $96 million compared to the same period in 2012. This change was primarily related to the deconsolidation of Blockbuster UK on January 16, 2013 and Blockbuster domestic store closings during 2013 and 2012.

Subscriber acquisition costs. "Subscriber acquisition costs" totaled $898 million for the six months ended June 30, 2013, an increase of $92 million or 11.4% compared to the same period in 2012. This change was primarily attributable to an increase in Pay-TV SAC described below, partially offset by a decrease in gross new Pay-TV subscriber activations. Included in "Subscriber acquisition costs" was $72 million and $10 million of expenses related to our broadband services for the six months ended June 30, 2013 and 2012, respectively.

Pay-TV SAC. Pay-TV SAC was $882 during the six months ended June 30, 2013 compared to $773 during the same period in 2012, an increase of $109 or 14.1%. This increase was primarily attributable to increased advertising and equipment costs. Advertising costs were up $28 per activation reflecting increased brand spending related to the launch of our new Hopper with Sling set-top box in February 2013. Capitalized equipment costs increased $57 per activation, primarily due to an increase in the percentage of new subscriber activations with new Hopper receiver systems. In addition, the Hopper with Sling set-top box cost per unit is currently higher than the original Hopper set-top box.

During the six months ended June 30, 2013 and 2012, the amount of equipment capitalized under our lease program for new Pay-TV subscribers totaled $301 million and $239 million, respectively. This increase in capital expenditures under our lease program for new Pay-TV subscribers resulted primarily from the factors described above.

Our Pay-TV SAC calculation does not reflect any benefit from payments we received in connection with equipment not returned to us from disconnecting lease subscribers and returned equipment that is made available for sale or used in our existing customer lease program rather than being redeployed through our new customer lease program. During the six months ended June 30, 2013 and 2012, these amounts totaled $77 million and $66 million, respectively.

General and administrative expenses. "General and administrative expenses" totaled $547 million during the six months ended June 30, 2013, a $157 million or 22.3% decrease compared to the same period in 2012. This decrease was primarily related to the deconsolidation of Blockbuster UK on January 16, 2013 and Blockbuster domestic store closings during 2013 and 2012, partially offset by $18 million of legal and financial advisory fees related to our proposed merger with Sprint.

Depreciation and amortization. "Depreciation and amortization" expense totaled $535 million during the six months ended June 30, 2013, a $27 million or 5.3% increase compared to the same period in 2012. This change in "Depreciation and amortization" expense was primarily due to $53 million of additional depreciation expense as a result of the accelerated depreciable lives of certain assets designed to support the TerreStar MSS business, which ceased operations during the second quarter 2013, and increased depreciation expense from equipment leased to subscribers primarily related to subscriber activations with new Hopper receiver systems. The second quarter 2012 was impacted by the $68 million of depreciation expense related to the 148 degree orbital location.

Impairment of long-lived assets. "Impairment of long-lived assets" of $438 million during the six months ended June 30, 2013 resulted from an impairment of the T2 and D1 satellites. See Note 7 in the Notes to the Condensed Consolidated Financial Statements for further information.

Interest income. "Interest income" totaled $81 million during the six months ended June 30, 2013, an increase of $54 million compared to the same period in 2012. This increase principally resulted from higher average cash and marketable investment securities balances during the six months ended June 30, 2013 and higher percentage returns earned on our cash and marketable investment securities.

Table of Contents

Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS — Continued

Interest expense, net of amounts capitalized. "Interest expense, net of amounts capitalized" totaled \$376 million during the six months ended June 30, 2013, an increase of \$129 million or 52.1% compared to the same period in 2012. This change primarily resulted from an increase in interest expense associated with the issuance of debt during 2012 and 2013 as well as the redemption of debt during the second quarter of 2013, partially offset by an increase in capitalized interest in 2013 of \$31 million primarily related to our wireless spectrum licenses. Included in "Interest expense, net of amounts capitalized" for the six months ended June 30, 2013 was \$30 million in premiums, interest expense and deferred financing costs related to the issuance and redemption of our 6 1/4% Senior Notes due 2023 and our 5% Senior Notes due 2017.

Other, net. "Other, net" income totaled \$107 million during the six months ended June 30, 2013, an increase of \$4 million compared to the same period in 2012. This change principally resulted from unrealized gains of \$85 million related to our derivative financial instruments that are indexed to the trading price of the common equity securities of Sprint during 2013 compared to the same period in 2012. The six months ended June 30, 2012 was favorably impacted by the non-cash gain of \$99 million related to the conversion of our DBSD North America 7.5% Convertible Senior Secured Notes due 2009 in connection with the completion of the DBSD Transaction.

Earnings before interest, taxes, depreciation and amortization. EBITDA was \$1.124 billion during the six months ended June 30, 2013, a decrease of \$528 million or 32.0% compared to the same period in 2012. EBITDA for the six months ended June 30, 2013 was negatively impacted by the \$438 million impairment charge for the T2 and D1 satellites and was favorably impacted by the \$85 million unrealized gain on our derivative financial instruments that are indexed to the trading price of the common equity securities of Sprint. The six months ended June 30, 2012 was favorably impacted by the non-cash gain of \$99 million related to the conversion of our DBSD North America 7.5% Convertible Senior Secured Notes due 2009 in connection with the completion of the DBSD Transaction. The following table reconciles EBITDA to the accompanying financial statements.

	For the Six Months Ended June 30, 2013	2012
	(In thousands)	
EBITDA	$ 1,123,652	$ 1,651,734
Interest expense, net	(294,919)	(220,021)
Income tax (provision) benefit, net	(89,386)	(337,854)
Depreciation and amortization	(534,801)	(507,817)
Net income (loss) attributable to DISH Network	$ 204,546	$ 586,042

EBITDA is not a measure determined in accordance with GAAP and should not be considered a substitute for operating income, net income or any other measure determined in accordance with GAAP. EBITDA is used as a measurement of operating efficiency and overall financial performance and we believe it to be a helpful measure for those evaluating companies in the pay-TV industry. Conceptually, EBITDA measures the amount of income generated each period that could be used to service debt, pay taxes and fund capital expenditures. EBITDA should not be considered in isolation or as a substitute for measures of performance prepared in accordance with GAAP.

Income tax (provision) benefit, net. Our income tax provision was \$89 million during the six months ended June 30, 2013, a decrease of \$248 million compared to the same period in 2012. The decrease in the provision was primarily related to the decrease in "Income (loss) before income taxes" and a decrease in our effective tax rate. Our effective tax rate was favorably impacted by the recent audit settlement with the IRS related to periods prior to 2009.

Net income (loss) attributable to DISH Network. "Net income (loss) attributable to DISH Network" was \$205 million during the six months ended June 30, 2013, a decrease of \$381 million compared to \$586 million for the same period in 2012. This decrease was primarily attributable to the changes in revenue and expenses discussed above.

Table of Contents

Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS — Continued

LIQUIDITY AND CAPITAL RESOURCES

Cash, Cash Equivalents and Current Marketable Investment Securities

We consider all liquid investments purchased within 90 days of their maturity to be cash equivalents. See "Item 3. — Quantitative and Qualitative Disclosures About Market Risk" for further discussion regarding our marketable investment securities. As of June 30, 2013, our cash, cash equivalents and current marketable investment securities totaled $9.527 billion compared to $7.238 billion as of December 31, 2012, an increase of $2.289 billion. This increase in cash, cash equivalents and current marketable investment securities primarily resulted from net proceeds of $2.292 billion from the issuance in April 2013 of our 4 1/4% Senior Notes due 2018 and 5 1/8% Senior Notes due 2020 and cash generated from operations of $1.231 billion, partially offset by purchases and prepaid funding to purchase derivative financial instruments of $696 million and capital expenditures of $594 million.

Cash Flow

The following discussion highlights our cash flow activities during the six months ended June 30, 2013.

Cash flows from operating activities

For the six months ended June 30, 2013, we reported "Net cash flows from operating activities" of $1.231 billion primarily attributable to $1.015 billion of net income adjusted to exclude non-cash charges for "Depreciation and amortization" expense, "Impairment of long-lived assets," "Realized and unrealized losses (gains) on investments" and "Deferred tax expense (benefit)." In addition, "Net cash flows from operating activities" benefited from sources of cash related to the changes in operating assets and liabilities related to timing differences between book expense and cash payments.

Cash flows from investing activities

For the six months ended June 30, 2013, we reported net cash outflows from investing activities of $3.058 billion primarily related to net purchases of marketable investment securities of $1.754 billion, purchases and prepaid funding to purchase derivative financial instruments of $696 million and capital expenditures of $594 million. The capital expenditures included $412 million for new and existing pay-TV subscriber equipment, $35 million for new and existing Broadband subscriber equipment, $18 million for satellites and $129 million of other corporate capital expenditures.

Cash flows from financing activities

For the six months ended June 30, 2013, we reported net cash inflows from financing activities of $2.315 billion primarily related to net proceeds of $2.292 billion from the issuance in April 2013 of our 4 1/4% Senior Notes due 2018 and 5 1/8% Senior Notes due 2020.

Free Cash Flow

We define free cash flow as "Net cash flows from operating activities" less "Purchases of property and equipment," as shown on our Condensed Consolidated Statements of Cash Flows. We believe free cash flow is an important liquidity metric because it measures, during a given period, the amount of cash generated that is available to repay debt obligations, make investments, fund acquisitions and for certain other activities. Free cash flow is not a measure determined in accordance with GAAP and should not be considered a substitute for "Operating income," "Net income," "Net cash flows from operating activities" or any other measure determined in accordance with GAAP. Since free cash flow includes investments in operating assets, we believe this non-GAAP liquidity measure is useful in addition to the most directly comparable GAAP measure "Net cash flows from operating activities."

During the six months ended June 30, 2013 and 2012, free cash flow was significantly impacted by changes in operating assets and liabilities and in "Purchases of property and equipment" as shown in the "Net cash flows from operating activities" and "Net cash flows from investing activities" sections, respectively, of our Condensed

Table of Contents

Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS — Continued

Consolidated Statements of Cash Flows included herein. Operating asset and liability balances can fluctuate significantly from period to period and there can be no assurance that free cash flow will not be negatively impacted by material changes in operating assets and liabilities in future periods, since these changes depend upon, among other things, management's timing of payments and control of inventory levels, and cash receipts. In addition to fluctuations resulting from changes in operating assets and liabilities, free cash flow can vary significantly from period to period depending upon, among other things, subscriber growth, subscriber revenue, subscriber churn, subscriber acquisition costs including amounts capitalized under our equipment lease programs, operating efficiencies, increases or decreases in purchases of property and equipment, and other factors.

The following table reconciles free cash flow to "Net cash flows from operating activities."

	For the Six Months Ended June 30,	
	2013	2012
	(In thousands)	
Free cash flow	$ 637,527	$ 927,879
Add back:		
Purchases of property and equipment	593,740	420,185
Net cash flows from operating activities	$ 1,231,267	$ 1,348,064

Subscriber Base

DISH lost approximately 42,000 net Pay-TV subscribers during the six months ended June 30, 2013, compared to the addition of approximately 94,000 net Pay-TV subscribers during the same period in 2012. The decrease versus the same period in 2012 primarily resulted from an increase in our Pay-TV churn rate and lower gross new Pay-TV subscriber activations. See "Results of Operations" above for further discussion. There are a number of factors that impact our future cash flow compared to the cash flow we generate at any given point in time, including our Pay-TV churn rate and how successful we are at retaining our current Pay-TV subscribers. As we lose Pay-TV subscribers from our existing base, the positive cash flow from that base is correspondingly reduced.

Satellites

Operation of our pay-TV service requires that we have adequate satellite transmission capacity for the programming we offer. Moreover, current competitive conditions require that we continue to expand our offering of new programming. While we generally have had in-orbit satellite capacity sufficient to transmit our existing channels and some backup capacity to recover the transmission of certain critical programming, our backup capacity is limited. In the event of a failure or loss of any of our satellites, we may need to acquire or lease additional satellite capacity or relocate one of our other satellites and use it as a replacement for the failed or lost satellite. Such a failure could result in a prolonged loss of critical programming or a significant delay in our plans to expand programming as necessary to remain competitive and cause us to expend a significant portion of our cash to acquire or lease additional satellite capacity.

Security Systems

Increases in theft of our signal or our competitors' signals could, in addition to reducing new subscriber activations, also cause subscriber churn to increase. We use microchips embedded in credit card sized access cards, called "smart cards," or security chips in our receiver systems to control access to authorized programming content ("Security Access Devices"). Our signal encryption has been compromised in the past and may be compromised in the future even though we continue to respond with significant investment in security measures, such as Security Access Device replacement programs and updates in security software, that are intended to make signal theft more difficult. It has been our prior experience that security measures may only be effective for short periods of time or not at all and that we remain susceptible to additional signal theft. During 2009, we completed the replacement of our Security Access Devices and re-secured our system. We expect additional future replacements of these devices will be necessary to keep our system secure. We cannot ensure that we will be successful in reducing or controlling theft of our programming content and we may incur additional costs in the future if our system's security is compromised.

Table of Contents

Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS — Continued

Stock Repurchases

Our Board of Directors previously authorized the repurchase of up to $1.0 billion of our Class A common stock. On November 2, 2012, our Board of Directors extended this authorization such that we are currently authorized to repurchase up to $1.0 billion of outstanding shares of our Class A common stock through and including December 31, 2013. As of June 30, 2013, we may repurchase up to $1.0 billion of our Class A common stock under this plan.

Subscriber Acquisition and Retention Costs

We incur significant upfront costs to acquire subscribers, including advertising, retailer incentives, equipment subsidies, installation services, and new customer promotions. While we attempt to recoup these upfront costs over the lives of their subscription, there can be no assurance that we will. We employ business rules such as minimum credit requirements and we strive to provide outstanding customer service, to increase the likelihood of customers keeping their DISH service over longer periods of time. Our subscriber acquisition costs may vary significantly from period to period.

We incur significant costs to retain our existing customers, mostly by upgrading their equipment to HD and DVR receivers. As with our subscriber acquisition costs, our retention spending includes the cost of equipment and installation services. In certain circumstances, we also offer free programming and/or promotional pricing for limited periods for existing customers in exchange for a commitment to receive service for a minimum term. A component of our retention efforts includes the installation of equipment for customers who move. Our subscriber retention costs may vary significantly from period to period.

Seasonality

Historically, the first half of the year generally produces fewer gross new subscriber activations than the second half of the year, as is typical in the pay-TV industry. In addition, the first and fourth quarters generally produce a lower churn rate than the second and third quarters. However, we cannot provide assurance that this will continue in the future.

Covenants and Restrictions Related to our Senior Notes

The indentures related to our outstanding senior notes contain restrictive covenants that, among other things, impose limitations on the ability of DISH DBS Corporation ("DISH DBS") and its restricted subsidiaries to: (i) incur additional indebtedness; (ii) enter into sale and leaseback transactions; (iii) pay dividends or make distributions on DISH DBS' capital stock or repurchase DISH DBS' capital stock; (iv) make certain investments; (v) create liens; (vi) enter into certain transactions with affiliates; (vii) merge or consolidate with another company; and (viii) transfer or sell assets. Should we fail to comply with these covenants, all or a portion of the debt under the senior notes could become immediately payable. The senior notes also provide that the debt may be required to be prepaid if certain change-in-control events occur. As of the date of filing, DISH DBS was in compliance with the covenants.

Other

We are also vulnerable to fraud, particularly in the acquisition of new subscribers. While we are addressing the impact of subscriber fraud through a number of actions, there can be no assurance that we will not continue to experience fraud, which could impact our subscriber growth and churn. Sustained economic weakness may create greater incentive for signal theft and subscriber fraud, which could lead to higher subscriber churn and reduced revenue.

Table of Contents

Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS — Continued

Obligations and Future Capital Requirements

Future Capital Requirements

We expect to fund our future working capital, capital expenditures and debt service requirements from cash generated from operations, existing cash and marketable investment securities balances, and cash generated through raising additional capital. The amount of capital required to fund our future working capital and capital expenditure needs varies, depending on, among other things, the rate at which we acquire new subscribers and the cost of subscriber acquisition and retention, including capitalized costs associated with our new and existing subscriber equipment lease programs. The amount of capital required will also depend on the levels of investment necessary to support potential strategic initiatives, including our plans to expand our national HD offerings and other strategic opportunities that may arise from time to time. Our capital expenditures vary depending on the number of satellites leased or under construction at any point in time, and could increase materially as a result of increased competition, significant satellite failures, or sustained economic weakness. These factors could require that we raise additional capital in the future.

Volatility in the financial markets has made it more difficult at times for issuers of high-yield indebtedness, such as us, to access capital markets at acceptable terms. These developments may have a significant effect on our cost of financing and our liquidity position.

Wireless Spectrum

On March 2, 2012, the FCC approved the transfer of 40 MHz of AWS-4 wireless spectrum licenses held by DBSD North America and TerreStar to us. On March 9, 2012, we completed the DBSD Transaction and the TerreStar Transaction, pursuant to which we acquired, among other things, certain satellite assets and wireless spectrum licenses held by DBSD North America and TerreStar. The total consideration to acquire the DBSD North America and TerreStar assets was approximately $2.860 billion.

On February 15, 2013, the FCC issued an order, which became effective on March 7, 2013, modifying our AWS-4 licenses to expand our terrestrial operating authority. The FCC's order of modification has imposed certain limitations on the use of a portion of this spectrum, including interference protections for other spectrum users and power and emission limits that we presently believe could render 5 MHz of our uplink spectrum (2000-2005 MHz) effectively unusable for terrestrial services and limit our ability to fully utilize the remaining 15 MHz of our uplink spectrum (2005-2020 MHz) for terrestrial services. These limitations could, among other things, impact the ongoing development of technical standards associated with our wireless business, and may have a material adverse effect on our ability to commercialize these licenses. The new rules also mandate certain interim and final build-out requirements for the licenses. By March 2017, we must provide terrestrial signal coverage and offer terrestrial service to at least 40% of the aggregate population represented by all of the areas covered by the licenses (the "AWS-4 Interim Build-out Requirement"). By March 2020, we must provide terrestrial signal coverage and offer terrestrial service to at least 70% of the population in each area covered by an individual license (the "AWS-4 Final Build-out Requirement"). If we fail to meet the AWS-4 Interim Build-out Requirement, the AWS-4 Final Build-out Requirement will be accelerated by one year, from March 2020 to March 2019. If we fail to meet the AWS-4 Final Build-out Requirement, our terrestrial authorization for each license area in which we fail to meet the requirement will terminate. In addition, the FCC has adopted rules for a spectrum band that is adjacent to our AWS-4 licenses, known as the "H Block." Depending on the outcome of the standard-setting process for the H Block, the rules that the FCC adopted could further impact the remaining 15 MHz of our uplink spectrum (2005-2020 MHz), which may have a material adverse effect on our ability to commercialize the AWS-4 licenses. See Note 8 in the Notes to the Condensed Consolidated Financial Statements for further information.

In 2008, we paid $712 million to acquire certain 700 MHz wireless spectrum licenses, which were granted to us by the FCC in February 2009. These licenses mandate certain interim and final build-out requirements. By June 2013, we must provide signal coverage and offer service to at least 35% of the geographic area in each area covered by each individual license (the "700 MHz Interim Build-out Requirement"). By the end of our license term (June 2019), we must provide signal coverage and offer service to at least 70% of the geographic area in each area covered by each individual license (the "700 MHz Final Build-out Requirement"). We have recently notified the FCC of our

Table of Contents

Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS — Continued

plans to commence signal coverage in select cities within certain of these areas, but we have not yet developed plans for providing signal coverage and offering service in all of these areas. If we fail to meet the 700 MHz Interim Build-out Requirement, the term of our licenses will be reduced, from June 2019 to June 2017, and we could face possible fines and the reduction of license area(s). On June 12, 2013, we filed a request with the FCC for an extension of the 700 MHz Interim Build-out Requirement. We cannot predict the timing or outcome of any FCC action on our extension request. If we fail to meet the 700 MHz Final Build-out Requirement, our authorization for each license area in which we fail to meet the requirement will terminate.

We will need to make significant additional investments or partner with others to, among other things, finance the commercialization and build-out requirements of these licenses and our integration efforts including compliance with regulations applicable to the acquired licenses. Depending on the nature and scope of such commercialization, build-out, and integration efforts, any such investment or partnership could vary significantly. There can be no assurance that we will be able to develop and implement a business model that will realize a return on these spectrum licenses or that we will be able to profitably deploy the assets represented by these spectrum licenses, which may affect the carrying value of these assets and our future financial condition or results of operations.

Other Future Capital Requirements

Our 7% Senior Notes with an aggregate principal balance of $500 million mature on October 1, 2013. We expect to fund this obligation from existing cash and marketable investment securities balances.

4 1/4% Senior Notes due 2018

On April 5, 2013, we issued $1.2 billion aggregate principal amount of our five-year, 4 1/4% Senior Notes due April 1, 2018 at an issue price of 100%. Interest accrues at an annual rate of 4 1/4% and is payable semi-annually in cash in arrears on April 1 and October 1 of each year, commencing on October 1, 2013.

5 1/8% Senior Notes due 2020

On April 5, 2013, we issued $1.1 billion aggregate principal amount of our seven-year, 5 1/8% Senior Notes due May 1, 2020 at an issue price of 100%. Interest accrues at an annual rate of 5 1/8% and is payable semi-annually in cash in arrears on May 1 and November 1 of each year, commencing on November 1, 2013.

Strategic Investments or Acquisitions

From time to time we evaluate opportunities for strategic investments or acquisitions that may complement our current services and products, enhance our technical capabilities, improve or sustain our competitive position, or otherwise offer growth opportunities. We may make investments in or partner with others to, among other things, expand our business into mobile and portable video, IPTV and wireline and wireless data and voice services. Future material investments or acquisitions may require that we obtain additional capital, assume third party debt or incur other long-term obligations.

Investments in ARS

A portion of our investment portfolio is invested in auction rate securities ("ARS"), and other strategic investments, and as a result a portion of our portfolio has restricted liquidity. Liquidity in the markets for these investments has been adversely impacted. If the credit ratings of these securities deteriorate or the lack of liquidity in the marketplace continues, we may be required to record impairment charges. Moreover, the sustained uncertainty of domestic and global financial markets has greatly affected the volatility and value of our marketable investment securities. To the extent we require access to funds, we may need to sell these securities under unfavorable market conditions, record further impairment charges and fall short of our financing needs.

Off-Balance Sheet Arrangements

Other than the "Guarantees" disclosed in Note 12 in the Notes to our Condensed Consolidated Financial Statements, we generally do not engage in off-balance sheet financing activities.

Table of Contents

Item 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Market Risks Associated With Financial Instruments

Our investments and debt are exposed to market risks, discussed below.

Cash, Cash Equivalents and Current Marketable Investment Securities

As of June 30, 2013, our cash, cash equivalents and current marketable investment securities had a fair value of $9.527 billion. Of that amount, a total of $8.164 billion was invested in: (a) cash; (b) VRDNs convertible into cash at par value plus accrued interest generally in five business days or less; (c) debt instruments of the United States Government and its agencies; (d) commercial paper and corporate notes with an overall average maturity of less than one year and rated in one of the four highest rating categories by at least two nationally recognized statistical rating organizations; and/or (e) instruments with similar risk, duration and credit quality characteristics to the commercial paper and corporate obligations described above. The primary purpose of these investing activities has been to preserve principal until the cash is required to, among other things, fund operations, make strategic investments and expand the business. Consequently, the size of this portfolio fluctuates significantly as cash is received and used in our business. The value of this portfolio is negatively impacted by credit losses; however, this risk is mitigated through diversification that limits our exposure to any one issuer.

Interest Rate Risk

A change in interest rates would affect the fair value of our cash, cash equivalents and current marketable investment securities portfolio; however, we normally hold these investments to maturity. Based on our June 30, 2013 current non-strategic investment portfolio of $8.164 billion, a hypothetical 10% change in average interest rates would not have a material impact on the fair value due to the limited duration of our investments.

Our cash, cash equivalents and current marketable investment securities had an average annual rate of return for the six months ended June 30, 2013 of 0.5%. A change in interest rates would affect our future annual interest income from this portfolio, since funds would be re-invested at different rates as the instruments mature. A hypothetical 10% decrease in average interest rates during 2013 would result in a decrease of approximately $3 million in annual interest income.

Strategic Marketable Investment Securities

As of June 30, 2013, we held strategic and financial debt and equity investments in public companies with a fair value of $1.363 billion for strategic and financial purposes which are highly speculative and have experienced and continue to experience volatility. As of June 30, 2013, our strategic investment portfolio consisted of securities of a small number of issuers, and as a result the value of that portfolio depends, among other things, on the performance of those issuers. For example, a significant portion of the value of these investments was concentrated in the debt securities of Clearwire. The fair value of these Clearwire securities as of June 30, 2013 was $927 million. Clearwire has multiple call options on certain of these debt securities upon 30 days notice. The call option price may be less than the fair market value of these debt securities and, if exercised, proceeds could be less than our recorded fair market value as of June 30, 2013 and therefore, reduce our unrealized gains recorded as a separate component of "Accumulated other comprehensive income (loss)" within "Total stockholders' equity (deficit)," on our Condensed Consolidated Balance Sheets. The fair value of certain of the debt and equity securities in our investment portfolio, including those of Clearwire, can be adversely impacted by, among other things, the issuers' respective performance and ability to obtain any necessary additional financing on acceptable terms, or at all.

The fair value of our strategic and financial debt and equity investments can be significantly impacted by the risk of adverse changes in securities markets generally, as well as risks related to the performance of the companies whose securities we have invested in, risks associated with specific industries, and other factors. These investments are subject to significant fluctuations in fair value due to the volatility of the securities markets and of the underlying businesses. In general, the debt instruments held in our strategic marketable investment securities portfolio are not significantly impacted by interest rate fluctuations as their value is more closely related to factors specific to the underlying business. A hypothetical 10% adverse change in the price of our public strategic debt and equity investments would result in a decrease of approximately $136 million in the fair value of these investments.

Table of Contents

Item 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK - Continued

Restricted Cash and Marketable Investment Securities and Noncurrent Marketable and Other Investment Securities

Restricted Cash and Marketable Investment Securities

As of June 30, 2013, we had $91 million of restricted cash and marketable investment securities invested in: (a) cash; (b) VRDNs convertible into cash at par value plus accrued interest generally in five business days or less; (c) debt instruments of the United States Government and its agencies; (d) commercial paper and corporate notes with an overall average maturity of less than one year and rated in one of the four highest rating categories by at least two nationally recognized statistical rating organizations; and/or (e) instruments with similar risk, duration and credit quality characteristics to the commercial paper described above. Based on our June 30, 2013 investment portfolio, a hypothetical 10% increase in average interest rates would not have a material impact in the fair value of our restricted cash and marketable investment securities.

Noncurrent Auction Rate and Other Investment Securities

As of June 30, 2013, we held investments in ARS of $119 million, which are reported at fair value. Events in the credit markets have reduced or eliminated current liquidity for certain of our ARS investments. As a result, we classify these investments as noncurrent assets as we intend to hold these investments until they recover or mature, and therefore interest rate risk associated with these securities is mitigated. A hypothetical 10% adverse change in the price of these investments would result in a decrease of approximately $12 million in the fair value of these investments.

Derivative Financial Instruments

From time to time, we speculate using derivative financial instruments.

During the first and second quarter 2013, we purchased derivative financial instruments that are indexed to the trading price of the common equity securities of Sprint, which generally can be terminated at our option at any time. Under the terms of these derivative financial instruments, we are entitled to any increase in value and are responsible to the counterparty for any decrease in value based on the change in the fair value of the underlying securities. As of June 30, 2013, we held derivative financial instruments with a fair value of $677 million. These derivative financial instruments have been classified as "Other current assets" on our Condensed Consolidated Balance Sheets.

In addition to the fair value of $677 million of derivative financial instruments that are indexed to the trading price of the common equity securities of Sprint, we held common equity securities of Sprint with a fair value of $85 million as of June 30, 2013, which were included in "Marketable investment securities" on our Condensed Consolidated Balance Sheets. The fair value of the derivative financial instruments and our investment in Sprint's common equity is dependent on the market value of Sprint's common equity which may be volatile and vary depending on, among other things, Sprint's financial and operational performance and market conditions.

On July 10, 2013, Sprint completed its merger with SoftBank Corp. ("SoftBank"). As of July 10, 2013, these derivative financial instruments had a fair value of $699 million and our common equity securities of Sprint had a fair value of $87 million. As a result of the merger, we received $544 million in cash attributed to these derivative financial instruments and continue to hold derivative financial instruments indexed to the trading price of the common equity securities of new Sprint with an aggregate notional amount of $155 million. In addition, as a result of the merger, we received $68 million in cash and shares of new Sprint stock with a fair value of $19 million in exchange for the common equity securities we held. A hypothetical 10% adverse change in the market value of new Sprint's common equity securities, after giving effect to the Sprint merger with SoftBank on July 10, 2013, would result in a decrease of approximately $17 million in the fair value of the remaining derivative financial instruments indexed to the trading price of the common equity securities of new Sprint and the common equity securities of new Sprint that we held at the time of the merger.

Table of Contents

Item 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK - Continued

Long-Term Debt

As of June 30, 2013, we had long-term debt of $13.935 billion, excluding capital lease obligations, on our Condensed Consolidated Balance Sheets. We estimated the fair value of this debt to be approximately $14.397 billion using quoted market prices for our publicly traded debt, which constitutes approximately 99% of our debt. The fair value of our debt is affected by fluctuations in interest rates. A hypothetical 10% decrease in assumed interest rates would increase the fair value of our debt by approximately $365 million. To the extent interest rates increase, our costs of financing would increase at such time as we are required to refinance our debt or raise additional debt. As of June 30, 2013, a hypothetical 10% increase in assumed interest rates would increase our annual interest expense by approximately $86 million.

Item 4. CONTROLS AND PROCEDURES

Conclusion regarding disclosure controls and procedures

Under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, we evaluated the effectiveness of our disclosure controls and procedures (as defined in Rule 13a-15(e) under the Securities Exchange Act of 1934) as of the end of the period covered by this report. Based upon that evaluation, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were effective as of the end of the period covered by this report.

Changes in internal control over financial reporting

There has been no change in our internal control over financial reporting (as defined in Rule 13a-15(f) under the Securities Exchange Act of 1934) during our most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

PART II — OTHER INFORMATION

Item 1. LEGAL PROCEEDINGS

We are involved in a number of legal proceedings (including those described below) concerning matters arising in connection with the conduct of our business activities. Many of these proceedings are at preliminary stages, and many of these proceedings seek an indeterminate amount of damages. We regularly evaluate the status of the legal proceedings in which we are involved to assess whether a loss is probable or there is a reasonable possibility that a loss or an additional loss may have been incurred and to determine if accruals are appropriate. If accruals are not appropriate, we further evaluate each legal proceeding to assess whether an estimate of the possible loss or range of possible loss can be made.

For certain cases described on the following pages, management is unable to provide a meaningful estimate of the possible loss or range of possible loss because, among other reasons, (i) the proceedings are in various stages; (ii) damages have not been sought; (iii) damages are unsupported and/or exaggerated; (iv) there is uncertainty as to the outcome of pending appeals or motions; (v) there are significant factual issues to be resolved; and/or (vi) there are novel legal issues or unsettled legal theories to be presented or a large number of parties (as with many patent-related cases). For these cases, however, management does not believe, based on currently available information, that the outcomes of these proceedings will have a material adverse effect on our financial condition, though the outcomes could be material to our operating results for any particular period, depending, in part, upon the operating results for such period.

Table of Contents

PART II — OTHER INFORMATION — Continued

c4cast.com, Inc.

On May 7, 2012, c4cast.com, Inc. filed a complaint against us and our wholly-owned subsidiary, Blockbuster L.L.C., in the United States District Court for the Eastern District of Texas alleging infringement of United States Patent No. 7,958,204 (the "204 patent"), which is entitled "Community-Selected Content." The 204 patent relates to systems, methods and techniques for providing resources to participants over an electronic network.

We intend to vigorously defend this case. In the event that a court ultimately determines that we infringe the asserted patent, we may be subject to substantial damages, which may include treble damages, and/or an injunction that could require us to materially modify certain features that we currently offer to consumers. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

ESPN

During 2008, our wholly-owned subsidiary, DISH Network L.L.C., filed a lawsuit against ESPN, Inc., ESPN Classic, Inc., ABC Cable Networks Group, Soapnet L.L.C. and International Family Entertainment (collectively, "ESPN") for breach of contract in New York State Supreme Court. Our complaint alleges that ESPN failed to provide us with certain HD feeds of the Disney Channel, ESPN News, Toon and ABC Family. In October 2011, the jury returned a verdict in favor of the defendants, which the New York State Supreme Court, Appellate Division, First Department (the "First Department") affirmed on April 2, 2013. We have sought leave to further appeal.

ESPN had asserted a counterclaim alleging that we owed approximately $35 million under the applicable affiliation agreements. On April 15, 2009, the New York State Supreme Court granted, in part, ESPN's motion for summary judgment on the counterclaim, finding that we are liable for some of the amount alleged to be owing but that the actual amount owing is disputed. On December 29, 2010, the First Department affirmed the partial grant of ESPN's motion for summary judgment on the counterclaim. After the partial grant of ESPN's motion for summary judgment, ESPN sought an additional $30 million under the applicable affiliation agreements. On March 15, 2010, the New York State Supreme Court ruled that we owe the full amount of approximately $66 million under the applicable affiliation agreements. As of December 31, 2010, we had $42 million recorded as a "Litigation accrual" on our Consolidated Balance Sheets.

On June 21, 2011, the First Department affirmed the New York State Supreme Court's ruling that we owe approximately $66 million under the applicable affiliation agreements and, on October 18, 2011, denied our motion for leave to appeal that decision to New York's highest court, the New York Court of Appeals. We sought leave to appeal directly to the New York Court of Appeals and, on January 10, 2012, the New York Court of Appeals dismissed our motion for leave on the ground that the ruling upon which we appealed does not fully resolve all claims in the action. As a result of the First Department's June 2011 ruling, during 2011, we recorded $24 million of "Litigation Expense" on our Consolidated Statements of Operations and Comprehensive Income (Loss). On October 11, 2012, the New York State Supreme Court awarded ESPN $5 million in attorneys' fees as the prevailing party on both our claim and ESPN's counterclaim. As a result, we recorded $5 million of "General and administrative expenses" and increased our "Litigation accrual" to a total of $71 million related to this case as of December 31, 2012. During the first quarter 2013, we paid $71 million to ESPN related to the counterclaim and attorneys' fees and $12 million for accrued interest, which amounts we may be able to recover if our further appeals are successful. We intend to vigorously prosecute and defend this case.

The Hopper Litigation

On May 24, 2012, our wholly-owned subsidiary, DISH Network L.L.C., filed a lawsuit in the United States District Court for the Southern District of New York against American Broadcasting Companies, Inc., CBS Corporation, Fox Entertainment Group, Inc., Fox Television Holdings, Inc., Fox Cable Network Services, L.L.C. and NBCUniversal, LLC. In the lawsuit, we are seeking a declaratory judgment that we are not infringing any defendant's copyright, or breaching any defendant's retransmission consent agreement, by virtue of the PrimeTime Anytime™ and AutoHop™ features of our Hopper® set-top box. A consumer can use the PrimeTime Anytime feature, at his or her option, to record certain primetime programs airing on ABC, CBS, Fox, and/or NBC up to every night, and to store those recordings for up to eight days. A consumer can use the AutoHop feature, at his or

Table of Contents

PART II — OTHER INFORMATION — Continued

her option, to watch certain recordings the subscriber made with our PrimeTime Anytime feature, commercial-free, if played back the next day after the show's original airing.

Later on May 24, 2012, (i) Fox Broadcasting Company, Twentieth Century Fox Film Corp. and Fox Television Holdings, Inc. filed a lawsuit against us and DISH Network L.L.C. in the United States District Court for the Central District of California, alleging that the PrimeTime Anytime feature, the AutoHop feature, as well as Sling placeshifting functionality infringe their copyrights and breach their retransmission consent agreements, (ii) NBC Studios LLC, Universal Network Television, LLC, Open 4 Business Productions LLC and NBCUniversal LLC filed a lawsuit against us and DISH Network L.L.C. in the United States District Court for the Central District of California, alleging that the PrimeTime Anytime feature and the AutoHop feature infringe their copyrights, and (iii) CBS Broadcasting Inc., CBS Studios Inc. and Survivor Productions LLC filed a lawsuit against us and DISH Network L.L.C. in the United States District Court for the Central District of California, alleging that the PrimeTime Anytime feature and the AutoHop feature infringe their copyrights. The Central District of California matters have been assigned to a single judge, but remain separate cases.

As a result of certain parties' competing venue-related motions brought in both the New York and California actions, and certain networks' filing various counterclaims and amended complaints, the claims are presently pending in the following venues: (1) the copyright and contract claims regarding the ABC and CBS parties are pending in New York; and (2) the copyright and contract claims regarding the Fox and NBC parties are pending in California. The NBC plaintiffs and Fox plaintiffs have filed amended complaints in their respective California actions adding copyright claims against EchoStar and EchoStar Technologies L.L.C. ("EchoStar Technologies"), a wholly-owned subsidiary of EchoStar. In addition, the Fox plaintiffs' amended complaint added claims challenging the Hopper Transfers™ feature of our second-generation Hopper set-top box. Additionally, both the ABC and CBS parties have filed counterclaims in the New York action adding copyright claims against EchoStar Technologies, and the CBS parties have filed a counterclaim alleging that we fraudulently concealed the AutoHop feature when negotiating renewal of our CBS retransmission consent agreement.

On September 21, 2012, the California court heard the Fox plaintiffs' motion for a preliminary injunction to enjoin the Hopper set-top box's PrimeTime Anytime and AutoHop features and, on November 7, 2012, entered an order denying the motion. The Fox plaintiffs appealed this order. On July 24, 2013, the United States Court of Appeals for the Ninth Circuit affirmed the denial of the Fox plaintiffs' motion for a preliminary injunction as to the PrimeTime Anytime and AutoHop features. On March 27, 2013, at the request of the parties, the Central District of California granted a stay of all proceedings in the action brought by the NBC plaintiffs, pending resolution of the appeal by the Fox plaintiffs.

On November 23, 2012, the ABC plaintiffs filed a motion in the New York action for a preliminary injunction to enjoin the Hopper set-top box's PrimeTime Anytime and AutoHop features, and we and the ABC plaintiffs have filed briefs related to that motion. On February 21, 2013, the Fox plaintiffs filed a second motion for preliminary injunction against: (i) us seeking to enjoin the Hopper Transfers feature in our second-generation Hopper set-top box, alleging breach of their retransmission consent agreement; and (ii) us and EchoStar Technologies seeking to enjoin the Sling placeshifting functionality in our second-generation Hopper set-top box, alleging copyright infringement and breach of their retransmission consent agreement. A hearing on that motion was held on April 19, 2013 and the court has not ruled on the motion.

We intend to vigorously prosecute and defend our position in these cases. In the event that a court ultimately determines that we infringe the asserted copyrights, or are in breach of any of the retransmission consent agreements, we may be subject to substantial damages, and/or an injunction that could require us to materially modify certain features that we currently offer to consumers. In addition, as a result of this litigation, we may not be able to renew certain of our retransmission consent agreements and other programming agreements on favorable terms or at all. If we are unable to renew these agreements, there can be no assurance that we would be able to obtain substitute programming, or that such substitute programming would be comparable in quality or cost to our existing programming. Loss of access to existing programming could have a material adverse effect on our business, financial condition and results of operations, including, among other things, our gross new subscriber activations and subscriber churn rate. We cannot predict with any degree of certainty the outcome of these suits or determine the extent of any potential liability or damages.

Table of Contents

PART II — OTHER INFORMATION — Continued

Norman IP Holdings, LLC

On September 15, 2011, Norman IP Holdings, LLC ("Norman") filed a patent infringement complaint (the "2011 Action") against Lexmark International Corporation ("Lexmark") and Brother International Corporation ("Brother") in the United States District Court for the Eastern District of Texas alleging infringement of U.S. Patent No. 5,592,555 (the "555 patent"), U.S. Patent No. 5,530,597 (the "597 patent") and U.S. Patent No. 5,502,689 (the "689 patent") by Lexmark, and infringement of the 555 patent and the 689 patent by Brother. On January 27, 2012, Norman filed a second amended complaint in the 2011 Action that added us as a defendant, among others, in which it asserted the 555 patent and the 689 patent against us. On September 21, 2012, Norman served us with preliminary infringement contentions related to the 555 patent and the 689 patent, as well as the 597 patent, which outlined Norman's claims with respect to certain DISH products. On February 8, 2013, Norman filed a third amended complaint in the 2011 Action, in which it added claims against us alleging infringement of the 597 patent. On April 8, 2013, Norman filed a fourth amended complaint in the 2011 Action, in which it added new claims against us alleging infringement of additional DISH products. On May 1, 2013, Norman filed a fifth amended complaint in the 2011 Action, in which it named Mercedes-Benz USA, LLC, Volkswagen Group of America, Inc., Xerox Corporation, ZTE (USA) Inc., and ZTE Solutions, Inc. as defendants, in addition to us. On July 9, 2013, the Court ordered Norman to file a new sixth amended complaint limiting Norman's claims against us to those specifically referenced in the September 21, 2012 preliminary infringement contentions. As a result, on July 10, 2013, Norman filed a sixth amended complaint in the 2011 Action, in which it asserted claims against our wholly-owned subsidiary, DISH Network L.L.C., replacing us as defendant, alleging that the use of certain Broadcom chipsets in DISH DVR systems infringes the 689 patent. In addition, Norman withdrew all infringement claims against us regarding the 555 patent and the 597 patent. On July 12, 2013, we filed a motion to dismiss the 2011 Action, because Norman failed to comply with the Court's July 9, 2013 order. Our motion to dismiss is pending, and a trial date in the 2011 Action has been set for January 5, 2015.

In addition, on May 10, 2013, Norman filed a separate patent infringement complaint (the "2013 Action") against us in the United States District Court for the Eastern District of Texas, asserting infringement of the 555, 597 and 689 patents, as well as U.S. Patent No. 5,608,873 (the "873 patent") and U.S. Patent Number 5,771,394 (the "394 patent"). The infringement claims asserted in the 2013 Action relate to different DISH products than Norman identified in the 2011 Action. On June 26, 2013, we filed a motion to dismiss the 2013 Action, because Norman failed to join necessary parties. Our motion to dismiss is pending, and no trial date has been set for the 2013 Action.

The 689 patent, which is asserted in the 2011 Action and the 2013 Action, relates to a clock generator capable of shut-down mode and clock generation method. In the 2013 Action, the 555 patent relates to a wireless communications privacy method and system, the 597 patent relates to an interrupt enable circuit that allows devices to exit processes without using a hardware reset, the 873 patent relates to a device and method for providing inter-processor communication in a multi-processor architecture, and the 394 patent relates to a servo loop control apparatus having a master microprocessor and at least one autonomous streamlined signal processor. Norman is an entity that seeks to license an acquired patent portfolio without itself practicing any of the claims recited therein.

We intend to vigorously defend these cases. In the event that a court ultimately determines that we infringe any of the asserted patents, we may be subject to substantial damages, which may include treble damages, and/or an injunction that could cause us to materially modify certain features that we currently offer to consumers. We cannot predict with any degree of certainty the outcome of these suits or determine the extent of any potential liability or damages.

Olympic Developments AG, LLC

On January 20, 2011, Olympic Developments AG, LLC ("Olympic") filed suit against our wholly-owned subsidiary, DISH Network L.L.C., Atlantic Broadband, Inc., Bright House Networks, LLC, Cable One, Inc., Cequel Communications Holdings I, LLC, CSC Holdings, LLC, GCI Communication Corp., Insight Communications Company, Inc., Knology, Inc., Mediacom Communications Corporation and RCN Telecom Services, LLC in the United States District Court for the Central District of California alleging infringement of United States Patent Nos. 5,475,585 and 6,246,400. The patents relate to on-demand services. Olympic is an entity that seeks to license an acquired patent portfolio without itself practicing any of the claims recited therein. On June 13, 2011, the case was transferred to the Northern District of California. On November 7, 2011, the case was stayed pending reexamination

Table of Contents

PART II — OTHER INFORMATION — Continued

by the U.S. Patent and Trademark Office. On March 12, 2013, Olympic voluntarily dismissed its claims against us without prejudice.

Personalized Media Communications, Inc.

During 2008, Personalized Media Communications, Inc. ("PMC") filed suit against us, EchoStar and Motorola Inc. in the United States District Court for the Eastern District of Texas alleging infringement of United States Patent Nos. 5,109,414, 4,965,825, 5,233,654, 5,335,277, and 5,887,243, which relate to satellite signal processing. PMC is an entity that seeks to license an acquired patent portfolio without itself practicing any of the claims recited therein. Subsequently, Motorola Inc. settled with PMC, leaving EchoStar and us as defendants. On July 18, 2012, pursuant to a Court order, PMC filed a Second Amended Complaint that added Rovi Guides, Inc. (f/k/a/ Gemstar-TV Guide International, Inc.) and TVG-PMC, Inc. (collectively, "Gemstar") as a party, and added a new claim against all defendants seeking a declaratory judgment as to the scope of Gemstar's license to the patents in suit, under which we and EchoStar are sublicensees. A new trial date has not yet been set.

We intend to vigorously defend this case. In the event that a court ultimately determines that we infringe any of the asserted patents, we may be subject to substantial damages, which may include treble damages, and/or an injunction that could cause us to materially modify certain features that we currently offer to consumers. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

Pragmatus Telecom, LLC

On December 5, 2012, Pragmatus Telecom, LLC ("Pragmatus") filed a patent infringement lawsuit against us in the United States District Court for the District of Delaware alleging infringement of United States Patent Nos. 6,311,231, 6,668,286, and 7,159,043. Pragmatus alleges that the click-to-chat and click-to-call customer support features of the DISH web site and call center management systems infringe these patents. Pragmatus has brought similar complaints against more than 40 other companies, including Comcast, AT&T, Sprint, Frontier Communications, Bright House, UPS, FedEx, GM and Ford. Pragmatus is an entity that seeks to license an acquired patent portfolio without itself practicing any of the claims recited therein. On March 5, 2013, Pragmatus voluntarily dismissed with prejudice all claims in the action relating to allegedly infringing features provided by certain of our vendors. Pragmatus also voluntarily dismissed without prejudice all remaining claims in the action.

Premier International Associates, LLC

On August 3, 2012, Premier International Associates, LLC ("Premier International Associates") filed a complaint against us, our wholly-owned subsidiaries, DISH DBS and DISH Network L.L.C., and EchoStar and its wholly-owned subsidiary, EchoStar Technologies L.L.C., in the United States District Court for the Northern District of Illinois alleging infringement of United States Patent No. 6,243,725 (the "725 patent"), which is entitled "List Building System." The 725 patent relates to a system for building an inventory of audio/visual works. Premier International Associates is an entity that seeks to license an acquired patent portfolio without itself practicing any of the claims recited therein. On March 27, 2013, Premier International Associates dismissed the action against us and the EchoStar defendants with prejudice, pursuant to a settlement under which we and the EchoStar defendants made an immaterial payment in exchange for a license to certain patents and patent applications.

Preservation Technologies, LLC

In December 2011, Preservation Technologies, LLC ("Preservation Technologies") filed suit against us in the United States District Court for the Central District of California. In the Operative Seventh Amended Complaint, filed on March 22, 2013, Preservation Technologies also names Netflix, Inc., Hulu, LLC, AT&T Services, Inc., Cox Communications, Inc., Disney Online, American Broadcasting Companies, Inc., Yahoo! Inc., Wal-Mart Stores, Inc., Vudu, Inc. and ESPN Internet Ventures as defendants. Preservation Technologies alleges that our BLOCKBUSTER On Demand, DISH branded pay-TV and DISH Online services and our Hopper and Joey® set-top boxes infringe U.S. Patent Nos. 5,813,014, 5,832,499, 6,092,080, 6,353,831, 6,574,638, 6,199,060, 5,832,495, 6,549,911, 6,212,527 and 6,477,537. The patents relate to digital libraries, the management of multimedia assets, and the cataloging of multimedia data. Preservation Technologies is an entity that seeks to license an acquired patent portfolio without itself practicing any of the claims recited therein.

Table of Contents

PART II — OTHER INFORMATION — Continued

We intend to vigorously defend this case. In the event that a court ultimately determines that we infringe any of the asserted patents, we may be subject to substantial damages, which may include treble damages, and/or an injunction that could cause us to materially modify certain features that we currently offer to consumers. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

Ronald A. Katz Technology Licensing, L.P.

During 2007, Ronald A. Katz Technology Licensing, L.P. ("Katz") filed a patent infringement action against our wholly-owned subsidiary, DISH Network L.L.C., in the United States District Court for the Northern District of California. The suit originally alleged infringement of 19 patents owned by Katz. The patents relate to interactive voice response, or IVR, technology. The case has been transferred and consolidated for pretrial purposes in the United States District Court for the Central District of California by order of the Judicial Panel on Multidistrict Litigation. Only four patents remain in the case against us, of which all are expired and two are subject to granted reexamination proceedings before the U.S. Patent and Trademark Office.

We intend to vigorously defend this case. In the event that a court ultimately determines that we infringe any of the asserted patents, we may be subject to substantial damages, which may include treble damages, and/or an injunction that could cause us to materially modify certain features that we currently offer to consumers. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

Technology Development and Licensing L.L.C.

On January 22, 2009, Technology Development and Licensing L.L.C. ("TDL") filed suit against us and EchoStar in the United States District Court for the Northern District of Illinois alleging infringement of United States Patent No. Re. 35,952, which relates to certain favorite channel features. TDL is an entity that seeks to license an acquired patent portfolio without itself practicing any of the claims recited therein. In July 2009, the Court granted our motion to stay the case pending two reexamination petitions before the U.S. Patent and Trademark Office.

We intend to vigorously defend this case. In the event that a court ultimately determines that we infringe the asserted patent, we may be subject to substantial damages, which may include treble damages, and/or an injunction that could cause us to materially modify certain features that we currently offer to consumers. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

TQP Development, LLC

On April 4, 2012, TQP Development, LLC ("TQP Development") filed suit against our wholly-owned subsidiary, DISH Network L.L.C., in the United States District Court for the Eastern District of Texas alleging infringement of United States Patent No. 5,412,730 titled "Encrypted Data Transmission System Employing Means for Randomly Altering the Encryption Keys." TQP Development is an entity that seeks to license an acquired patent portfolio without itself practicing any of the claims recited therein. The trial date has been set for January 6, 2014.

We intend to vigorously defend this case. In the event that a court ultimately determines that we infringe the asserted patent, we may be subject to substantial damages, which may include treble damages, and/or an injunction that could cause us to materially modify certain features that we currently offer to consumers. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

Tse

On May 30, 2012, Ho Keung Tse filed a complaint against our wholly-owned subsidiary, Blockbuster L.L.C., in the United States District Court for the Eastern District of Texas alleging infringement of United States Patent No. 6,665,797, which is entitled "Protection of Software Again [sic] Against Unauthorized Use." Mr. Tse is the named inventor on the patent. On the same day that he sued Blockbuster, Mr. Tse filed a separate action in the same court alleging infringement of the same patent against Google, Samsung and HTC. He also has earlier-filed litigation on the same patent pending in the United States District Court for the Northern District of California against Sony

Table of Contents

PART II — OTHER INFORMATION — Continued

Connect, Inc., Napster, Inc., Apple Computer, Inc., Realnetworks, Inc., and MusicMatch, Inc. On March 8, 2013, the Court granted Blockbuster L.L.C.'s motion to transfer the matter to the United States District Court for the Northern District of California, the same venue where the matter against Google, Samsung and HTC also was transferred. On July 26, 2013, we filed a summary judgment motion, which is scheduled for a hearing on August 30, 2013.

We intend to vigorously defend this case. In the event that a court ultimately determines that we infringe the asserted patent, we may be subject to substantial damages, which may include treble damages, and/or an injunction that could require us to materially modify certain features that we currently offer to consumers. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

Other

In addition to the above actions, we are subject to various other legal proceedings and claims which arise in the ordinary course of business, including, among other things, disputes with programmers regarding fees. In our opinion, the amount of ultimate liability with respect to any of these actions is unlikely to materially affect our financial position, results of operations or liquidity, though the outcomes could be material to our operating results for any particular period, depending, in part, upon the operating results for such period.

Item 1A. RISK FACTORS

Item 1A, "Risk Factors," of our Annual Report on Form 10-K for the year ended December 31, 2012 and our Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2013 include a detailed discussion of our risk factors.

Item 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

Issuer Purchases of Equity Securities

The following table provides information regarding repurchases of our Class A common stock from April 1, 2013 through June 30, 2013.

Period	Total Number of Shares Purchased	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Maximum Approximate Dollar Value of Shares that May Yet be Purchased Under the Plans or Programs (1)
		(In thousands, except share data)		
April 1 - April 30, 2013	—	$ —	—	$ 1,000,000
May 1 - May 31, 2013	—	$ —	—	$ 1,000,000
June 1 - June 30, 2013	—	$ —	—	$ 1,000,000
Total	—	$ —	—	$ 1,000,000

(1) Our Board of Directors previously authorized stock repurchases of up to $1.0 billion of our Class A common stock. On November 2, 2012, our Board of Directors extended the plan and authorized the maximum dollar value of shares that may be repurchased under the plan, such that we are currently authorized to repurchase up to $1.0 billion of our outstanding Class A common stock through and including December 31, 2013. Purchases under our repurchase program may be made through open market purchases, privately negotiated transactions, or Rule 10b5-1 trading plans, subject to market conditions and other factors. We may elect not to purchase the maximum amount of shares allowable under this program and we may also enter into additional share repurchase programs authorized by our Board of Directors.

Table of Contents

PART II — OTHER INFORMATION — Continued

Item 6. EXHIBITS

(a) Exhibits.

31.1□	Section 302 Certification of Chief Executive Officer.
31.2□	Section 302 Certification of Chief Financial Officer.
32.1□	Section 906 Certification of Chief Executive Officer.
32.2□	Section 906 Certification of Chief Financial Officer.
10.1*	Plan Support Agreement, dated as of July 23, 2013, by and among certain lenders of LightSquared LP, L-Band Acquisition, LLC and, solely for the purposes of Section 7.11 thereof, DISH Network Corporation (incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K of DISH Network Corporation filed July 23, 2013, Commission File No. 000-26176).
101□	The following materials from the Quarterly Report on Form 10-Q of DISH Network for the quarter ended June 30, 2013, filed on August 6, 2013, formatted in eXtensible Business Reporting Language ("XBRL"): (i) Condensed Consolidated Balance Sheets, (ii) Condensed Consolidated Statements of Operations and Comprehensive Income (Loss), (iii) Condensed Consolidated Statements of Cash Flows and (iv) related notes to these financial statements.

□ Filed herewith.

* Incorporated by reference.

Table of Contents

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

DISH NETWORK CORPORATION

By: /s/ *Joseph P. Clayton*
Joseph P. Clayton
President and Chief Executive Officer
(Duly Authorized Officer)

By: /s/ *Robert E. Olson*
Robert E. Olson
Executive Vice President and Chief Financial Officer
(Principal Financial Officer)

Date: August 6, 2013

EXHIBIT 28

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE BARNES & NOBLE STOCKHOLDERS DERIVATIVE LITIGATION : Civil Action No. 4813-VCS

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Chancery Courtroom No. 12A
New Castle County Courthouse
Wilmington, Delaware
Thursday, October 21, 2010
10:50 a.m.

BEFORE: HON. LEO E. STRINE, JR., Vice Chancellor.

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ORAL ARGUMENT

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APPEARANCES:

PAMELA S. TIKELLIS, ESQ.
TIFFANY JOANNE CRAMER, ESQ.
Chimicles & Tikellis LLP
-and-
MICHAEL J. BARRY, ESQ.
Grant & Eisenhofer, P.A.
for Plaintiffs

BLAKE ROHRBACHER, ESQ.
Richards, Layton & Finger
-and-
ERIC REIDER, ESQ.
JOHN D. KIRCHER, ESQ.
of the New York Bar
Bryan Cave LLP
for Defendants Leonard Riggio and Stephen Riggio and Lawrence S. Zilavy

KENNETH J. NACHBAR, ESQ.
SUSAN W. WAESCO, ESQ.
Morris, Nichols, Arsht & Tunnell LLP
-and-
CHARLES S. DUGGAN, ESQ.
of the New York Bar
Davis Polk & Wardell
for Defendants George Campbell Jr., Michael J. Del Giudice, William Dillard, II, Patricia L. Higgins, Irene R. Miller and Margaret T. Monaco

PETER J. WALSH, JR., ESQ.
WILLIAM E. GREEN, JR., ESQ.
Potter, Anderson & Corroon LLP
-and-
KEVIN J. ORSINI, ESQ.
of the New York Bar
Cravath, Swaine & Moore LLP

for Barnes & Noble, Inc.

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THE COURT: Good morning, everyone. Sorry to keep you waiting. I thought it was at ten, and I was early at ten, and then I was late at 10:30. I think you all can understand the phones ring and other things and how that would make sense. I apologize for the delay.

I was ready to go like 9:50. I'm, like, why aren't we in court? Oh, it's 10:30. And then we're here. So let's -- we may proceed. Miss Tikellis.

MS. TIKELLIS: Yes, Your Honor. I'm going to rise very briefly to say good morning to Your Honor. I think Your Honor knows everyone with me. They're all Delaware attorneys. Tiffany Cramer from my office; Michael Berry and Ned Weinberger from the Grant & Eisenhofer firm.

THE COURT: Thank you.

MR. ROHRBACHER: Your Honor, I would like to introduce Eric Rieder from Bryan Cave and John Kircher from Bryan Cave. Mr. Rieder will be making the presentation on behalf of the nonvoting directors.

In reviewing the docket this morning, we realized -- although Mr. Rieder had appeared in front of Your Honor in the preconsolidation motion to expedite -- a formal motion pro hac vice had not been filed. I'll hand one up.

THE COURT: So long as you're willing to pay interest. It's been lean years for state governments.

MR. WALSH: Good morning, Your Honor. Peter Walsh on behalf of the nominal defendant, Barnes & Noble, Inc. I rise to reintroduce to the Court Kevin Orsini of the Cravath Swaine & Moore firm. To the extent the Court has any questions of counsel for the company, Mr. Orsini will respond.

THE COURT: Thank you, Mr. Walsh.

Good morning, Mr. Nachbar.

MR. NACHBAR: Your Honor, it's my privilege to introduce Charles Duggan of Davis Polk.

As Your Honor knows, we're here today on the defendants' motion to dismiss the complaint. With the permission of the Court, I'll present argument on behalf of the outside directors, sometimes called the voting directors. Mr. Rieder will argue on behalf of the inside, or nonvoting directors.

My client's motion is brought pursuant to Rule 23.1, for failure to make a presuit demand,

and Rule 12(b)(6), failing to state a claim.

Factually, as Your Honor knows, this case challenges the acquisition by Barnes & Noble of Barnes & Noble College, sometimes referred to as College Booksellers from Len Riggio, the chairman and 31 percent stockholder of Barnes & Noble. The transaction was recommended by a special committee of four independent directors advised by independent counsel, David Polk & Wardwell, and independent financial advisor Greenhill.

Plaintiff challenges the independence of the committee members, which I'll get to, and it challenges Greenhill's compensation, but it doesn't otherwise challenge the special committee.

And I should point out that we've got a record here. There was a Section 220 demand that was made and there are certain documents incorporated into the complaint. Those are included in the affidavit of Susan Waesco that we filed that has 15 or 16 of what we think are the more important documents.

So despite the record, the complaint does not in any way challenge the functioning of the committee, the independence or competence of its advisors. It does not allege, unlike some other cases, that Mr. Riggio interfered in any way with the functioning of the committee, or that the committee failed to act appropriately. Nor could it. The record shows that the negotiations here occurred, albeit with some interruptions, over 18 months. The committee met 15 times before ultimately approving the transaction. The record also reflects arm's-length negotiations as to both price and structure.

The Waesco affidavit, Exhibit 5, indicates that there was originally a 650 million-dollar price that got reduced significantly, and there were several iterations that came down in stages. Also, that initially Mr. Riggio was asking for $470 million in cash. That also got reduced significantly.

The true gravamen of the complaint is that plaintiffs disagree with the committee about the wisdom of the transaction. And we submit, perhaps reasonable people can disagree, but that's not the stuff of demand excusal.

THE COURT: I think one of the issues here is, if this was so logical, why was it never thunk of by anyone for 15 years?

MR. NACHBAR: Well, I don't know that

it wasn't thunk of. It certainly wasn't implemented. We can agree with that.

THE COURT: There's -- I mean, we're here on a pleading stage. And we're going to deal with some of the things that I know. I think I'm rather surprised, frankly, that plaintiffs did not amend their complaint in light of the other case in some ways, just because there are things that are known out there that are, frankly, pleadable, as a matter of public record. You have some things about Mr. Del Giudice. It's hard for me to unknow. And I can't understand why they would never amend their complaint, leave weak stuff in when there's something real that people can debate about but much more tangible. But they didn't.

But even with respect to this transaction, I think part of what they're saying is, why would anybody do this, other than that it's a situation where people feel that there's a control environment, and so, in this kind of self-constrained world, it begins to make sense to think about this. When it's all been maintained separately for 15 years, and more favorable environments arguably for Barnes & Noble to bring this in, and yet at a time when it probably, for Mr. Riggio, makes entirely good estate planning and other sense to begin to reduce the concentration of his wealth and particular assets, and at a time where he's, frankly, publicly expressed -- or expressed to people skepticism about the future retail. He has the public company double down on retail. He's able to liquidate a large part of his net wealth and put it in safer cash assets, retain all his voting control, because the company didn't take any steps to use it to say, "Well, maybe this is a chance to actually reduce the influence of Len Riggio. But no. We'll let him keep the stock. We won't buy in our own stock." That's what's nagging at me.

You're telling me that this is just like a normal garden variety business decision. And sort of help me alleviate these concerns.

MR. NACHBAR: Sure. And I think that there was a special committee. It was independent. It was well advised. And it took all of that, I believe --

THE COURT: Let's talk about the special committee. It's a very odd-looking special committee because, when I mention that nobody for 15 years ever thought of this, three of the four members of the special committee had a professional obligation to think about this for 15 years because they had been continuously a director of Barnes & Noble, and they never thought this was a good enough idea, from the record, to put it on the table themselves. Not only on the board 15 years, they're alleged to be personal friends with Leonard Riggio. And in the case of the chair, she was his management protege, served under him for management for six or seven years, was retained on the board after that, and has had essentially a continuous 20-year relationship with Leonard Riggio. And she's appointed to be the chair.

Then there's another person who has been a friend and been on there for 15 years, who is removed from the comp committee after investigation, because the comp committee didn't do such a great job, but is immediately put on audit and on a transaction committee.

Then you have Mr. Dillard who is alleged to be a close friend, been on the board for 15 years, and who happens to be in what might colloquially be called the controllers club, which is, no doubt, he's not economically dependent on Leonard Riggio because he runs an eponymously named company called Dillard's. But there is this notion -- it may be in the notion of the controller club, but I don't know. You lay a friendship, 15 years. You know, controllers just don't mess with each other. It's kind of etiquette. It's just an odd-looking committee.

And then I'll hit you with something else. I'm not sure why they let Bryan Cave go to the other side. Then you got Stephen Riggio -- right? --the CEO. Now, he's in a no-win situation because his bro is the largest stockholder, the chairman, and proposing a conflict transaction. But he's the CEO. He the man. And he plays the role of the bullfighter's cape. Probably not that active. The bullfighter's cape has a role because it attracts the bull. He just steps aside. Well, that stepping aside -- he's not in the way, but he's also -- there's the chief executive officer of the company, who is not operating on a transaction of fundamental importance?

I'm just -- and I'll finish. But I want you to address, in all its texture, because that's the stuff that's on my mind, Mr. Nachbar. It's not that I have any preconceived view, one way or the other, this is an inconceivable deal. But it's not a kind of ordinary situation either.

MR. NACHBAR: Well, let me address those. I appreciate Your Honor's expressing those concerns because it helps me know which points to hit.

And to start, I guess, at the beginning, the landscape has changed tremendously for Booksellers, obviously. The rise of Amazon, and the advent of eBooks has just changed that world dramatically. So the last 15 years, or, you know, certainly the last dozen years prior to 2007, 2008, I think are very different than the subsequent three or four years.

THE COURT: But in a way that makes it more or less sensible for Barnes & Noble to acquire again.

MR. NACHBAR: I think more sensible at the right price. Look, any acquisition, you know, at the right price is favorable; at the wrong price is unfavorable. I'm sure, if College Booksellers had been bought for a dollar, nobody would have a problem with it. I'm sure, if it had been bought for $2 billion, you know, it would be a ridiculous transaction.

It was purchased at a favorable price.

There's no question about that. There is a question -- reasonable minds, as I say, can differ -- did it make strategic sense? And the idea behind it is that the College Booksellers is very different than the bricks and mortar, freestanding bookstore down in Christiana. You've got a captive audience. You've got a monopoly. A lot of these stores are leased operations. And the idea is that it's somewhat countercyclical. Yes, in the broadest sense of the word, you're doubling down on books because bookstores sell books. Although a minority of their revenue is from books, a lot of it is tee shirts, apparel, all the other things.

THE COURT: And how many of the stores do they own the bricks and mortar of?

MR. NACHBAR: I don't know the answer to that.

THE COURT: Are there a large number of them leased?

MR. NACHBAR: I believe a large number are leased.

THE COURT: You're saying, if they do, like the Penn bookstore, which I believe they do, all the Penn athletic tee shirts that they get the sales out of, they're on campus, they have a coffee cafe, the students go there. They have an e-technology center, and students with computers and stuff use them.

MR. NACHBAR: Exactly.

So the idea is that it's not cyclical, and that it's a sort of counter to the traditional bookstores. You know, the limited record that we have, the committee minutes show that that was all discussed. That was all -- you know, it's not like somebody -- Len Riggio -- came in and said, "Do this." You know, and the special committee said, "How high do I jump?" That's not what the record shows. So the last 15 years, you know, I think two things. One, the world has changed; two, you know, Len Riggio has to be willing to sell.

Now it's fair to say, well, did anybody ask him to sell? You know, as far as I know, the record doesn't indicate that anybody did. But the record also doesn't indicate that he was willing to sell.

THE COURT: I understand that. But that's -- you know, there's a razor's edge here on a few points, which is one of the points to make. This was an opportunity for the public company to get its trademark.

MR. NACHBAR: Right.

THE COURT: The flip side of that is, this is a dude who was smart enough, when he took these companies public, to do the rather self-interested act of retaining the trademark in the company, whose retail face in some ways -- retail face to the public -- is often less about Barnes & Noble. I believe there's some of those College Bookstores where, from the outside, you would not even know that it was Barnes & Noble. It's when you get inside and you realize the texture of the relationship between the university and the book stores that Barnes & Noble comes across. But you'd be thinking you're going into the Penn, or the Auburn, or the Delaware book store; right?

MR. NACHBAR: Right.

THE COURT: But Len Riggio, who everybody, you know, on your side, kind of dances around, whether he's in control or not, he got the trademark; right?

MR. NACHBAR: He set it up that way a long time ago.

THE COURT: Right. What you're saying is, until he wanted to relinquish this, nobody, you know -- you couldn't make him. But that's the flip side of when he wants to relinquish it. You have to wonder: he kept it all these years and he kept it for himself. And he may be a good man, but we're in the area of commerce. So there's an assumption that maybe he did it for his own benefit to keep it to himself when it's his own benefit. And when he wants to unload it, perhaps there ought to be a healthy measure of skepticism about whether it's in the interest of Barnes & Noble to let him unload it; right?

MR. NACHBAR: I think there was a healthy level of skepticism. That's why this took 18 months. That's why there were arm's-length negotiations. That's why the price dropped significantly, that's why the amount of cash in the deal changed significantly.

THE COURT: I guess what I'm getting at is, I'm saying those are really good arguments. We haven't moved up to the number in the rules that begins with five. We're down in the --

MR. NACHBAR: The ones and twos.

THE COURT: In the teens and in the

twenties; right? You may be right. But isn't it premature?

MR. NACHBAR: Well, I think not. And I guess that sort of segues into who the directors were and if they're independent. Because I certainly agree. If the directors are not independent, if the majority of them aren't independent, then, first prong of Aronson, Your Honor is going to deny a motion to dismiss. We all understand that. So let's talk about that a little bit.

You know, we had a trial in the Yucaipa case. And Your Honor found, after an evidentiary record, that five of the six independent directors were indeed independent, and the sixth, Mr. Del Giudice, Your Honor had doubts about, which Your Honor expressed.

Five is a majority of nine, for sure. What's alleged about the four special committee members, in particular, extremely thin. Mr. Campbell, for example, he's president of Cooper Union.

THE COURT: In the interest -- they haven't laid a level camp. I mean, even the one who is the newer edition to the board, who is on the special committee --

MR. NACHBAR: Patricia Higgins.

THE COURT: Right. Who is basically a professional director, it appears, at this point. They own the game.

MR. NACHBAR: So that leaves us with Dillard, Monaco and Miller.

THE COURT: Yeah.

MR. NACHBAR: Right. Mr. Dillard is an independently wealthy man. He's been a friend of Len Riggio's for a long time. But Beam v. Stewart says that friendship alone isn't sufficient. And I think that's all they have got here.

THE COURT: Wait a minute. He's been on this board -- you know, it's like the guy, when they talked about Enron. One of the weirdest things about Enron, when professionals write things like Enron had model corporate governance, the man had been on the audit committee chair for 17 years. That's a long period of time to be resolutely independent. 17 years. You bring in that fresh mindset of -- it's -- he's alleged to be a close friend who regularly socializes with Mr. Riggio. He's been on his board since the 1990s. All this time College Bookstores has been maintained separately. Never proposed the transaction, from what I can tell. When Len Riggio wanted to do it, it did it. There's no question here. He's financially beholden.

But there's also an issue, again, of, you don't have to be financially beholden. And he's in the controllers club. And then you got the other one who has been on the board and is a friend -- the friends club of 15 years -- chaired by the protege, one of whom was the protege is your special committee. Why would anybody do this?

MR. NACHBAR: Well, again, you know, the allegations about friendship are extremely vague, extremely nonspecific, and were disproved in the Yucaipa case. I mean, these are not -- they played golf once a year. These are not people who are best buddies. They don't live -- you know, Mr. Dillard doesn't live in New York. He doesn't see Mr. Riggio often. Yes, he's been on the board, you know, since 1993. That's a fact.

THE COURT: What you're telling me is, there's stuff about Dillard in the other record?

MR. NACHBAR: Yes.

THE COURT: Okay.

MR. NACHBAR: And Your Honor made

factual findings based upon that record. And they really -- you know, if they had contrary allegations in this case, we would need to, I suppose, accept them as true and move on to that higher number rule some day. But they don't have those types of specific allegations. They have conclusory allegations of friendship that, you know, we know they won't be able to prove because we had a trial that addressed those issues.

The only other thing they say about Mr. Dillard is that he is on the national advisory board -- two national advisory boards for JPMorgan.

THE COURT: I don't care about that. That overstates it. I'm trying to be helpful to everybody. If they were actively -- and I get the one about the former. She used to be at Merrill Lynch. She's not at Merrill Lynch now. If they are each at JPMorgan now, or Merrill Lynch, that might matter.

MR. NACHBAR: That's the point. It's Margaret Monaco, who is the former affiliation with Merrill Lynch. You know, again, as to Miss Monaco, what do they say? Well, she was on the compensation committee. But, again, there was testimony about that. There was a report that was done -- an independent report. There was no wrongdoing. What happened was there was some inadvertent and pretty trivial options backdating that were not options that went to Mr. Riggio, or any other senior management people. They went to, you know, relatively low-level employees.

There was some sloppiness within the managerial ranks, like happened to a lot of companies. It was corrected. You know, there was -- there's no implication of Margaret Monaco in that in any way. The only other thing they say about her is that ten years ago she and Mr. Riggio supported Bill Bradley for president.

THE COURT: Yeah.

MR. NACHBAR: But that's the type of allegations we have. That's the level of the allegations that they're making here. You know, you roll your eyes at some of those. I do, too. But that's what they're alleging.

THE COURT: It was a very small group that ultimately supported senator Bradley.

MR. NACHBAR: In the end, that was true, I suppose.

THE COURT: He was one of the least

exciting great basketball players and one of the least exciting presidential candidates. Even his basketball game had a relentless efficiency. Almost so relentless, you couldn't watch it after a while.

MR. NACHBAR: They were talking about choosing leadership positions in the new senate one year and he suggested jumpshots from the top of the key.

THE COURT: That would be his thing.

MR. NACHBAR: Irene Miller, finally. Obviously was a former employee of Barnes & Noble, but her employment ended in 1997. The New York Stock Exchange rules, as Your Honor knows, provide for a three-year cooling off period. Miss Miller had a 13-year cooling off period.

THE COURT: But she never -- here's the thing I was thinking about. Again, our law is contextual. When you think of -- when you set up these rules, you tend to think that somebody, who was somebody's superior, will continue on the board. What you have here is a situation where a person was a subordinate and protege, continued on the board. Am I supposed to ignore that?

MR. NACHBAR: Well, I don't think that

the fact that somebody was a subordinate or a protege affects their judgment. I mean, Your Honor hears cases, you know, where some of your former superiors or proteges are representing a party. And I don't think Your Honor's --

THE COURT: You said a very, very important thing -- "representing a party" -- because we do. I mean, you know, you can't help -- any judge who ignores their own experience or ignores -- it does affect things.

One of the things that all of us do, who are judges, is there are a lot -- I'm pleased to have -- you know, I'm proud of the fact, and I know members who in our profession that just say something about -- you know, I could probably say that close to a majority of the people I care about most in this world, who aren't family members, are lawyers. Through all kinds of firms in Delaware, and stuff like that. I mean -- and if the idea was that people on our court could not hear cases because friends of ours were doing their job, our system of justice would shut down. That's very different. Like somebody representing a client.

This is not a situation where

Miss Miller has to rule on whether Len Riggio's client gets something. This is a situation -- this would be more analogous to me as a judge, or one of my colleagues as a judge, having someone who we had worked with, and who we had a continuous relationship, be a party in the case. Now, we wouldn't do that.

Now, I'm not saying that the rules of litigation apply in the business world. Obviously it's not as strict. There's a reason why you set up a transactional committee, and it's designed to create something like arm's length.

Here you have a situation where it's really pled -- it may be unfair, I agree. They haven't had discovery. That Miss Miller -- really, this is a very important personal and professional relationship with her that has been going on for more than a generation. And that if she got an award from some national association and she stood up and thanked the people who have been most important to her career as an executive, Len Riggio would play a prominent role in that speech. And that's -- why would someone like that be put in the place to being a chair of the special committee? You know, that's what I'm struggling with on a pleading stage. I'll give you a chance to answer. That's what's on my mind. It's not a case like Len Riggio is appearing before her, she's a judge, he's a lawyer. It's Len Riggio is the party. And this is her mentor.

MR. NACHBAR: Well, again, I think the record here speaks for itself. I mean, you know, Your Honor could read the minutes. There was -- the ones that are in the record -- there was 18 months. There was arm's-length bargaining. These things were considered. The transaction -- you know, Len Riggio, at a certain point, made demands. The special committee said no.

So it's hard to understand how, if the members of the committee -- and Miss Miller in particular -- weren't independent, if they were somehow beholden to Mr. Riggio -- not in the position to say no -- how did they say no?

THE COURT: Well, they didn't ultimately say no. The fact that they said no to some things are bargained doesn't mean they got to a level that was consistent with what would have been done if it was a disinterested transaction; right?

MR. NACHBAR: Well, we --

THE COURT: I remember going -- I went

to a directors session. It was really interesting. A bunch of directors, a professor/moderator. The professor said, "Do any of you knowingly overpay a CEO?" They said no. Come on. Didn't you ever have a situation where you knew it was too much, and it started to come out? And no one had ever knowingly overpaid a CEO by more than a million, but virtually everyone had knowingly given more than they were really comfortable with, and most was in the half million to a million dollar range. And part of it was, "Well, the CEO needs to feel loved. You know, we were afraid it's going to affect his moral." Did they have another opportunity? No, not really.

That's what I'm struggling with here. I understand they can say no. But part of the dynamic is, did they get themselves in a situation where, honestly, they wouldn't be behaving this way if it weren't for Len Riggio? They wouldn't even be thinking about this. Then they -- but they go down this road and they do kind of the best they can. But it's still not what they would have done with someone else.

MR. NACHBAR: Well, that's a tautology, I think, in the sense that, if you posit that people who have a relationship that these people had, are not independent, are not fully independent, and that it would be different with arm's-length people who had no relationship. Then there's no way at a pleading stage, or any other stage, that you could ever prove that they got the best deal and the same deal --

THE COURT: See, that's the difference. At another stage you have more information. You hear people and you make a fully contextual determination. Admittedly because it's made by humans: imperfect. But you're asking me to foreclose that and to conclude that it's indisputable that this was an independent committee, because the fact that three of the four members had these deep, long-standing relationships with Len Riggio could not have possibly influenced their approach to this transaction. Right? That's what I have to conclude.

MR. NACHBAR: That the types of relationships were ones that did not preclude the committee members from exercising independent --

THE COURT: You just did not preclude.

MR. NACHBAR: Right.

THE COURT: I have no doubt that

someone like Miss Miller could act independently. Could. I don't know Miss Miller. Could. But I also -- we all have mentors in our lives; right? I could probably think of some of yours. You could probably think of some of mine, you know, where you'd have to say, "If it was on your mind every day that it was blank, when you're doing your job, one of the things you have to ask yourself is, should I be doing this." Because if it's on my mind that it's blank, I'm trying to put it aside and I'm trying not to let it -- it's, frankly, on my mind. And I don't know how it's making me act. There's that possibility.

There's the possibility -- there's the possibility on the other side you actually make them -- it could be that the deal is way, way more favorable to Barnes & Noble precisely because Miss Miller, Miss Monaco, and Mr. Dillard were a little uncomfortable, and tightness rules. That's a possibility. But I'm on a complaint.

MR. NACHBAR: Well, again, I can only go back to the law and the legal standards in cases like Beam v. Stewart.

THE COURT: But somebody went to Martha Stewart's wedding.

MR. NACHBAR: That's possible.

THE COURT: Her daughter's wedding. Had they been on the board for 15 years with Martha Stewart?

MR. NACHBAR: What was alleged was long-term friendships, exactly of the type we have here. You know, the exact same type of allegations. And if those are now going to be disabling, I think we have turned a page in the law and we basically -- I think that, in special litigation committees, there's been a very high standard because you're terminating litigation that was properly brought. And that was controversial, certainly in the Oracle case, in particular.

THE COURT: Yeah. Oracle had nothing -- had very little to do with personal friendship. It had to do with, you know, being on --

MR. NACHBAR: There were independent direct connections through Stanford University.

THE COURT: Not indirect. I know the case. The Lucas Conference Center at the Stanford Research Institute. Lucas was a target of the special committee. The two special committee members were board members at the Lucas Conference Center -- at that facility. Lucas was the principal economic contributor to that. Larry Ellison had expressed publicly he was leaving his house to Stanford. His house was worth hundreds of millions of dollars.

The other target of the committee was a fellow board member at the Economic Research Institute, who was a fellow professor at Stanford. The fellow target of the committee, the guy Lucas had given money, a specific thank-you gift to Stanford, half of which went into one member of the special committee's research fund. This had very little to do with golf. It had everything to do with cardinals. It had everything to do with dollars. It had everything to do with, you know, universities. I react to that because people -- oh, the fact that one of them made like one walk through Stanford? No. It was -- this was real money, real stuff.

In Beam, people were in the same social circle, ran in the same thing. Not that they had been friends for 15 years. Not that they were the managerial protege of the controller -- such a protege that they got to stay on the board for 15 years; right? That wasn't the case in Beam, was it?

MR. NACHBAR: No. That specific fact

was not.

THE COURT: Wasn't it Beam was basically these are the types of people who like to appear in that Sunday part of the New York Times where they show the charitable balls, and that there was a picture five years ago and it showed Martha Stewart at the Met's Annual Ball next to these people?

MR. NACHBAR: I think there was more than that. I think there was close, personal friendship, and there were other cases with golfing buddies and things that, frankly, rise on a personal level to much higher levels than is the case here. These are business associates, to be sure, but they are not people who are house guests at each others' houses or vacationing together frequently. That's just not the level that we have here.

So if the law is going to say that those types of relationships are going to be disabling, I think what it eventually gets to, before too long, is term limits for directors. Because, if the fact that you've been a director for five years or ten years, or even 15 years, makes you nonindependent, then I think it leads logically to term limits for directors. Maybe that's a good idea. But that's certainly not where our law is or has been.

THE COURT: I get that there are difficulties. I mean, it's also one of the difficulties with using boxes about one of the things I don't like really particularly about the NYAC rules, you're either nonindependent or independent for all purposes, and you put a label on somebody.

We also have the strength of our law. The weakness of it is it's contextual sometimes. The fact that you've been 15 years -- right? --if there had been five CEOs -- not five. That would probably suggest you're on a terrible board. But assume that there had been three CEOs and that there was a management development program, a regular program of managerial succession that this was Johnson & Johnson and you'd been independent for 15 years, and during that course -- frankly, this is the third year. She's on her second year as CEO. It would be expected in probably six years she'll go. It may be a different situation than when you're a friend and been on the same board for 15 years, with the same dude in charge and, when he doesn't want to be a CEO himself, he says, "Make my bro a CEO."

MR. NACHBAR: Well, Barnes & Noble has

a nonRiggio CEO currently.

THE COURT: Currently. Under an atmosphere of externally increased barometric pressure; right?

MR. NACHBAR: I think the barometric pressure rose somewhat before the new CEO was chosen, but it rose a lot more after he was chosen.

THE COURT: I think it was already rising; right?

MR. NACHBAR: It was rising a little bit.

THE COURT: This lawsuit had been filed?

MR. NACHBAR: Yes, this lawsuit had been filed.

THE COURT: The Yucaipa insurgency had begun to emerge?

MR. NACHBAR: I don't think it was viewed as quite the same insurgency when they had 8 percent as when they had 18 percent.

THE COURT: I understand. But some letters had been written of a disquieting nature?

MR. NACHBAR: Yes.

THE COURT: Are you the one to ask

about Steve Riggio, or is someone else representing him?

MR. NACHBAR: Someone else is representing him.

Unless Your Honor has more questions about the independence prong, I'll move on to the second prong of Aronson.

THE COURT: Sure. I understand they actually kind of relate to each other in some ways. I know I've asked you some questions that are probably in that realm.

MR. NACHBAR: Right. The second prong of Aronson, as I understand it, is implicated when directors are not in a position to pass upon the merits of a demand because there's a threat of personal liability that would interfere with their ability to function with respect to such a demand.

Aronson expressly holds that the mere threat of personal liability for approving a questioned transaction standing alone is insufficient, but it holds that there are rare cases in which a transaction may be so egregious on its face that, quoting from page 815 of the opinion, ". . .board approval cannot meet the test of business judgment and a substantial likelihood of director liability therefore exists."

I think the threat of director liability is the key to the second prong of Aronson. I think numerous cases recognize that and they say, to survive a Rule 23.1 motion, plaintiff must plead a nonexculpated claim of breach of duty.

THE COURT: That's true. You don't have to plead that as to every member of the board; right?

MR. NACHBAR: A majority.

THE COURT: You have to plead that a majority face a nonexculpated claim?

MR. NACHBAR: Yes. I believe that's correct.

THE COURT: What case stands for that?

MR. NACHBAR: I think that's the whole underpinning of Aronson.

THE COURT: So that, if two of them face nonexculpated claims, you get rid of the claim against all of them?

MR. NACHBAR: You have a demand requirement. Let's take the prototypical case. Let's say you have a nine person board and you've got eight independent outside directors who are just added yesterday and are just wonderful people, and the ninth person is accused of having, you know, stolen money from the company. Do you get to sue on that or do you have to make a demand? I think you have to make a demand.

THE COURT: That's an unusual situation, obviously, because in that -- because the stealing -- the one person steals, then there's no question it's really alleged that he stole. Then why isn't anybody doing anything about it? I thought Disney said -- and I thought a legion of other cases say -- if you state that's a breach of fiduciary duty and you have a nonexculpated claim against someone, it goes forward. Yes, it is the liability. I agree with you -- part of it. Part of it is Aronson is also dealing with this structural bias issue by saying you don't need to be so binary about the determination about indepedence because we've got this safety valve. The safety valve would seem to me in Aronson, if you plead facts that suggest that the deal with the interested person was a breach of fiduciary duty, such as in Aronson, when a person had 46 percent, if you plead that under a particular pleading standard, then you get by, regardless of the fact that a majority of the board is not interested in the transaction or lacks independence.

Remember, under the first prong, it's both. So how would they face liability under the second prong? Except what it is -- you're trying to show a particularized team. Why it is you think it's suspect? And we'd be turning 102(b)(7) -- I doubt -- I'm one of the members of the court, fairly assiduous about respecting the 102(b)(7) provision. We had Emerald Partners dust up for a while. But here you're talking about a safe harbor for people like Mr. Riggio, where it may be, for example, that directors are exculpated because they only screwed up in terms of their duty of care.

But I thought, when you screwed up in terms of your duty of care in approving an interested transaction, that left one person still on the hook.

MR. NACHBAR: I think it does.

THE COURT: Well, but what you're saying is that it doesn't.

MR. NACHBAR: Well, no. You have to make a demand. Just because you make a demand doesn't mean that Mr. Riggio is off the hook. I mean, the board has to then function with respect to the demand and may well take remedial action. And, you know, the board may also have changed in the interim. You know, board's do change.

THE COURT: There's also a psychological -- you're putting down -- I do think it is one of the things -- and I've written it. You're probably citing in part things that I've written -- that there's a sufficiently real threat of liability when someone meets a particularized pleading standard that people have to weigh the personal consequences.

There's also, for all the reasons you talk about, reputational things at stake. And when somebody survives a particularized pleading standard, the board -- whether you have a 102(b)(7) clause or not, you don't want litigation against you proving that you were not a very good monitor.

MR. NACHBAR: Right.

THE COURT: If they passed the gateway, so basically they're going to accuse themselves of having let a big one slip by?

MR. NACHBAR: Well, again, our law looks at personal liability. That's the underpinning of Aronson. To go back to the question of whether one person's --

THE COURT: What you're saying -- I know of no place in Aronson where it suggested, by the way, we have this really major stockholder -- 46 percent -- the transaction is with him.

MR. NACHBAR: That's the facts of Aronson.

THE COURT: Yes. But that if -- that the second prong only has teeth if you have a claim against a majority of the board that is pled with particularity and that is nonexculpated. It doesn't seem like much of a safety valve, because how does it act as a safety valve? It's basically a reduplication of the same analysis with this overlay that, frankly, if they can't be held liable -- a majority can't be held liable -- the fact that someone else could, in particular the interested party, that doesn't matter. They just sue him.

MR. NACHBAR: Yes. That is --

THE COURT: Has it ever been applied that way?

MR. NACHBAR: Well, let's look at the logic of it.

THE COURT: I'm asking, though, more,

has it ever been applied that way, even by some of the more persnickety of us on courts in terms of reading complaints?

MR. NACHBAR: I don't know that there's a particular case that comes out either way on that issue.

I do know this. If a nonexculpated claim against one director is sufficient to excuse demand, then all breach of duty of loyalty cases are demand excused cases because, by definition, there's a non-- you can't exculpate a breach of the duty of loyalty claim. So all transactions attacking self-interested transactions, no matter who is on the board, are demand excused.

THE COURT: Only if you meet a particularized pleading standard.

MR. NACHBAR: Right. But still --

THE COURT: But there are plenty of cases where loyalty claims have been brought and dismissed under 12(b)(6).

MR. NACHBAR: Right. But they're also dismissed.

THE COURT: Your friends on the plaintiffs bar will say, "Mr. Nachbar, you slight your own record of obtaining dismissals of our complaints. You've done it many times."

MR. NACHBAR: They're also dismissed under 23.1.

THE COURT: That's the point. If they're dismissed under 23.1, they have been dismissed on both prongs.

MR. NACHBAR: Right.

THE COURT: So what I'm saying is, it's not so toothless, as you suggest, because the plaintiffs still have to lay -- they have to plead a nonexculpated claim. Because there's so many cases where they never -- that's why I'm asking. You're in a situation where, if there was no exculpatory charter provision, the judge would conclude that there was a due care claim against the independent directors. It's an interested transaction, thus the interested party is, frankly, always reliant upon how good is that cleansing mechanism. If it's not good, and it's unfair: loyalty claim. Then you overlay 102(b)(7). You have the same factual paradigm. Six of the members: you have concerns about whether they acted with gross negligence. But they're exculpated. There's two interested members. So there's a nonexculpated claim against two. You're saying the second prong of Aronson: tough. The board gets to decide.

What I'm asking: is there a case to tell that? I thought Disney, for example, held -- wasn't there an exculpatory charter provision in Disney?

MR. NACHBAR: Yes, there was.

THE COURT: Didn't the Supreme Court hold in Brehm, if you pass muster on the second prong, the case goes forward?

MR. NACHBAR: Yes. But the reason, I believe, was because if -- there was a nonexculpated claim against every member of that board is what the Court found. There was enough pled to allege that the entire board had breached its duty of good faith.

THE COURT: If there was enough pled in a case where you were hiring an outside executive, who was giving up his control of the hottest talent agency in Hollywood to go into a messed up company that needed a dealmaker, and give up controlling his own company and riding in limos with Gwyneth, how can you win here?

MR. NACHBAR: Well, because the

specific allegations were that they had received particular advice, or I guess had not asked for advice from their -- they had a compensation expert.

THE COURT: I understand. They seized the day; right?

MR. NACHBAR: They also didn't win that case in the end.

THE COURT: I know. Again, you're asking me to foreclose the great legal drama --

MR. NACHBAR: There were specific facts pled in that case that said that all of these board members -- each of them has breached his or her duty of good faith because, for example, they never -- they had the compensation person there and they never asked A, B, C, D.

THE COURT: To me that makes no inference -- that's entirely a care issue. They had no relationship with Ovitz.

I never -- admittedly, it's a case I always had -- it's a situation I always had issues with because it never seemed to me that the outside directors had any reason, and if anybody -- if there was anybody to be concerned about, it would have been Eisner, and, frankly, undermining Ovitz or whatever.

But, you know, what I'm saying is, if it's a situation like that, where in a nonconflict transaction it goes forward, how would in this case I say, "Oh, well, yeah, there's nonexculpated claims as to Riggio and Zilavy, but, you know, because everybody else is potentially protected by 102(b)(7), it's okay, and they'll be happy to sue Riggio over this"?

MR. NACHBAR: I believe that's where the law is because otherwise --

THE COURT: Where is there a case for that?

MR. NACHBAR: Every case that has dismissed on 23.1 grounds, a claim alleging a breach -- a self-interested transaction --

THE COURT: No. I'm asking, very precisely, where you were past the second prong of Aronson on its own terms, but where, because the suspected breach of fiduciary duty by a majority is at most a duty of care violation that you then dismiss all the claims, including the loyalty claim against the interested party. That's what I'm asking for -- a case that specifically holds that.

MR. NACHBAR: I would have to go back and look. I think Lear may so hold or be read to so hold. I would have to go back and look at it again.

The whole purpose --

THE COURT: I thought Lear said -- maybe it didn't. I mean, I wrote them, but it doesn't mean I remember them or what they say. I thought Lear also said there wasn't any pleading of a breach of fiduciary duty. Maybe it did say nonexculpated.

MR. NACHBAR: I believe it did say nonexculpated.

You know, the theoretical underpinning is that people -- directors -- either are or aren't able to exercise business judgment with respect to a demand. If their pocketbook is on the line, then they're not in a position to exercise that judgment. If their mere reputation is on the line, they are. That's why, for instance, the fact that the directors approved the challenged transaction isn't, by itself, sufficient to excuse demand.

So the question is: do they face a threat of liability? And I think the answer here is no. You know, interestingly, what the plaintiffs say -- there's two aspects to this. The first aspect is because it's a self-interested transaction it's under the Lynch standard. And I'll talk about that in a moment. That's what this really relates to. Then they say, and it could be the product of business judgment because it's a bad transaction. And they have numerous flavors of that that I'll get to promptly.

So the first claim, whether entire fairness applies. I submit that it's not all that clear. First, there's got to be a controlling stockholder. Mr. Riggio is alleged to own 31 percent of Barnes & Noble. Certainly he's been the founder and chair of the company. But it's not clear in what sense he controls the company. He was obviously recently subject to a proxy contest. He won, barely. But I think that may have had more to do with the platform espoused by the person running against him than on the sheer magnitude of his ownership.

Indeed, if Yucaipa thought he was a controlling stockholder, I don't think they ever would have done a proxy contest. Certainly no Delaware case has ever held that ownership of 31 percent constitutes a control block. I suspect that had this deal been structured a little bit differently and Mr. Riggio got 19 percent more stock and became a 51 percent stockholder, people would scream that he had gotten control without paying a control premium. I think it's hard to make the argument that he's already a controlling stockholder, unless you're prepared to say, and if he got to 51 percent that would be fine.

THE COURT: Again, it's hard to make that argument, if the world is full of the more simplistic choices that we expose children to in elementary school math. There's obviously a difference between owning 31 and owning 51 percent. But there's also a difference between someone who owns 31 percent, and that's all they own, and they don't play any day-to-day management role; and someone who owns 31 percent, retains the chairmanship, when he gives up the chairmanship, installs his brother, has other managerial subordinates, has retained the trademarks. You know, the law -- that's the good thing. We're adults. But that's -- because we're adults, there's more complexity.

One of the things you mentioned -- for example, I don't take heart. I actually find it troubling that this appears to be -- again, all I have is their allegations. You know, you're attacking their allegations. The allegation is that the special committee managed the Revlon's doctrine rather than used it as an opportunity. Right?

MR. NACHBAR: Well, there's no evidence that there was any opportunity that Riggio would have paid some control premium, which it's hard -- I guess, the way --

THE COURT: I don't mean that. I mean, when you have a situation like this, where there's a fairly fundamental thing on the table and one of the ways you might structure it is by actually using stock, considering whether he pays a control premium, you also consider maybe we ought to use this as a time -- if Len Riggio believes it's a good time to monetize investments in retailing, perhaps it's a good time for us to monetize that on behalf of our public stockholders and to put Len to the test.

But instead there was -- the evidence appears -- we wouldn't want to go down this road because it could invoke upon us the requirement to look at other alternatives and to make sure that we're maximizing value. Or we could have a stockholder vote requirement. And we wouldn't want to do that. Why?

MR. NACHBAR: Well, again, there's -- this really gets beyond the Kahn v. Lynch argument. I can turn to that or go through the Kahn v. Lynch.

THE COURT: You can do both. I'm just wondering: is this a case that we can neatly fit in any box at this point? If I put it in Lynch -- and there is law I can put it in Lynch -- right? --because there's a lot of loose language out there that anything with the controlling stockholder is entire fairness. You know, case goes on.

MR. NACHBAR: That's what I would actually like to address. That's kind of where I was heading. There is a lively debate as to whether Kahn v. Lynch should be limited to its fact situations, which a controlling stockholder seeks to get additional shares or more control, you know, or whether it applies to all transactions with a controlling stockholder.

In considering the applicability of Kahn to the present case, I think it's worth noting the theoretical underpinning of that case, and that's, if the controlling stockholder doesn't get its way, he's going to engage in some type of retributive conduct. The most obvious type of threat was the one that actually occurred in Kahn. What you had there was, I think, a 43 percent stockholder who said, "Look, if you don't do my merger, I'm going to go out to the public. I'm going to buy 7 percent more of the stock and then I'll be at the magic 51 number. You know, I could buy at the lower price."

It's difficult to see how that rationale is implicated here. If the board said no to the College Booksellers transaction, what's the retributive action that Riggio could take? He certainly couldn't have done the type of thing that was threatened in Kahn. He couldn't go directly to the stockholder and say, "You know, I have 624 book stores. Would you by this one?" You know, that's -- that sort of disaggregated action problem that you had in Kahn simply isn't present here. He wanted to sell College Booksellers. He had to go through the board. I think that's a very important distinction.

Nor could Mr. Riggio easily remove or replace board members. The company has a classified board. He's a 31 percent stockholder. He can't unilaterally do anything. He couldn't be assured of prevailing at an annual meeting. And so the theoretical underpinning of Kahn v. Lynch, I would submit, would appear to be largely absent here.

But let's bypass that. Let's say Kahn v. Lynch did apply. How does that affect demand futility?

If Kahn v. Lynch were to apply, the most that could be said is that the transaction is subject to an entire fairness standard. That would mean that, if entire fairness was not shown, Mr. Riggio could face personal liability. But I think, critically, for Aronson, none of the outside directors would face any threat of personal liability. To the extent that somebody said they breached the duty of care, they're protected under 102(b)(7), there's no real claim of breach of the duty of loyalty, because none of the directors are alleged to have benefitted personally in any way from the challenged transaction.

What the plaintiffs do is says they were disloyal because they didn't --

THE COURT: The problem under Lynch is that, if it's entire fairness -- L-I-T-E -- the burden of persuasion ends up shifting to you all. At best, you get extra special -- you get an extra special dollop of creme fraiche or a slice of truffle on the analysis; right?

I mean, that's the problem with Lynch. Even if you layer a majority of the minority on top of the special committee, you, at best, get a burden shift.

MR. NACHBAR: Right.

THE COURT: So how does that get you -- how does that help you? Is it the layering of the 23.1 thing that wouldn't exist in the squeeze-out merger so that you get the particularized pleading standard, where you have to assume that you kind of go through the whole persuasion shifting analysis all on the complaint?

MR. NACHBAR: Because a majority of the board is in a position to function with respect to the demand, in the sense that, A, they are independent of Mr. Riggio. We had a lively debate here this morning about that. If Your Honor rules against us on that, then I guess you don't get to prong two.

THE COURT: It's just always been an oddment of that -- I mean, the continued coexistence of that case in Aronson has always been a bit of an analytical puzzle. That's why I've always been more content with saying that the Lynch doctrine is some squeeze-out merger doctrine because the psychological intuitions are so utterly at odds with each other.

MR. NACHBAR: Right.

THE COURT: But if you assume, once you're in that world of entire fairness burden shifting, how you get out of that at a pleading stage has never made any sense to me.

MR. NACHBAR: I think the way you get out of it is by saying a majority of the board is -- we're assuming independence, because otherwise you lose on prong one. You don't reach prong two.

THE COURT: I'm saying, under Lynch, even assuming you have the conditions for a burden shift, under -- once you're in the entire fairness rubric, the plaintiffs have ultimately the ability to show substantive unfairness and to achieve a recovery, irrespective of the fact that the burden of persuasion on fairness has shifted to them. Thus, I would have to make an economic judgment on the complaint that this transaction was economically -- or that they had failed to plead any facts that suggested this was economically an inadvisable transaction for Barnes & Noble.

MR. NACHBAR: No. I don't think you need to get to that on the pleadings. I think where you have to get on the pleadings is whose threat of liability is it. Because, if a majority of the board is independent --

THE COURT: This gets back to our prior colloquy about the mere fact that it's just Riggio and Zilavy, arguably -- certainly Riggio, who had -- are interested. Then you don't worry about that.

MR. NACHBAR: Right. Then the other directors -- if it's a derivative claim -- the other directors are in a position to consider a demand because they don't face any threat of personal liability. They can decide whether to sue Mr. Riggio or not, or to settle with him or whatever. And so that's -- that's how you get out of that box.

Obviously, if the plaintiffs state a direct claim, there's no 23.1 demand and you don't go through that analysis.

So we believe that, even if Lynch -- we don't think Lynch applies for the reasons that we've said. Even if it did apply, we don't think it would drive the demand excusal decision.

I guess finally -- well, not finally, because there's a 12(b)(6) motion as well. The balance of the second prong of Aronson is the plaintiffs saying various aspects of the transaction

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF DISH NETWORK DERIVATIVE LITIGATION.	SUPREME COURT No. 69012
JACKSONVILLE POLICE AND FIRE PENSION FUND, Appellant, vs. GEORGE R. BROKAW; CHARLES M. LILLIS; TOM A. ORTOLF; CHARLES W. ERGEN; CANTEY M. ERGEN; JAMES DEFRANCO; DAVID K. MOSKOWITZ; CARL E. VOGEL; THOMAS A. CULLEN; KYLE J. KISER; AND R. STANTON DODGE, Respondent.	SUPREME COURT No. 69729 **JOINT APPENDIX** **VOLUME 4 of 44**

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Date	Document Description	Volume	Bates No.
2014-08-29	Affidavit of Service re Second Amended Complaint Kyle Jason Kiser	Vol. 18	JA004272 – JA004273[1]
2014-08-29	Affidavit of Service re Second Amended Complaint Stanton Dodge	Vol. 18	JA004268 – JA004271
2014-08-29	Affidavit of Service re Second Amended Complaint Thomas A. Cullen	Vol. 18	JA004274 – JA004275
2013-08-22	Affidavit of Service re Verified Shareholder Complaint	Vol. 1	JA000040

[1] JA = Joint Appendix

Date	Document Description	Volume	Bates No.
2013-08-22	Affidavit of Service re Verified Shareholder Complaint	Vol. 1	JA000041
2013-08-22	Affidavit of Service re Verified Shareholder Complaint	Vol. 1	JA000042
2013-08-22	Affidavit of Service re Verified Shareholder Complaint	Vol. 1	JA000043
2013-08-22	Affidavit of Service re Verified Shareholder Complaint	Vol. 1	JA000044
2013-08-22	Affidavit of Service re Verified Shareholder Complaint	Vol. 1	JA000045
2013-08-22	Affidavit of Service re Verified Shareholder Complaint	Vol. 1	JA000046
2013-08-22	Affidavit of Service re Verified Shareholder Complaint	Vol. 1	JA000047
2013-08-22	Affidavit of Service re Verified Shareholder Complaint	Vol. 1	JA000048
2016-01-27	Amended Judgment	Vol. 43	JA010725 – JA010726
2014-10-26	Appendix, Volume 1 of the Appendix to the Report of the Special Litigation Committee of DISH Network Corporation (No exhibits attached)	Vol. 20	JA004958 – JA004962
2014-10-27	Appendix, Volume 2 of the Appendix to the Report of the Special Litigation Committee of DISH Network Corporation (No exhibits attached)	Vol. 20	JA004963 – JA004971

Date	Document Description	Volume	Bates No.
2014-10-27	Appendix, Volume 3 of the Appendix to the Report of the Special Litigation Committee of DISH Network Corporation and Selected Exhibits to Special Litigation Committee's Report: Exhibit 162 (Omnibus Objection of the United States Trustee to Confirmation dated Nov. 22, 2013); Exhibit 172 (Hearing Transcript dated December 10, 2013); and Exhibit 194 (Transcript, Hearing: Bench Decision in Adv. Proc. 13-01390-scc., Hearing: Bench Decision on Confirmation of Plan of Debtors (12-12080-scc), In re LightSquared Inc., No. 12-120808-scc, Adv. Proc. No. 13-01390-scc (Bankr. S.D.N.Y. May 8, 2014)); Exhibit 195 (Post-Trial Findings of Fact and Conclusion of Law dated June 10, 2014 (In re LightSquared, No. 12-120808 (Bankr. S.D.N.Y.)); Exhibit 203 (Decision Denying Confirmation of Debtors' Third Amended Joint Plan Pursuant to Chapter 11 of Bankruptcy Code (In re LightSquared, No. 12-120808 (Bankr. S.D.N.Y.))	Vol. 20 Vol. 21 Vol. 22 Vol. 23	JA004972 – JA005001 JA005002 – JA005251 JA005252 – JA005501 JA005502 – JA005633
2014-10-27	Appendix, Volume 4 of the Appendix to the Report of the Special Litigation Committee of DISH Network Corporation (No exhibits attached)	Vol. 23	JA005634 – JA005642

Date	Document Description	Volume	Bates No.
2014-10-27	Appendix, Volume 5 of the Appendix to the Report of the Special Litigation Committee of DISH Network Corporation and Selected Exhibits to Special Litigation Committee's Report: Exhibit 395 (Perella Fairness Opinion dated July 21, 2013); Exhibit 439 (Minutes of the Special Meeting of the Board of Directors of DISH Network Corporation (December 9, 2013). (In re LightSquared, No. 12-120808 (Bankr. S.D.N.Y.)) **(Filed Under Seal)**	Vol. 23	JA005643 – JA005674
2014-10-27	Appendix, Volume 6 of the Appendix to the Report of the Special Litigation Committee of DISH Network Corporation (No exhibits attached)	Vol. 23	JA005675 – JA005679
2014-06-18	Defendant Charles W. Ergen's Response to Plaintiff's Status Report	Vol. 17	JA004130 – JA004139
2014-08-29	Director Defendants Motion to Dismiss the Second Amended Complaint	Vol. 18	JA004276 – JA004350
2014-10-02	Director Defendants Reply in Further Support of Their Motion to Dismiss the Second Amended Complaint	Vol. 19	JA004540 – JA004554

Date	Document Description	Volume	Bates No.
2013-11-21	Errata to Report to the Special Litigation Committee of Dish Network Corporation Regarding Plaintiff's Motion for Preliminary Injunction	Vol. 13	JA003144 – JA003146
2013-08-12	Errata to Verified Shareholder Complaint	Vol. 1	JA000038 – JA000039
2013-11-27	Findings of Fact and Conclusion of Law	Vol. 14	JA003316 – JA003331
2015-09-18	Findings of Fact and Conclusions of Law Regarding The Motion to Defer to the SLC's Determination That The Claims Should Be Dismissed	Vol. 41	JA010074 – JA010105
2013-09-19	Hearing Transcript re Motion for Expedited Discovery	Vol. 5	JA001029 – JA001097
2013-11-25	Hearing Transcript re Motion for Preliminary Injunction	Vol. 13 Vol. 14	JA003147 – JA003251 JA003252 - JA003315
2013-12-19	Hearing Transcript re Motion for Reconsideration	Vol. 14	JA003332 – JA003367
2015-07-16	Hearing Transcript re Motion to Defer	Vol. 41	JA010049 – JA010071
2015-01-12	Hearing Transcript re Motions including Motion to Defer to the Special Litigation Committee's Determination that the Claims Should be Dismissed and Motion to Dismiss **(Filed Under Seal)**	Vol. 25 Vol. 26	JA006228 – JA006251 JA006252 – JA006311

Date	Document Description	Volume	Bates No.
2015-11-24	Hearing Transcript re Plaintiff’s Motion to Retax	Vol. 43	JA010659 – JA010689
2013-10-04	Minute Order	Vol. 7	JA001555 – JA001556
2015-08-07	Minute Order	Vol. 41	JA010072 – JA010073
2015-10-12	Notice of Appeal	Vol. 41	JA010143 – JA010184
2016-02-02	Notice of Appeal	Vol. 43	JA010734 – JA010746
2016-02-09	Notice of Appeal	Vol. 43 Vol. 44	JA010747 – JA010751 JA010752 – JA010918
2016-01-28	Notice of Entry of Amended Judgment	Vol. 43	JA010727 – JA010733
2015-10-02	Notice of Entry of Findings of Fact and Conclusions of Law re the SLC’s Motion to Defer	Vol. 41	JA010106 – JA010142
2016-01-12	Notice of Entry of Order Granting in Part and Denying in Part Plaintiff's Motion to Retax	Vol. 43	JA010716 – JA010724
2013-10-16	Notice of Entry of Order Granting, in Part, Plaintiffs Ex Parte Motion for Order to Show Cause and Motion to (1) Expedite Discovery and (2) Set a Hearing on Motion for Preliminary Injunction on Order Shortening Time and Plaintiff’s Motion for Preliminary Injunction and for Discovery on an Order Shortening Time	Vol. 7	JA001562 – JA001570

Date	Document Description	Volume	Bates No.
2015-02-20	Notice of Entry of Order Regarding Motion to Defer to The SLC's Determination that the Claims Should Be Dismissed	Vol. 26	JA006315 – JA006322
2016-01-08	Order Granting in Part and Denying in Part Plaintiff's Motion to Retax	Vol. 43	JA010712 – JA010715
2013-10-15	Order Granting, in Part, Plaintiffs Ex Parte Motion for Order to Show Cause and Motion to (1) Expedite Discovery and (2) Set a Hearing on Motion for Preliminary Injunction on Order Shortening Time and Plaintiff's Motion for Preliminary Injunction and for Discovery on an Order Shortening Time	Vol. 7	JA001557 – JA001561
2015-02-19	Order Regarding Motion to Defer to the SLC's Determination that the Claims Should Be Dismissed	Vol. 26	JA006312 – JA006314
2013-09-13	Plaintiff's Appendix of Exhibits to Motion for Preliminary Injunction and For Discovery on an Order Shortening Time	Vol. 1 Vol. 2 Vol. 3 Vol. 4 Vol. 5	JA00132 – JA00250 JA00251 – JA00501 JA00502 – JA00751 JA00752 – JA001001 JA001002 – JA001028
2013-10-03	Plaintiff's Appendix of Exhibits to Status Report	Vol. 5 Vol. 6	JA001115 – JA001251 JA001252 – JA001335
2014-06-06	Plaintiff's Appendix of Exhibits to Status Report	Vol. 14 Vol. 15 Vol. 16	JA03385 – JA003501 JA003502 – JA003751 JA003752 – JA003950

Date	Document Description	Volume	Bates No.
2013-11-13	Plaintiff's Appendix of Exhibits to Supplement to Motion for Preliminary Injunction Vol. 1 Part 1 **(Filed Under Seal)**	Vol. 7 Vol. 8	JA001607 – JA001751 JA001752 – JA001955
2013-11-13	Plaintiff's Appendix of Exhibits to Supplement to Motion for Preliminary Injunction Vol. 1 Part 2 **(Filed Under Seal)**	Vol. 8 Vol. 9 Vol. 10	JA001956 – JA002001 JA002002 – JA002251 JA002252 – JA002403
2013-11-13	Plaintiff's Appendix of Exhibits to Supplement to Motion for Preliminary Injunction Vol. 1 Part 3 **(Filed Under Seal)**	Vol. 10 Vol. 11 Vol. 12 Vol. 13	JA002404 – JA002501 JA002502 – JA002751 JA002752 – JA003001 JA003002 – JA003065
2015-06-18	Plaintiff's Appendix of Exhibits to their Supplemental Opposition to the SLC's Motion to Defer to its Determination that the Claims Should be Dismissed **(Filed Under Seal)**	Vol. 27 Vol. 28 Vol. 29 Vol. 30 Vol. 31 Vol. 32 Vol. 33 Vol. 34 Vol. 35 Vol. 36 Vol. 37	JA006512 – JA006751 JA006752 – JA007001 JA007002 – JA007251 JA007252 – JA007501 JA007502 – JA007751 JA007752 – JA008251 JA008002 – JA008251 JA008252 – JA008501 JA008502 – JA008751 JA008752 – JA009001 JA009002 – JA009220
2013-09-13	Plaintiff's Motion for Preliminary Injunction and for Discovery on an Order Shortening Time	Vol. 1	JA000095 – JA000131
2015-11-03	Plaintiff's Motion to Retax	Vol. 43	JA010589 – JA010601

Date	Document Description	Volume	Bates No.
2014-09-19	Plaintiff's Opposition to the Director Defendants' Motion to Dismiss the Second Amended Complaint and Director Defendant's Motion to Dismiss the Second Amended Complaint **(Filed Under Seal)**	Vol. 18 Vol. 19	JA004453 – JA004501 JA004502 – JA004508
2014-12-10	Plaintiff's Opposition to the SLC's Motion to Defer to its Determination that the Claims Should be Dismissed **(Filed Under Seal)**	Vol. 24	JA005868 – JA005993
2014-09-19	Plaintiff's Opposition to the Special Litigation Committee's Motion to Dismiss for Failure to Plead Demand Futility	Vol. 19	JA004509 – JA004539
2015-11-20	Plaintiff's Reply in Further Support of its Motion to Retax	Vol. 43	JA010644 – JA010658
2015-12-10	Plaintiff's Response to SLC's Supplement to Opposition to Plaintiff's Motion to Retax	Vol. 43	JA010700 – JA010711
2013-10-03	Plaintiff's Status Report	Vol. 5	JA001098 – JA001114
2014-06-06	Plaintiff's Status Report	Vol. 14	JA003368 – JA003384
2014-10-30	Plaintiff's Status Report	Vol. 23	JA005680 - JA005749
2015-04-03	Plaintiff's Status Report	Vol. 26	JA006323 – JA006451
2013-11-18	Plaintiff's Supplement to its Supplement to its Motion for Preliminary Injunction	Vol. 13	JA003066 – JA003097

Date	Document Description	Volume	Bates No.
2013-11-08	Plaintiff's Supplement to Motion for Preliminary Injunction **(Filed Under Seal)**	Vol. 7	JA001571 – JA001606
2014-06-16	Plaintiff's Supplement to the Status Report	Vol. 16 Vol. 17	JA003951 – JA004001 JA004002 – JA004129
2014-12-15	Plaintiff's Supplemental Authority to its Opposition to the SLC's Motion to Defer to its Determination that the Claims Should be Dismissed	Vol. 24 Vol. 25	JA005994 – JA006001 JA006002 – JA006010
2015-06-18	Plaintiff's Supplemental Opposition to the SLC's Motion to Defer to its Determination that the Claims Should be Dismissed **(Filed Under Seal)**	Vol. 26 Vol. 27	JA006460 – JA006501 JA006502 – JA006511
2014-10-24	Report of the Special Litigation Committee **(Filed Under Seal)**	Vol. 19 Vol. 20	JA004613 – JA004751 JA004752 – JA004957
2014-07-25	Second Amended Complaint **(Filed Under Seal)**	Vol. 17 Vol. 18	JA004140 – JA004251 JA004252 – JA004267
2013-11-20	Special Litigation Committee Report Regarding Plaintiff's Motion for Preliminary Injunction **(Filed Under Seal)**	Vol. 13	JA003098 – JA003143
2015-01-06	Special Litigation Committee's Appendix of Exhibits Referenced in their Reply In Support of their Motion to Defer to its Determination that the Claims Should Be Dismissed	Vol. 25	JA006046 – JA006227

Date	Document Description	Volume	Bates No.
2015-07-02	Special Litigation Committee's Appendix of Exhibits to Supplemental Reply in Support of their Motion to Defer **(Filed Under Seal)** (Includes Exhibits: C, D, E, J and K)	Vol. 39	JA009553 – JA009632
2015-07-02	Special Litigation Committee's Appendix of Exhibits to their Supplemental Reply in Support of their Motion to Defer (Exhibits Filed Publicly) (Includes Exhibits: A, B, F, G, H, I, L and M)	Vol. 37 Vol. 38	JA009921 – JA009251 JA009252 – JA009498
2015-07-02	Special Litigation Committee's Appendix of SLC Report Exhibits Referenced in Supplemental Reply in Support of the Motion to Defer **(Exhibits Filed Under Seal)** (Includes SLC Report Exhibits 298, 394, 443, 444, 446, 447 and 454)	Vol. 41	JA0010002 – JA010048
2015-07-02	Special Litigation Committee's Appendix of SLC Report Exhibits Referenced in Supplemental Reply in Support of the Motion to Defer (Exhibits Filed Publicly) (Includes SLC Report Exhibits 5, 172, and 195)	Vol. 39 Vol. 40	JA009633 – JA009751 JA009752 – JA010001
2015-10-19	Special Litigation Committee's Memorandum of Costs	Vol. 41 Vol. 42 Vol. 43	JA010185 – JA010251 JA010252 – JA010501 JA010502 – JA010588
2014-11-18	Special Litigation Committee's Motion to Defer to its Determination that the Claims Should Be Dismissed	Vol. 23 Vol. 24	JA005750 – JA005751 JA005751 – JA005867

Date	Document Description	Volume	Bates No.
2014-08-29	Special Litigation Committee's Motion to Dismiss for Failure to Plead Demand Futility	Vol. 18	JA004351 – JA004452
2015-11-16	Special Litigation Committee's Opposition to Plaintiff's Motion to Retax	Vol. 43	JA010602 – JA010643
2014-10-02	Special Litigation Committee's Reply in Support of Their Motion to Dismiss for Failure to Plead Demand Futility	Vol. 19	JA004555 – JA004612
2015-01-05	Special Litigation Committee's Reply in Support of their Motion to Defer to its Determination that the Claims Should Be Dismissed	Vol. 25	JA006011 – JA006045
2013-10-03	Special Litigation Committee's Status Report	Vol. 6 Vol. 7	JA001336 – JA001501 JA001502 – JA001554
2015-04-06	Special Litigation Committee's Status Report	Vol. 26	JA006452 – JA006459
2015-12-08	Special Litigation Committee's Supplement to Opposition to Plaintiff's Motion to Retax	Vol. 43	JA010690 – JA010699
2015-07-02	Special Litigation Committee's Supplemental Reply in Support of the Motion to Defer to the SLC's Determination that the Claims Should Be Dismissed **(Filed Under Seal)**	Vol. 38 Vol. 39	JA009499 – JA009501 JA009502 – JA009552
2013-09-12	Verified Amended Derivative Complaint	Vol. 1	JA000049 – JA000094

Date	Document Description	Volume	Bates No.
2013-08-09	Verified Shareholder Derivative Complaint	Vol. 1	JA000001 – JA000034

the Debtors or any of their assets or properties, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims or Equity Interests, including demands, liabilities, and Causes of Action that arose before the Effective Date, any liability to the extent such Claims or Equity Interests relate to services performed by employees of the Debtors prior to the Effective Date and that arise from a termination of employment or a termination of any employee or retiree benefit program, regardless of whether such termination occurred prior to or after the Effective Date, any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code, in each case whether or not (1) a Proof of Claim or proof of Equity Interest based upon such debt, right, or Equity Interest is Filed or deemed Filed pursuant to section 501 of the Bankruptcy Code, (2) a Claim or Equity Interest based upon such debt, right, or Equity Interest is Allowed pursuant to section 502 of the Bankruptcy Code, or (3) the Holder of such a Claim or Equity Interest has accepted the Plan. Any default by the Debtors or their Affiliates with respect to any Claim or Equity Interest that existed immediately prior to or on account of the filing of the Chapter 11 Cases shall be deemed cured on the Effective Date. The Confirmation Order shall be a judicial determination of the discharge of all Claims and Equity Interests subject to the occurrence of the Effective Date.

B. Subordinated Claims

The allowance, classification, and treatment of all Allowed Claims and Allowed Equity Interests and the respective Plan Distributions and treatments under the Plan shall give effect to the relative priority and rights of the Claims and Equity Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, the Debtors or Wind Down Debtors reserve the right to re-classify any Allowed Claim or Equity Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

C. Compromise and Settlement of Claims and Controversies

Pursuant to sections 363 and 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the Plan Distributions and other benefits provided pursuant to the Plan, the provisions of the Plan shall constitute a good faith compromise of all Claims, Equity Interests, Causes of Action, and controversies resolved pursuant to the Plan and relating to any contractual, legal, and subordination rights that a Holder of a Claim or Equity Interest may have with respect to any Allowed Claim or Equity Interest, or any Plan Distributions to be made on account of such an Allowed Claim or Equity Interest. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise or settlement of all such Claims, Equity Interests, Causes of Action, controversies, as well as a finding by the Bankruptcy Court that such compromise or settlement is in the best interests of the Debtors, their Estates, and Holders of Claims or Equity Interests and is fair, equitable, and reasonable. Plan Distributions made to Holders of Allowed Claims or Equity Interests are intended to be final. In accordance with the provisions of the Plan, pursuant to sections 363 and 1123 of the Bankruptcy Code and Bankruptcy Rule 9019(a), without any further notice to or action, order, or approval of the Bankruptcy Court or any other Entity, after the Effective Date, the Wind Down Debtors may compromise and settle Claims against, or Equity Interests in, the Wind Down Debtors, and Causes of Action against other Entities.

D. Releases by Debtors

Pursuant to section 1123(b) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan, for good and valuable consideration, including the service of the Released Parties to facilitate the expeditious implementation of the transactions contemplated by the Plan, on and after the Effective Date, the Released Parties are deemed released and discharged by the Debtors, the Wind Down Debtors, and the Estates from any and all claims, interests, obligations, rights, suits, damages, Causes of Action, remedies, and liabilities whatsoever, including any derivative claims asserted on behalf of the Debtors, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise, whether for tort, contract, violations of federal or state securities laws, or otherwise, that the Debtors, the Wind Down Debtors, the Estates, or their Affiliates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim or Equity Interest or other Entity, based on or relating to, or in any manner arising from, in whole or in part, the Debtors, the Chapter 11 Cases, the purchase, sale, or rescission of the purchase or sale of any Security of the Debtors, the Sale, the subject matter of, or the transactions or events giving rise to, any Claim or Equity Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the restructuring of Claims or Equity Interests prior to or in the Chapter 11 Cases, the negotiation, formulation, or preparation of the Plan and the Debtors' Disclosure Statement, or related agreements, instruments, or other documents, upon any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date, other than claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes willful misconduct (including fraud) or gross negligence.

E. Exculpation

Except as otherwise specifically provided in the Plan, no Exculpated Party shall have or incur, and each Exculpated Party is hereby released and exculpated from, any claim, obligation, Cause of Action, or liability for any exculpated Claim, except for willful misconduct (including fraud) or gross negligence, but in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan. The Exculpated Parties have, and upon Confirmation of the Plan shall be deemed to have, participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code with regard to the distributions of the Securities pursuant to the Plan and the Sale, and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan.

F. Third-Party Releases by Holders of Claims or Equity Interests

Except as otherwise specifically provided in the Plan, on and after the Effective Date, the Releasing Parties shall be deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged the Released Parties from any and all claims, interests, obligations, rights, suits, damages, Claims, Equity Interests, Causes of Action, remedies, and liabilities whatsoever, including any derivative claims asserted on behalf of a Debtor, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, whether for tort, contract, violations of federal or state securities laws, or otherwise, that each Releasing Party would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the Debtors, the Chapter 11 Cases, the purchase, sale, or rescission of the purchase or sale of any Security of the Debtors, the Sale, the subject matter of, or the transactions or events giving rise to, any Claim or Equity Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the restructuring of Claims or Equity Interests prior to or in the Chapter 11 Cases, the negotiation, formulation, or preparation of the Plan and the Debtors' Disclosure Statement, or related agreements, instruments, or other documents, upon any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date, other than claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes willful misconduct (including fraud) or gross negligence.

G. Injunction

Except as otherwise expressly provided in the Plan or for obligations issued pursuant to the Plan, all Entities who have held, hold, or may hold Claims or Equity Interests that have been released pursuant to Article VIII.D hereof or Article VIII.F hereof, discharged pursuant to Article VIII.A hereof, or are subject to exculpation pursuant to Article VIII.E hereof are permanently enjoined, from and after the Effective Date, from taking any of the following actions against the Debtors or the Wind Down Debtors: (1) commencing or continuing in any manner any action or other proceeding of any kind on account of, in connection with, or with respect to any such Claims or Equity Interests; (2) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Entities on account of, in connection with, or with respect to any such Claims or Equity Interests; (3) creating, perfecting, or enforcing any encumbrance of any kind against such Entities or the property or estates of such Entities on account of, in connection with, or with respect to any such Claims or Equity Interests; (4) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from such Entities or against the property or Estates of such Entities on account of, in connection with, or with respect to any such Claims or Equity Interests unless such Holder has Filed a motion requesting the right to perform such setoff on or before the Confirmation Date, and notwithstanding an indication in a Proof of Claim or proof of Equity Interest or otherwise that such Holder asserts, has, or intends to preserve any right of setoff pursuant to section 553 of the Bankruptcy Code or otherwise; and (5) commencing or continuing in any manner any action or other proceeding of any kind on account of, in connection with, or with respect to any such Claims or Equity

Interests released or settled pursuant to the Plan. Nothing in the Plan or Confirmation Order shall preclude any Entity from pursuing an action against one or more of the Debtors in a nominal capacity to recover insurance proceeds so long as the Debtors or Wind Down Debtors, as applicable, and any such Entity agree in writing that such Entity shall (1) waive all Claims against the Debtors, the Wind Down Debtors, and the Estates related to such action and (2) enforce any judgment on account of such Claim solely against applicable insurance proceeds, if any.

H. Release of Liens

Except as otherwise provided in the Plan or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, (1) on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan and (2) in the case of a Secured Claim, upon satisfaction in full of the portion of the Secured Claim that is Allowed as of the Effective Date, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall be fully released, settled, discharged, and compromised and all rights, titles, and interests of any Holder of such mortgages, deeds of trust, Liens, pledge, or other security interests against any property of the Estates shall revert to the Wind Down Debtors and their successors and assigns. The Wind Down Debtors shall be authorized to file any necessary or desirable documents to evidence such release in the name of such Holder of a Secured Claim.

ARTICLE IX.
CONDITIONS PRECEDENT TO EFFECTIVE DATE OF PLAN

A. Conditions Precedent to Effective Date

It shall be a condition to the Effective Date of the Plan that the following conditions shall have been satisfied or waived pursuant to the provisions of Article IX.B hereof:

1. The Confirmation Order shall have been entered in a form and in substance reasonably satisfactory to the Debtors.

2. The Plan Documents, to the extent applicable to the transactions to be consummated pursuant to the Confirmation Order, shall have been executed and delivered, and any conditions (other than the occurrence of the Effective Date or certification by the Debtors that the Effective Date has occurred) contained therein shall have been waived or satisfied in accordance therewith, including, but not limited to:

(a) the Asset Purchase Agreement(s), in form(s) and substance acceptable to the Debtors and the Purchaser(s), shall have been executed and delivered by all of the Entities that are parties thereto, and all conditions to each Sale Closing and the consummation of each Sale shall have been waived or satisfied in accordance with the terms thereof;

(b) the Chief Wind Down Officer Agreement, in form and substance acceptable to the Debtors, shall have been executed and delivered by all of the Entities that are parties thereto, and all conditions precedent to the consummation thereof shall have been waived or satisfied in accordance with the terms thereof; and

(c) the Debtors shall have sufficient Cash on hand to fund the Wind Down Reserve (including the Professional Fee Reserve and the Disputed Claims and Equity Interests Reserve).

3. The Bankruptcy Court shall have entered the Disclosure Statement Order and the Bid Procedures Order, and the Canadian Court shall have entered the Disclosure Statement Recognition Order, the Bid Procedures Recognition Order, and the Confirmation Recognition Order.

4. The final version of the Plan Supplement and all of the schedules, documents, and exhibits contained therein shall have been Filed in form and substance reasonably acceptable to the Debtors, without prejudice to the Wind Down Debtors' rights under the Plan to alter, amend, or modify certain of the schedules, documents, and exhibits contained in the Plan Supplement; provided, however, each such altered, amended, or modified schedule, documents, or exhibit shall be in form and substance acceptable to the Wind Down Debtors.

5. All necessary actions, documents, certificates, and agreements necessary to implement this Plan shall have been effected or executed and delivered to the required parties and, to the extent required, Filed with the applicable governmental units in accordance with applicable laws.

6. All authorizations, consents, and regulatory approvals required by applicable law in order to effect the transactions to be consummated pursuant to the Confirmation Order shall have been obtained from the FCC, Industry Canada, or any other regulatory agency including, without limitation, any approvals required in connection with the transfer, change of control, or assignment of FCC and Industry Canada licenses, and no appeals of such approvals remain outstanding.

B. Waiver of Conditions

The conditions to the Effective Date of the Plan set forth in this Article IX.A may be waived by the Debtors without notice to, or action, order, or approval of, the Bankruptcy Court or any other Entity.

ARTICLE X.
MODIFICATION, REVOCATION, OR WITHDRAWAL OF PLAN

A. Modification and Amendments

Except as otherwise specifically provided in the Plan, the Debtors reserve the right to modify the Plan as to material terms and seek Confirmation consistent with the Bankruptcy Code. Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, and those restrictions on modifications set forth in the Plan, each of the Debtors expressly reserves its respective rights to revoke or withdraw, or, to alter, amend, or modify materially the Plan with respect to such Debtor, one or more times, after

Confirmation, and, to the extent necessary, may initiate proceedings in the Bankruptcy Court or Canadian Court to so alter, amend, or modify the Plan, or remedy any defect or omission, or reconcile any inconsistencies in the Plan, the Debtors' Disclosure Statement, the Confirmation Order, or the Confirmation Recognition Order, in such matters as may be necessary to carry out the purposes and intent of the Plan. Any such modification or supplement shall be considered a modification of the Plan and shall be made in accordance with this Article X.A.

B. Effect of Confirmation on Modifications

Entry of a Confirmation Order or Confirmation Recognition Order shall mean that all modifications or amendments to the Plan since the solicitation thereof are approved pursuant to section 1127(a) of the Bankruptcy Code and do not require additional disclosure or re-solicitation under Bankruptcy Rule 3019.

C. Revocation or Withdrawal of Plan

The Debtors reserve the right to revoke or withdraw the Plan prior to the Confirmation Date and to file subsequent chapter 11 plans. If the Debtors revoke or withdraw the Plan, or if the Confirmation or Consummation does not occur, then: (1) the Plan shall be null and void in all respects; (2) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain of any Claims or Equity Interests or Class of Claims or Equity Interests), assumption, assumption and assignment, or rejection of Executory Contracts or Unexpired Leases effected by the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null and void in all respects; and (3) nothing contained in the Plan or the Debtors' Disclosure Statement shall (a) constitute a waiver or release of any Claims or Equity Interests in any respect, (b) prejudice in any manner the rights of such Debtor or any other Entity in any respect, or (c) constitute an admission, acknowledgement, offer, or undertaking of any sort by such Debtor or any other Entity in any respect.

ARTICLE XI.
RETENTION OF JURISDICTION

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, on and after the Effective Date, the Bankruptcy Court shall retain jurisdiction over all matters arising out of, or relating to, the Chapter 11 Cases and the Plan pursuant to sections 105(a) and 1142 of the Bankruptcy Code, including jurisdiction to:

1. Allow, disallow, determine, liquidate, classify, estimate, or establish the priority, Secured or unsecured status, or amount of any Claim or Equity Interest, including the resolution of any request for payment of any Administrative Claim, of any request for the payment or Plan Distribution on account of Claims entitled to priority pursuant to section 507 of the Bankruptcy Code, and of any and all objections to the Secured or unsecured status, priority, amount, or allowance of Claims or Equity Interests;

2. Decide and resolve all matters relating to the granting and denying, in whole or in part, any applications for allowance of compensation or reimbursement of expenses to Professionals authorized pursuant to the Bankruptcy Code or the Plan;

3. Resolve any matters relating to the following: (a) the assumption, assumption and assignment, or rejection of any Executory Contract or Unexpired Lease to which a Debtor is party or with respect to which a Debtor may be liable and to hear, determine, and, if necessary, liquidate, any Claims arising therefrom, including Cure Costs pursuant to section 365 of the Bankruptcy Code; (b) any potential contractual obligation under any Executory Contract or Unexpired Lease that is assumed, or assumed and assigned; (c) the Wind Down Debtors' amending, modifying, or supplementing, after the Effective Date, pursuant to Article V hereof, any Executory Contracts or Unexpired Leases to the list of Executory Contracts and Unexpired Leases to be assumed, or assumed and assigned; and (d) any dispute regarding whether a contract or lease is or was executory or unexpired;

4. Ensure that Plan Distributions to Holders of Allowed Claims and Allowed Equity Interests are accomplished pursuant to the provisions of the Plan;

5. Adjudicate, decide, or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters, and grant or deny any applications involving a Debtor that may be pending on the Effective Date;

6. Adjudicate, decide, or resolve any and all matters related to Causes of Action;

7. Adjudicate, decide, or resolve any and all matters related to section 1141 of the Bankruptcy Code;

8. Enter and implement such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of the Plan and all contracts, instruments, releases, indentures, and other agreements or documents created in connection with the Plan or the Debtors' Disclosure Statement;

9. To hear and determine any matters relating to the implementation of the Sale, including arising out of, or in connection with, the Asset Purchase Agreement(s), or the Chief Wind Down Officer Agreement, and any ancillary or related agreements thereto, and to enter and enforce any order for the sale of property pursuant to sections 363, 1123, or 1146(a) of the Bankruptcy Code;

10. Resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with the Consummation, interpretation, or enforcement of the Plan or any Entity's obligations incurred in connection with the Plan;

11. Issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Entity with the Consummation or enforcement of the Plan;

12. Resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the releases, injunctions, and other provisions contained in Article VIII hereof and enter such orders as may be necessary or appropriate to implement such releases, injunctions, and other provisions;

13. Hear and determine all disputes involving the existence, nature, or scope of the Debtors' discharge, including any dispute relating to any liability arising out of the termination of employment or the termination of any employee or retiree benefit program, regardless of whether such termination occurred prior to or after the Effective Date;

14. Resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the repayment or return of Plan Distributions and the recovery of additional amounts owed by the Holder of a Claim or Equity Interest for amounts not timely repaid pursuant to Article VI.J hereof;

15. Enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;

16. Determine any other matters that may arise in connection with or relate to the Plan, the Debtors' Disclosure Statement, the Confirmation Order, or any contract, instrument, release, indenture, or other agreement or document created in connection with the Plan or the Debtors' Disclosure Statement;

17. Enter an order or final decree concluding or closing the Chapter 11 Cases;

18. Adjudicate any and all disputes arising from or relating to Plan Distributions under the Plan or any transactions contemplated therein;

19. Consider any modifications of the Plan, to cure any defect or omission, or to reconcile any inconsistency in any Bankruptcy Court order, including the Confirmation Order;

20. Hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

21. Enforce all orders previously entered by the Bankruptcy Court; and

22. Hear any other matter not inconsistent with the Bankruptcy Code.

ARTICLE XII.
MISCELLANEOUS PROVISIONS

A. Immediate Binding Effect

Subject to Article IX.A hereof, and notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan, the Plan Supplement, and the Confirmation Order shall be immediately effective and enforceable and deemed binding upon the Debtors, the Wind Down Debtors, and any and all Holders of Claims or Equity Interests (irrespective of whether such Claims or Equity Interests are deemed to have accepted the Plan), all Entities that are parties, or are subject, to the settlements, compromises, releases, discharges, and injunctions described in the Plan, each Entity acquiring or receiving property under the Plan, and any and all non-Debtor parties to Executory Contracts or Unexpired Leases with the Debtors. All Claims and debts shall be as fixed, adjusted, or compromised, as applicable, pursuant to the Plan regardless of whether any Holder of a Claim or debt has voted on the Plan.

B. Additional Documents

On or before the Effective Date, the Debtors may file with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Debtors or the Wind Down Debtors, as applicable, and all Holders of Claims or Equity Interests receiving Plan Distributions pursuant to the Plan and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or appropriate to effectuate the provisions and intent of the Plan.

C. Reservation of Rights

Except as expressly set forth in the Plan, the Plan shall have no force or effect unless the Bankruptcy Court shall have entered the Confirmation Order. None of the Filing of the Plan, any statement or provision contained in the Plan, or the taking of any action by any Debtor with respect to the Plan or the Debtors' Disclosure Statement, shall be or shall be deemed to be an admission or waiver of any rights of any Debtor with respect to the Holders of Claims or Equity Interests prior to the Effective Date.

D. Successors and Assigns

The rights, benefits, and obligations of any Entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign, affiliate, officer, director, agent, representative, attorney, beneficiary, or guardian, if any, of each Entity.

E. Service of Documents

After the Effective Date, any pleading, notice, or other document required by the Plan to be served on or delivered to:

the Debtors or the Reorganized Debtors, shall be served on:

LightSquared Inc.
Attn: General Counsel
10802 Parkridge Boulevard
Reston, VA 20191

Milbank, Tweed, Hadley & McCloy LLP
Matthew S. Barr
Steven Z. Szanzer
Karen Gartenberg
One Chase Manhattan Plaza
New York, NY 10005

the Ad Hoc Secured Group of Prepetition LP Lenders or any members thereof, shall be served on:

White & Case LLP
Thomas E Lauria

Glenn M. Kurtz
1155 Avenue of the Americas
New York, NY 10036

the DIP Inc. Agent, the Prepetition Inc. Agent, or the Prepetition Inc. Lenders, shall be served on:

Akin, Gump, Strauss, Hauer & Feld LLP
Philip C. Dublin
Kenneth A. Davis
One Bryant Park
New York, NY 10036

Harbinger Capital Partners, LLC or its affiliates, shall be served on:

Kasowitz, Benson, Torres & Friedman LLP
David M. Friedman
Adam L. Shiff
1633 Broadway
New York, NY 10019

After the Effective Date, the Wind Down Debtors have authority to send a notice to Entities that to continue to receive documents pursuant to Bankruptcy Rule 2002, they must file a renewed request to receive documents pursuant to Bankruptcy Rule 2002. After the Effective Date, the Wind Down Debtors are authorized to limit the list of Entities receiving documents pursuant to Bankruptcy Rule 2002 to those Entities who have Filed such renewed requests.

F. Term of Injunctions or Stays

Unless otherwise provided in the Plan, the Confirmation Order, or the Confirmation Recognition Order, all injunctions or stays in effect in the Chapter 11 Cases pursuant to sections 105 or 362 of the Bankruptcy Code or any order of the Bankruptcy Court, and extant on the Confirmation Date (excluding any injunctions or stays contained in the Plan, the Confirmation Order, or the Confirmation Recognition Order), shall remain in full force and effect until the Effective Date. All injunctions or stays contained in the Plan, the Confirmation Order, or the Confirmation Recognition Order shall remain in full force and effect in accordance with their terms.

G. Plan Supplement

All exhibits and documents included in the Plan Supplement are incorporated into, and are a part of, the Plan as if set forth in full in the Plan, and any reference to the Plan shall mean the Plan and the Plan Supplement. Upon its Filing, the Plan Supplement may be inspected in the office of the clerk of the Bankruptcy Court or its designee during normal business hours, at the Bankruptcy Court's website at www.nysb.uscourts.gov, and at the website of the Claims and Solicitation Agent at http://www.kccllc.net/lightsquared. The documents contained in the Plan

Supplement are an integral part of the Plan and shall be deemed approved by the Bankruptcy Court pursuant to the Confirmation Order.

H. Entire Agreement

Except as otherwise indicated, the Plan and the Plan Supplement supersede all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into the Plan.

I. Non-severability of Plan Provisions

If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan shall remain in full force and effect and shall in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall be deemed to provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is (1) valid and enforceable pursuant to its terms, (2) integral to the Plan and may not be deleted or modified without the Debtors' or Wind Down Debtors' (as applicable) consent, and (3) non-severable and mutually dependent.

J. Votes Solicited in Good Faith

Upon entry of the Confirmation Order, the Debtors shall be deemed to have solicited votes on the Plan in good faith and in compliance with the Bankruptcy Code, and pursuant to section 1125(e) of the Bankruptcy Code, the Debtors and each of their respective Affiliates, subsidiaries, members, principals, shareholders, officers, directors, employees, representatives, agents, financial advisors, attorneys, accountants, investment bankers, consultants, and other professionals shall be deemed to have participated in good faith and in compliance with the Bankruptcy Code in the offer, issuance, sale, and purchase of Securities offered and sold under the Plan, and, therefore, shall have no liability for the violation of any applicable law, rule, or regulation governing the solicitation of votes on the Plan or the offer, issuance, sale, or purchase of the Securities offered and sold under the Plan.

K. Waiver or Estoppel

Each Holder of a Claim or an Equity Interest shall be deemed to have waived any right to assert any argument, including the right to argue that its Claim or Equity Interest should be Allowed in a certain amount, in a certain priority, Secured or not subordinated by virtue of an agreement made with the Debtors or their counsel or any other Entity, if such agreement was not disclosed in the Plan, the Debtors' Disclosure Statement, or papers Filed with the Bankruptcy Court prior to the Confirmation Date.

L. Conflicts

Except as set forth in the Plan, to the extent that any provision of the Debtors' Disclosure Statement, the Plan Supplement, or any other order (other than the Confirmation Order) referenced in the Plan (or any exhibits, schedules, appendices, supplements, or amendments to any of the foregoing), conflicts with or is in any way inconsistent with any provision of the Plan, unless otherwise ordered by the Bankruptcy Court, the non-exhibit or non-document portion of the Plan shall govern and control.

New York, New York
Dated: August 30, 2013

LightSquared Inc. (for itself and all other Debtors)

/s/ Douglas Smith
Douglas Smith
Chief Executive Officer, President, and
Chairman of the Board of LightSquared Inc.

EXHIBIT 27

10-Q 1 a13-13768_110q.htm 10-Q
Table of Contents

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Form 10-Q

(Mark One)

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 FOR THE QUARTERLY PERIOD ENDED JUNE 30, 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	**88-0336997**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)
9601 South Meridian Boulevard **Englewood, Colorado**	**80112**
(Address of principal executive offices)	(Zip code)

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

Not Applicable
(Former name, former address and former fiscal year, if changed since last report)

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 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 ☐

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

As of July 31, 2013, the registrant's outstanding common stock consisted of 218,230,414 shares of Class A common stock and 238,435,208 shares of Class B common stock.

Table of Contents

TABLE OF CONTENTS

PART I — FINANCIAL INFORMATION

PART II — OTHER INFORMATION

Table of Contents

PART I — FINANCIAL INFORMATION

DISCLOSURE REGARDING FORWARD-LOOKING STATEMENTS

We make "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995 throughout this report. Whenever you read a statement that is not simply a statement of historical fact (such as when we describe what we "believe," "intend," "plan," "estimate," "expect" or "anticipate" will occur and other similar statements), you must remember that our expectations may not be achieved, even though we believe they are reasonable. We do not guarantee that any future transactions or events described herein will happen as described or that they will happen at all. You should read this report completely and with the understanding that actual future results may be materially different from what we expect. Whether actual events or results will conform with our expectations and predictions is subject to a number of risks and uncertainties. The risks and uncertainties include, but are not limited to, the following:

Competition and Economic Risks Affecting our Business

- We face intense and increasing competition from satellite television providers, cable companies and telecommunications companies, especially as the pay-TV industry has matured, which may require us to increase subscriber acquisition and retention spending or accept lower subscriber activations and higher subscriber churn.
- Competition from digital media companies that provide or facilitate the delivery of video content via the Internet may reduce our gross new subscriber activations and may cause our subscribers to purchase fewer services from us or to cancel our services altogether, resulting in less revenue to us.
- Sustained economic weakness, including continued high unemployment and reduced consumer spending, may adversely affect our ability to grow or maintain our business.
- Our competitors may be able to leverage their relationships with programmers to reduce their programming costs and offer exclusive content that will place them at a competitive advantage to us.
- We face increasing competition from other distributors of unique programming services such as foreign language and sports programming that may limit our ability to maintain subscribers that desire these unique programming services.

Operational and Service Delivery Risks Affecting our Business

- If we do not continue improving our operational performance and customer satisfaction, our gross new subscriber activations may decrease and our subscriber churn may increase.
- If our gross new subscriber activations decrease, or if subscriber churn, subscriber acquisition costs or retention costs increase, our financial performance will be adversely affected.
- Programming expenses are increasing and could adversely affect our future financial condition and results of operations.
- We depend on others to provide the programming that we offer to our subscribers and, if we lose access to this programming, our gross new subscriber activations may decline and subscriber churn may increase.
- Our local programming strategy faces uncertainty because we may not be able to obtain necessary retransmission consent agreements at acceptable rates, or at all, from local network stations.
- We may be required to make substantial additional investments to maintain competitive programming offerings.
- Any failure or inadequacy of our information technology infrastructure could harm our business.
- We currently depend on EchoStar Corporation and its subsidiaries, or EchoStar, to design, develop and manufacture all of our new set-top boxes and certain related components, and to provide transponder capacity, digital broadcast operations and other services to us. Our business would be adversely affected if EchoStar ceases to provide these products and services to us and we are unable to obtain suitable replacement products and services from third parties.

Table of Contents

- We operate in an extremely competitive environment and our success may depend in part on our timely introduction and implementation of, and effective investment in, new competitive products and services, the failure of which could negatively impact our business.

- Technology in our industry changes rapidly and our inability to offer new subscribers and upgrade existing subscribers with more advanced equipment could cause our products and services to become obsolete.

- We rely on a single vendor or a limited number of vendors to provide certain key products or services to us such as information technology support, billing systems, and security access devices, and the inability of these key vendors to meet our needs could have a material adverse effect on our business.

- Our sole supplier of new set-top boxes, EchoStar, relies on a few suppliers and in some cases a single supplier, for many components of our new set-top boxes, and any reduction or interruption in supplies or significant increase in the price of supplies could have a negative impact on our business.

- Our programming signals are subject to theft, and we are vulnerable to other forms of fraud that could require us to make significant expenditures to remedy.

- We depend on third parties to solicit orders for our services that represent a significant percentage of our total gross new subscriber activations.

- We have limited owned and leased satellite capacity and failures or reduced capacity could adversely affect our business.

- Our owned and leased satellites are subject to construction, launch, operational and environmental risks that could limit our ability to utilize these satellites.

- We generally do not carry commercial insurance for any of the in-orbit satellites that we use, other than certain satellites leased from third parties, and could face significant impairment charges if one of our satellites fails.

- We may have potential conflicts of interest with EchoStar due to our common ownership and management.

- We rely on key personnel and the loss of their services may negatively affect our businesses.

Acquisition and Capital Structure Risks Affecting our Business

- We made a substantial investment to acquire certain AWS-4 wireless spectrum licenses and other assets from DBSD North America Inc. ("DBSD North America") and TerreStar Networks, Inc. ("TerreStar"). We will need to make significant additional investments or partner with others to commercialize these licenses and assets.

- We made a substantial investment to acquire certain 700 MHz wireless spectrum licenses and will need to make significant additional investments or partner with others to commercialize these licenses.

- To the extent we commercialize our wireless spectrum licenses, we will face certain risks entering and competing in the wireless services industry and operating a wireless services business.

- Our Blockbuster business faces risks, including, among other things, operational challenges and increasing competition from video rental kiosks and streaming and mail order businesses that may negatively impact the business, financial condition or results of operations of Blockbuster.

- We may pursue acquisitions and other strategic transactions to complement or expand our businesses that may not be successful and we may lose up to the entire value of our investment in these acquisitions and transactions.

- We may need additional capital, which may not be available on acceptable terms or at all, to continue investing in our businesses and to finance acquisitions and other strategic transactions.

- A portion of our investment portfolio is invested in securities that have experienced limited or no liquidity and may not be immediately accessible to support our financing needs, including investments in public companies that are highly speculative and have experienced and continue to experience volatility.

- We have substantial debt outstanding and may incur additional debt.

- It may be difficult for a third party to acquire us, even if doing so may be beneficial to our shareholders, because of our ownership structure.

Table of Contents

- We are controlled by one principal stockholder who is also our Chairman.

Legal and Regulatory Risks Affecting our Business

- Our business depends on certain intellectual property rights and on not infringing the intellectual property rights of others.
- We are party to various lawsuits which, if adversely decided, could have a significant adverse impact on our business, particularly lawsuits regarding intellectual property.
- Our ability to distribute video content via the Internet involves regulatory risk.
- Changes in the Cable Act of 1992 ("Cable Act"), and/or the rules of the Federal Communications Commission ("FCC") that implement the Cable Act, may limit our ability to access programming from cable-affiliated programmers at non-discriminatory rates.
- The injunction against our retransmission of distant networks, which is currently waived, may be reinstated.
- We are subject to significant regulatory oversight, and changes in applicable regulatory requirements, including any adoption or modification of laws or regulations relating to the Internet, could adversely affect our business.
- Our business depends on FCC licenses that can expire or be revoked or modified and applications for FCC licenses that may not be granted.
- We are subject to digital high-definition ("HD") "carry-one, carry-all" requirements that cause capacity constraints.
- There can be no assurance that there will not be deficiencies leading to material weaknesses in our internal control over financial reporting.
- We may face other risks described from time to time in periodic and current reports we file with the Securities and Exchange Commission, or SEC.

All cautionary statements made herein should be read as being applicable to all forward-looking statements wherever they appear. Investors should consider the risks described herein and should not place undue reliance on any forward-looking statements. We assume no responsibility for updating forward-looking information contained or incorporated by reference herein or in other reports we file with the SEC.

Unless otherwise required by the context, in this report, the words "DISH Network," the "Company," "we," "our" and "us" refer to DISH Network Corporation and its subsidiaries, "EchoStar" refers to EchoStar Corporation and its subsidiaries, and "DISH DBS" refers to DISH DBS Corporation and its subsidiaries, a wholly-owned, indirect subsidiary of DISH Network.

Table of Contents

Item 1. FINANCIAL STATEMENTS

DISH NETWORK CORPORATION
CONDENSED CONSOLIDATED BALANCE SHEETS
(Dollars in thousands, except share amounts)
(Unaudited)

	As of June 30, 2013	As of December 31, 2012
Assets		
Current Assets:		
Cash and cash equivalents	$ 4,093,822	$ 3,606,140
Marketable investment securities	5,433,340	3,631,637
Trade accounts receivable - other, net of allowance for doubtful accounts of $15,987 and $16,945, respectively	878,579	842,905
Trade accounts receivable - EchoStar, net of allowance for doubtful accounts of zero	23,648	26,960
Inventory	577,288	623,720
Deferred tax assets	99,854	99,854
Prepaid income taxes	91,459	110,608
Other current assets (Note 2)	963,901	117,329
Total current assets	12,161,891	9,059,153
Noncurrent Assets:		
Restricted cash and marketable investment securities	90,858	134,410
Property and equipment, net of accumulated depreciation of $3,130,717 and $3,043,609, respectively	3,990,025	4,402,360
FCC authorizations	3,296,665	3,296,665
Marketable and other investment securities	134,295	119,051
Other noncurrent assets, net	392,067	367,969
Total noncurrent assets	7,903,910	8,320,455
Total assets	$ 20,065,801	$ 17,379,608
Liabilities and Stockholders' Equity (Deficit)		
Current Liabilities:		
Trade accounts payable - other	$ 294,390	$ 298,722
Trade accounts payable - EchoStar	321,711	281,875
Deferred revenue and other	887,338	857,280
Accrued programming	1,186,807	1,096,908
Accrued interest	261,488	224,383
Litigation accrual	—	70,999
Other accrued expenses	524,329	556,599
Current portion of long-term debt and capital lease obligations	535,837	537,701
Total current liabilities	4,011,900	3,924,467
Long-Term Obligations, Net of Current Portion:		
Long-term debt and capital lease obligations, net of current portion	13,633,032	11,350,399
Deferred tax liabilities	1,664,891	1,662,732
Long-term deferred revenue, distribution and carriage payments and other long-term liabilities	386,290	370,382
Total long-term obligations, net of current portion	15,684,213	13,383,513
Total liabilities	19,696,113	17,307,980
Commitments and Contingencies (Note 12)		
Stockholders' Equity (Deficit):		
Class A common stock, $.01 par value, 1,600,000,000 shares authorized, 273,688,726 and 270,613,262 shares issued, 217,570,466 and 214,495,002 shares outstanding, respectively	2,737	2,706
Class B common stock, $.01 par value, 800,000,000 shares authorized, 238,435,208 shares issued and outstanding	2,384	2,384
Class C common stock, $.01 par value, 800,000,000 shares authorized, none issued and outstanding	—	—

Additional paid-in capital	2,517,367	2,440,626
Accumulated other comprehensive income (loss)	214,533	188,803
Accumulated earnings (deficit)	(823,647)	(1,028,193)
Treasury stock, at cost	(1,569,459)	(1,569,459)
Total DISH Network stockholders' equity (deficit)	343,915	36,867
Noncontrolling interest	25,773	34,761
Total stockholders' equity (deficit)	369,688	71,628
Total liabilities and stockholders' equity (deficit)	$ 20,065,801	$ 17,379,608

The accompanying notes are an integral part of these condensed consolidated financial statements.

Table of Contents

DISH NETWORK CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE INCOME (LOSS)
(Dollars in thousands, except per share amounts)
(Unaudited)

	For the Three Months Ended June 30,		For the Six Months Ended June 30,	
	2013	2012	2013	2012
Revenue:				
Subscriber-related revenue	$ 3,456,536	$ 3,295,831	$ 6,809,086	$ 6,520,296
Equipment and merchandise sales, rental and other revenue	140,611	270,257	341,145	620,994
Equipment sales, services and other revenue - EchoStar	8,986	5,678	11,126	12,345
Total revenue	3,606,133	3,571,766	7,161,357	7,153,635
Costs and Expenses (exclusive of depreciation shown separately below - Note 7):				
Subscriber-related expenses	1,924,020	1,823,665	3,835,613	3,584,917
Satellite and transmission expenses:				
EchoStar	125,706	107,082	238,639	216,936
Other	10,190	9,178	20,438	20,857
Cost of sales - equipment, merchandise, services, rental and other	76,783	130,061	176,309	272,323
Subscriber acquisition costs:				
Cost of sales - subscriber promotion subsidies	67,745	51,500	145,232	136,269
Other subscriber acquisition costs	366,791	355,142	753,204	669,911
Total subscriber acquisition costs	434,536	406,642	898,436	806,180
General and administrative expenses - EchoStar	26,297	14,790	45,177	26,872
General and administrative expenses	249,879	312,877	501,443	676,970
Depreciation and amortization (Note 7)	300,474	299,119	534,801	507,817
Impairment of long-lived assets (Note 7)	437,575	—	437,575	—
Total costs and expenses	3,585,460	3,103,414	6,688,431	6,112,872
Operating income (loss)	20,673	468,352	472,926	1,040,763
Other Income (Expense):				
Interest income	43,843	20,204	81,337	27,293
Interest expense, net of amounts capitalized	(214,870)	(109,301)	(376,256)	(247,314)
Other, net	97,241	(7,448)	106,981	102,834
Total other income (expense)	(73,786)	(96,545)	(187,938)	(117,187)
Income (loss) before income taxes	(53,113)	371,807	284,988	923,576
Income tax (provision) benefit, net	38,039	(146,211)	(89,386)	(337,854)
Net income (loss)	(15,074)	225,596	195,602	585,722
Less: Net income (loss) attributable to noncontrolling interest	(4,022)	(136)	(8,944)	(320)
Net income (loss) attributable to DISH Network	$ (11,052)	$ 225,732	$ 204,546	$ 586,042
Weighted-average common shares outstanding - Class A and B common stock:				
Basic	455,452	450,292	454,353	448,791
Diluted	455,452	453,077	457,405	451,425
Earnings per share - Class A and B common stock:				
Basic net income (loss) per share attributable to DISH Network	$ (0.02)	$ 0.50	$ 0.45	$ 1.31
Diluted net income (loss) per share attributable to DISH Network	$ (0.02)	$ 0.50	$ 0.45	$ 1.30
Comprehensive Income (Loss):				
Net income (loss)	$ (15,074)	$ 225,596	$ 195,602	$ 585,722
Other comprehensive income (loss):				

Foreign currency translation adjustments	2,862	(1,965)	5,599	1,288
Unrealized holding gains (losses) on available-for-sale securities	19,285	(69,393)	37,068	(18,372)
Recognition of previously unrealized (gains) losses on available-for-sale securities included in net income (loss)	(6,706)	(3,135)	(5,344)	(84,022)
Deferred income tax (expense) benefit	(4,597)	—	(11,593)	—
Total other comprehensive income (loss), net of tax	10,844	(74,493)	25,730	(101,106)
Comprehensive income (loss)	(4,230)	151,103	221,332	484,616
Less: Comprehensive income (loss) attributable to noncontrolling interest	(4,022)	(136)	(8,944)	(320)
Comprehensive income (loss) attributable to DISH Network	$ (208)	$ 151,239	$ 230,276	$ 484,936

The accompanying notes are an integral part of these condensed consolidated financial statements.

Table of Contents

DISH NETWORK CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)
(Unaudited)

	For the Six Months Ended June 30, 2013	For the Six Months Ended June 30, 2012
Cash Flows From Operating Activities:		
Net income (loss)	$ 195,602	$ 585,722
Adjustments to reconcile net income (loss) to net cash flows from operating activities:		
Depreciation and amortization	534,801	507,817
Impairment of long-lived assets	437,575	—
Realized and unrealized losses (gains) on investments	(107,947)	(101,638)
Non-cash, stock-based compensation	15,362	30,199
Deferred tax expense (benefit)	(45,319)	68,683
Other, net	49,959	7,841
Change in noncurrent assets	17,733	27,230
Change in long-term deferred revenue, distribution and carriage payments and other long-term liabilities	25,555	(29,170)
Changes in current assets and current liabilities, net	107,946	251,380
Net cash flows from operating activities	1,231,267	1,348,064
Cash Flows From Investing Activities:		
Purchases of marketable investment securities	(3,590,433)	(1,996,257)
Sales and maturities of marketable investment securities	1,836,573	1,221,341
Purchases and prepaid funding of derivative financial instruments (Note 2)	(696,000)	—
Purchases of property and equipment	(593,740)	(420,185)
Change in restricted cash and marketable investment securities	43,067	(1,535)
DBSD North America Transaction, less cash acquired of $5,230	—	(40,015)
TerreStar Transaction	—	(36,942)
Other	(57,842)	(15,867)
Net cash flows from investing activities	(3,058,375)	(1,289,460)
Cash Flows From Financing Activities:		
Proceeds from issuance of long-term debt	2,300,000	1,900,000
Proceeds from issuance of restricted debt	2,600,000	—
Redemption of restricted debt	(2,600,000)	—
Funding of restricted debt escrow	(2,596,750)	—
Release of restricted debt escrow	2,596,771	—
Debt issuance costs	(11,427)	(9,564)
Repayment of long-term debt and capital lease obligations	(20,531)	(18,949)
Net proceeds from Class A common stock options exercised and stock issued under the Employee Stock Purchase Plan	37,071	49,852
Other	9,605	5,770
Net cash flows from financing activities	2,314,739	1,927,109
Effect of exchange rates on cash and cash equivalents	51	873
Net increase (decrease) in cash and cash equivalents	487,682	1,986,586
Cash and cash equivalents, beginning of period	3,606,140	609,108
Cash and cash equivalents, end of period	$ 4,093,822	$ 2,595,694
Supplemental Disclosure of Cash Flow Information:		
Cash paid for interest (including capitalized interest)	$ 405,951	$ 268,800
Capitalized interest	$ 69,153	$ 38,643
Cash received for interest	$ 90,427	$ 19,383
Cash paid for income taxes	$ 115,130	$ 243,861

Employee benefits paid in Class A common stock	$ 24,229	$ 22,280
Transfer of regulatory authorization from EchoStar	$ 23,148	$ —

The accompanying notes are an integral part of these condensed consolidated financial statements.

Table of Contents

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

1. Organization and Business Activities

Principal Business

DISH Network Corporation is a holding company. Its subsidiaries (which together with DISH Network Corporation are referred to as "DISH Network," the "Company," "we," "us" and/or "our," unless otherwise required by the context) operate three primary business segments.

- ***DISH.*** The DISH® branded direct broadcast satellite ("DBS") pay-TV service had 14.014 million subscribers in the United States as of June 30, 2013. The DISH branded pay-TV service consists of Federal Communications Commission ("FCC") licenses authorizing us to use DBS and Fixed Satellite Service ("FSS") spectrum, our owned and leased satellites, receiver systems, third party broadcast operations, customer service facilities, a leased fiber network, in-home service and call center operations, and certain other assets utilized in our operations. In addition, we market broadband services under the dishNET™ brand.

- ***Blockbuster.*** On April 26, 2011, we completed the acquisition of most of the assets of Blockbuster, Inc. (the "Blockbuster Acquisition"). The financial results of our Blockbuster operations are included in our financial results beginning April 26, 2011. Blockbuster primarily offers movies and video games for sale and rental through multiple distribution channels such as retail stores, by-mail, digital devices, the blockbuster.com website and the BLOCKBUSTER On Demand® service.

- ***Wireless.*** In 2008, we paid $712 million to acquire certain 700 MHz wireless spectrum licenses, which were granted to us by the FCC in February 2009 subject to certain interim and final build-out requirements. On March 9, 2012, we completed the acquisitions of 100% of the equity of reorganized DBSD North America, Inc. ("DBSD North America") and substantially all of the assets of TerreStar Networks, Inc. ("TerreStar"), pursuant to which we acquired, among other things, 40 MHz of AWS-4 wireless spectrum licenses held by DBSD North America (the "DBSD Transaction") and TerreStar (the "TerreStar Transaction"). The financial results of DBSD North America and TerreStar are included in our financial results beginning March 9, 2012. The total consideration to acquire the DBSD North America and TerreStar assets was approximately $2.860 billion. On February 15, 2013, the FCC issued an order, which became effective on March 7, 2013, modifying our AWS-4 licenses to expand our terrestrial operating authority. The FCC's order of modification has imposed certain limitations on the use of a portion of the spectrum and also mandated certain interim and final build-out requirements for the licenses. See Note 8 for further information.

  During the second quarter 2013, we ceased operations of our TerreStar Mobile Satellite Service ("MSS") business, which had less than 2,000 customers and had less than $1 million of revenue for each of the three and six months ended June 30, 2013. See Note 7 for further information. We currently generate an immaterial amount of revenue and incur expenses associated with certain satellite operations and regulatory compliance matters from our wireless spectrum assets. As we review our options for the commercialization of this wireless spectrum, we may incur significant additional expenses and may have to make significant investments related to, among other things, research and development, wireless testing and wireless network infrastructure.

Table of Contents

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued
(Unaudited)

2. Summary of Significant Accounting Policies

Basis of Presentation

The accompanying unaudited Condensed Consolidated Financial Statements have been prepared in accordance with accounting principles generally accepted in the United States ("GAAP") and with the instructions to Form 10-Q and Article 10 of Regulation S-X for interim financial information. Accordingly, these statements do not include all of the information and notes required for complete financial statements prepared under GAAP. In our opinion, all adjustments (consisting of normal recurring adjustments) considered necessary for a fair presentation have been included. Our results of operations for the interim periods presented are not necessarily indicative of the results that may be expected for the full year. For further information, refer to the Consolidated Financial Statements and notes thereto included in our Annual Report on Form 10-K for the year ended December 31, 2012 ("2012 10-K"). Certain prior period amounts have been reclassified to conform to the current period presentation.

Principles of Consolidation

We consolidate all majority owned subsidiaries, investments in entities in which we have controlling influence and variable interest entities where we have been determined to be the primary beneficiary. Non-majority owned investments are accounted for using the equity method when we have the ability to significantly influence the operating decisions of the investee. When we do not have the ability to significantly influence the operating decisions of an investee, the cost method is used. All significant intercompany accounts and transactions have been eliminated in consolidation.

Use of Estimates

The preparation of financial statements in conformity with GAAP requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expense for each reporting period. Estimates are used in accounting for, among other things, allowances for doubtful accounts, self-insurance obligations, deferred taxes and related valuation allowances, uncertain tax positions, loss contingencies, the useful lives and residual value surrounding our rental library inventory, estimated accruals related to revenue-sharing titles that are subject to performance guarantees, fair value of financial instruments, fair value of options granted under our stock-based compensation plans, fair value of assets and liabilities acquired in business combinations, fair value of multi-element arrangements, capital leases, asset impairments, estimates of future cash flows used to evaluate impairments, useful lives of property, equipment and intangible assets, asset retirement obligations, retailer incentives, programming expenses, subscriber lives and royalty obligations. Weak economic conditions have increased the inherent uncertainty in the estimates and assumptions indicated above. Actual results may differ from previously estimated amounts, and such differences may be material to the Condensed Consolidated Financial Statements. Estimates and assumptions are reviewed periodically, and the effects of revisions are reflected prospectively in the period they occur.

Table of Contents

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued
(Unaudited)

Fair Value Measurements

We determine fair value based on the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants. Market or observable inputs are the preferred source of values, followed by unobservable inputs or assumptions based on hypothetical transactions in the absence of market inputs. We apply the following hierarchy in determining fair value:

- Level 1, defined as observable inputs being quoted prices in active markets for identical assets, including U.S. treasury notes;
- Level 2, defined as observable inputs other than quoted prices included in Level 1, including quoted prices for similar assets and liabilities in active markets; quoted prices for identical or similar instruments in markets that are not active; model-derived valuations in which significant inputs and significant value drivers are observable in active markets; and derivative financial instruments indexed to marketable investment securities; and
- Level 3, defined as unobservable inputs for which little or no market data exists, consistent with reasonably available assumptions made by other participants therefore requiring assumptions based on the best information available.

As of June 30, 2013 and December 31, 2012, the carrying value for cash and cash equivalents, marketable investment securities, trade accounts receivable (net of allowance for doubtful accounts), derivative financial instruments, and current liabilities (excluding the "Current portion of long-term debt and capital lease obligations") is equal to or approximates fair value due to their short-term nature or proximity to current market rates. See Note 5 for the fair value of our marketable investment securities.

Fair values for our publicly traded debt securities are based on quoted market prices, when available. The fair values of private debt are estimated based on an analysis in which we evaluate market conditions, related securities, various public and private offerings, and other publicly available information. In performing this analysis, we make various assumptions regarding, among other things, credit spreads, and the impact of these factors on the value of the notes. See Note 10 for the fair value of our long-term debt.

Derivative Financial Instruments

We may purchase and hold derivative financial instruments for, among other reasons, strategic or speculative purposes. We record all derivative financial instruments on our Condensed Consolidated Balance Sheets at fair value as either assets or liabilities. Changes in the fair values of derivative financial instruments are recognized in our results of operations and included in "Other, net" within "Other Income (Expense)" on our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss). We currently have not designated any derivative financial instrument for hedge accounting.

During the first and second quarter 2013, we purchased derivative financial instruments that are indexed to the trading price of the common equity securities of Sprint Corporation ("Sprint"), which generally can be terminated at our option at any time. Under the terms of these derivative financial instruments, we are entitled to any increase in value and are responsible to the counterparty for any decrease in value based on the change in the fair value of the underlying securities. As of June 30, 2013, we held an aggregate notional amount of $592 million of these derivative financial instruments. We had also made prepayments of $104 million prior to June 30, 2013, which may be used to purchase additional derivative financial instruments subsequent to June 30, 2013. All amounts associated with these derivative financial instruments have been classified as "Other current assets" on our Condensed Consolidated Balance Sheets.

Table of Contents

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued
(Unaudited)

In addition to the $592 million of derivative financial instruments that are indexed to the trading price of the common equity securities of Sprint, we held common equity securities of Sprint with a fair value of $85 million as of June 30, 2013, which were included in "Marketable investment securities" on our Condensed Consolidated Balance Sheets. The fair value of the derivative financial instruments and our investment in Sprint's common equity is dependent on the market value of Sprint's common equity which may be volatile and vary depending on, among other things, Sprint's financial and operational performance and market conditions.

We recorded an unrealized gain of $76 million and $85 million on these derivative financial instruments included in "Other, net" within "Other Income (Expense)" on our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss) during the three and six months ended June 30, 2013, respectively. We held no derivative financial instruments as of December 31, 2012.

As of June 30, 2013, we held derivative financial instruments indexed to the trading price of the common equity securities of Sprint with a fair value of $677 million and common equity securities of Sprint with a fair value of $85 million. On July 10, 2013, Sprint completed its merger with SoftBank Corp. ("SoftBank"). As of July 10, 2013, these derivative financial instruments had a fair value of $699 million and our common equity securities of Sprint had a fair value of $87 million. As a result of the merger, we received $544 million in cash attributed to these derivative financial instruments and continue to hold derivative financial instruments indexed to the trading price of the common equity securities of new Sprint with an aggregate notional amount of $155 million. In addition, as a result of the merger, we received $68 million in cash and shares of new Sprint stock with a fair value of $19 million in exchange for the common equity securities we held.

Advertising Costs

Our advertising costs associated with acquiring new Pay-TV and Broadband subscribers and Blockbuster customers are expensed as incurred. During the three months ended June 30, 2013 and 2012, we recorded advertising costs of $130 million and $131 million, respectively, and during the six months ended June 30, 2013 and 2012, we recorded advertising costs of $252 million and $230 million, respectively. Advertising costs are included in "Other subscriber acquisition costs" and "General and administrative expenses" on our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss).

Deferred Cost of Sales

On May 22, 2013, we launched a promotion whereby qualifying new Pay-TV subscribers may choose either an Apple® iPad® 2 or programming credits when they, among other things, commit to a two-year contract. The costs of the iPad 2 are recorded as short-term or long-term deferred cost of sales expense within "Other current assets" and "Other noncurrent assets, net," respectively, on our Condensed Consolidated Balance Sheets and are amortized on a straight-line basis over the related contract term to "Cost of sales — equipment, merchandise, services, rental and other" on our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss).

Table of Contents

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued
(Unaudited)

3. Basic and Diluted Net Income (Loss) Per Share

We present both basic earnings per share ("EPS") and diluted EPS. Basic EPS excludes potential dilution and is computed by dividing "Net income (loss) attributable to DISH Network" by the weighted-average number of common shares outstanding for the period. Diluted EPS reflects the potential dilution that could occur if stock awards were exercised. The potential dilution from stock awards was computed using the treasury stock method based on the average market value of our Class A common stock. The following table presents EPS amounts for all periods and the basic and diluted weighted-average shares outstanding used in the calculation.

	For the Three Months Ended June 30,		For the Six Months Ended June 30,	
	2013	2012	2013	2012
	(In thousands, except per share amounts)			
Net income (loss) attributable to DISH Network	$ (11,052)	$ 225,732	$ 204,546	$ 586,042
Weighted-average common shares outstanding - Class A and B common stock:				
Basic	455,452	450,292	454,353	448,791
Dilutive impact of stock awards outstanding	—	2,785	3,052	2,634
Diluted	455,452	453,077	457,405	451,425
Earnings per share - Class A and B common stock:				
Basic net income (loss) per share attributable to DISH Network	$ (0.02)	$ 0.50	$ 0.45	$ 1.31
Diluted net income (loss) per share attributable to DISH Network	$ (0.02)	$ 0.50	$ 0.45	$ 1.30

We had a net loss for the three months ended June 30, 2013; therefore, the effect of stock awards is excluded from the computations of diluted earnings (loss) per share since the effect is anti-dilutive. As of June 30, 2013 and 2012, there were stock awards to purchase 1.7 million and 3.3 million shares, respectively, of Class A common stock outstanding, not included in the weighted-average common shares outstanding above, as their effect is anti-dilutive.

Vesting of options and rights to acquire shares of our Class A common stock granted pursuant to our performance-based stock incentive plans ("Restricted Performance Units") is contingent upon meeting certain goals, some of which are not yet probable of being achieved. As a consequence, the following are also not included in the diluted EPS calculation.

	As of June 30,	
	2013	2012
	(In thousands)	
Performance-based options	7,841	7,976
Restricted Performance Units	1,987	1,198
Total	9,828	9,174

Table of Contents

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued
(Unaudited)

4. Other Comprehensive Income (Loss)

The following tables present the tax effect on each component of "Other comprehensive income (loss)." A full valuation allowance was established against any deferred tax assets that were capital in nature during 2012.

	For the Three Months Ended June 30,					
	2013			2012		
	Before Tax Amount	Tax (Expense) Benefit	Net of Tax Amount	Before Tax Amount	Tax (Expense) Benefit	Net of Tax Amount
	(In thousands)					
Foreign currency translation adjustments	$ 2,862	$ —	$ 2,862	$ (1,965)	$ —	$ (1,965)
Unrealized holding gains (losses) on available-for-sale securities	19,285	(4,597)	14,688	(69,393)	—	(69,393)
Recognition of previously unrealized (gains) losses on available-for-sale securities included in net income (loss)	(6,706)	—	(6,706)	(3,135)	—	(3,135)
Other comprehensive income (loss)	$ 15,441	$ (4,597)	$ 10,844	$ (74,493)	$ —	$ (74,493)

	For the Six Months Ended June 30,					
	2013			2012		
	Before Tax Amount	Tax (Expense) Benefit	Net of Tax Amount	Before Tax Amount	Tax (Expense) Benefit	Net of Tax Amount
	(In thousands)					
Foreign currency translation adjustments	$ 5,599	$ —	$ 5,599	$ 1,288	$ —	$ 1,288
Unrealized holding gains (losses) on available-for-sale securities	37,068	(11,593)	25,475	(18,372)	—	(18,372)
Recognition of previously unrealized (gains) losses on available-for-sale securities included in net income (loss)	(5,344)	—	(5,344)	(84,022)	—	(84,022)
Other comprehensive income (loss)	$ 37,323	$ (11,593)	$ 25,730	$ (101,106)	$ —	$ (101,106)

The "Accumulated other comprehensive income (loss)" is detailed in the following table.

Accumulated Other Comprehensive Income (Loss)	Foreign Currency Translation Adjustment	Unrealized/ Recognized Gains (Losses)	Total
		(In thousands)	
Balance as of December 31, 2012	$ (5,033)	$ 193,836	$ 188,803
Other comprehensive income (loss) before reclassification	5,599	37,068	42,667
Amounts reclassified from accumulated other comprehensive income (loss)	—	(5,344)	(5,344)
Tax (expense) benefit	—	(11,593)	(11,593)
Balance as of June 30, 2013	$ 566	$ 213,967	$ 214,533

Table of Contents

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued
(Unaudited)

5. Marketable Investment Securities, Restricted Cash and Cash Equivalents, and Other Investment Securities

Our marketable investment securities, restricted cash and cash equivalents, and other investment securities consisted of the following:

	As of June 30, 2013	As of December 31, 2012
	(In thousands)	
Marketable investment securities:		
Current marketable investment securities - VRDNs	$ 154,131	$ 130,306
Current marketable investment securities - strategic	1,363,460	1,261,015
Current marketable investment securities - other	3,915,749	2,240,316
Total current marketable investment securities	5,433,340	3,631,637
Restricted marketable investment securities (1)	84,777	51,366
Noncurrent marketable investment securities - ARS and other (2)	119,191	106,172
Total marketable investment securities	5,637,308	3,789,175
Restricted cash and cash equivalents (1)	6,081	83,044
Other investment securities:		
Other investment securities - cost method (2)	15,104	12,879
Total other investment securities	15,104	12,879
Total marketable investment securities, restricted cash and cash equivalents, and other investment securities	$ 5,658,493	$ 3,885,098

(1) Restricted marketable investment securities and restricted cash and cash equivalents are included in "Restricted cash and marketable investment securities" on our Condensed Consolidated Balance Sheets.
(2) Noncurrent marketable investment securities — auction rate securities ("ARS") and other investment securities are included in "Marketable and other investment securities" on our Condensed Consolidated Balance Sheets.

Marketable Investment Securities

Our marketable investment securities portfolio consists of various debt and equity instruments, all of which are classified as available-for-sale, except as specified below.

Current Marketable Investment Securities - VRDNs

Variable rate demand notes ("VRDNs") are long-term floating rate municipal bonds with embedded put options that allow the bondholder to sell the security at par plus accrued interest. All of the put options are secured by a pledged liquidity source. Our VRDN portfolio is comprised mainly of investments in municipalities, which are backed by financial institutions or other highly rated obligors that serve as the pledged liquidity source. While they are classified as marketable investment securities, the put option allows VRDNs to be liquidated generally on a same day or on a five business day settlement basis.

Current Marketable Investment Securities - Strategic

Our current strategic marketable investment securities include strategic and financial debt and equity investments in public companies that are highly speculative and have experienced and continue to experience volatility. As of June 30, 2013, our strategic investment portfolio consisted of securities of a small number of issuers, and as a result the

Table of Contents

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued
(Unaudited)

value of that portfolio depends, among other things, on the performance of those issuers. For example, a significant portion of the value of these investments was concentrated in the debt securities of Clearwire Corporation ("Clearwire"). The adjusted cost basis of these Clearwire securities as of June 30, 2013 and December 31, 2012 was $759 million and $751 million, respectively. The fair value of these Clearwire securities as of June 30, 2013 and December 31, 2012 was $927 million and $951 million, respectively. Clearwire has multiple call options on certain of these debt securities upon 30 days notice. The call option price may be less than the fair market value of these debt securities and, if exercised, proceeds could be less than our recorded fair market value as of June 30, 2013 and therefore, reduce our unrealized gains recorded as a separate component of "Accumulated other comprehensive income (loss)" within "Total stockholders' equity (deficit)," on our Condensed Consolidated Balance Sheets. The fair value of certain of the debt and equity securities in our investment portfolio, including those of Clearwire, can be adversely impacted by, among other things, the issuers' respective performance and ability to obtain any necessary additional financing on acceptable terms, or at all.

Current Marketable Investment Securities - Other

Our current marketable investment securities portfolio includes investments in various debt instruments including corporate and government bonds.

Restricted Cash and Marketable Investment Securities

As of June 30, 2013 and December 31, 2012, our restricted marketable investment securities, together with our restricted cash, included amounts required as collateral for our letters of credit or surety bonds and for litigation. During the first quarter 2013, we released $42 million of restricted cash related to litigation. See Note 12 for further information.

Noncurrent Marketable Investment Securities — ARS and Other Investment Securities

We have investments in ARS and other investment securities which are either classified as available-for-sale securities or are accounted for under the fair value method. Previous events in the credit markets reduced or eliminated current liquidity for certain of our ARS and other investment securities. As a result, we classify these investments as noncurrent assets, as we intend to hold these investments until they recover or mature.

The valuation of our ARS and other investment securities investments portfolio is subject to uncertainties that are difficult to estimate. Due to the lack of observable market quotes for identical assets, we utilize analyses that rely on Level 2 and/or Level 3 inputs, as defined in "Fair Value Measurements." These inputs include, among other things, observed prices on similar assets as well as our assumptions and estimates related to the counterparty credit quality, default risk underlying the security and overall capital market liquidity. These securities were also compared, when possible, to other observable market data for financial instruments with similar characteristics.

Fair Value Election. As of June 30, 2013, our ARS and other noncurrent marketable investment securities portfolio of $119 million included $73 million of securities accounted for under the fair value method.

Table of Contents

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued
(Unaudited)

Other Investment Securities

We have strategic investments in certain debt and equity securities that are included in noncurrent "Marketable and other investment securities" on our Condensed Consolidated Balance Sheets and accounted for using the cost, equity and/or fair value methods of accounting.

Our ability to realize value from our strategic investments in companies that are not publicly traded depends on the success of those companies' businesses and their ability to obtain sufficient capital, on acceptable terms or at all, to execute their business plans. Because private markets are not as liquid as public markets, there is also increased risk that we will not be able to sell these investments, or that when we desire to sell them we will not be able to obtain fair value for them.

Unrealized Gains (Losses) on Marketable Investment Securities

As of June 30, 2013 and December 31, 2012, we had accumulated net unrealized gains of $214 million and $194 million, both net of related tax effect, respectively, as a part of "Accumulated other comprehensive income (loss)" within "Total stockholders' equity (deficit)." The components of our available-for-sale investments are summarized in the table below.

	As of June 30, 2013				As of December 31, 2012			
	Marketable Investment Securities	Unrealized			Marketable Investment Securities	Unrealized		
		Gains	Losses	Net		Gains	Losses	Net
	(In thousands)							
Debt securities:								
VRDNs	$ 154,131	$ —	$ —	$ —	$ 130,306	$ —	$ —	$ —
ARS and other	46,454	1,154	(4,485)	(3,331)	43,921	1,375	(8,033)	(6,658)
ARS fair value election	72,737	—	—	—	62,251	—	—	—
Other (including restricted)	4,927,741	174,293	(5,012)	169,281	3,287,317	208,208	(1,203)	207,005
Equity securities	436,245	74,203	(1,701)	72,502	265,380	17,918	(11,537)	6,381
Total	$ 5,637,308	$ 249,650	$ (11,198)	$ 238,452	$ 3,789,175	$ 227,501	$ (20,773)	$ 206,728

As of June 30, 2013, restricted and non-restricted marketable investment securities included debt securities of $3.291 billion with contractual maturities within one year, $1.734 billion with contractual maturities after one year through five years and $176 million with contractual maturities after ten years. Actual maturities may differ from contractual maturities as a result of our ability to sell these securities prior to maturity.

Table of Contents

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued
(Unaudited)

Marketable Investment Securities in a Loss Position

The following table reflects the length of time that the individual securities, accounted for as available-for-sale, have been in an unrealized loss position, aggregated by investment category. As of June 30, 2013, the unrealized losses on our investments in equity securities represent investments in companies in the telecommunications industry. We are not aware of any specific factors which indicate the unrealized losses in these investments are due to anything other than temporary market fluctuations. As of June 30, 2013 and December 31, 2012, the unrealized losses on our investments in debt securities primarily represent investments in ARS. We have the ability to hold and do not intend to sell our investments in these debt securities before they recover or mature, and it is more likely than not that we will hold these investments until that time. In addition, we are not aware of any specific factors indicating that the underlying issuers of these debt securities would not be able to pay interest as it becomes due or repay the principal at maturity. Therefore, we believe that these changes in the estimated fair values of these marketable investment securities are related to temporary market fluctuations.

	As of			
	June 30, 2013		December 31, 2012	
	Fair Value	Unrealized Loss	Fair Value	Unrealized Loss
	(In thousands)			
Debt Securities:				
Less than 12 months	$ 2,811,860	$ (4,404)	$ 761,551	$ (909)
12 months or more	91,334	(5,093)	72,395	(8,327)
Equity Securities:				
Less than 12 months	52,460	(1,701)	154,566	(11,537)
12 months or more	—	—	—	—
Total	$ 2,955,654	$ (11,198)	$ 988,512	$ (20,773)

Fair Value Measurements

Our investments measured at fair value on a recurring basis were as follows:

	As of							
	June 30, 2013				December 31, 2012			
	Total	Level 1	Level 2	Level 3	Total	Level 1	Level 2	Level 3
	(In thousands)							
Cash equivalents (including restricted)	$ 3,752,515	$ 4,886	$ 3,747,629	$ —	$ 3,386,929	$ 67,833	$ 3,319,096	$ —
Debt securities:								
VRDNs	$ 154,131	$ —	$ 154,131	$ —	$ 130,306	$ —	$ 130,306	$ —
ARS and other	119,191	—	807	118,384	106,172	—	955	105,217
Other (including restricted)	4,927,741	11,045	4,916,696	—	3,287,317	11,182	3,276,135	—
Equity securities	436,245	436,245	—	—	265,380	265,380	—	—
Subtotal	5,637,308	447,290	5,071,634	118,384	3,789,175	276,562	3,407,396	105,217
Purchases and prepaid funding of derivative financial instruments	780,531	103,985	676,546	—	—	—	—	—
Total	$ 6,417,839	$ 551,275	$ 5,748,180	$ 118,384	$ 3,789,175	$ 276,562	$ 3,407,396	$ 105,217

As of June 30, 2013 and December 31, 2012, our Level 3 investments consisted predominately of ARS and other investment securities. On a quarterly basis we evaluate the reasonableness of significant unobservable inputs used in those measurements. The valuation models used for some of our ARS investments require an evaluation of the underlying instruments held by the trusts that issue these securities. For our other ARS and other investment

Table of Contents

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued
(Unaudited)

securities, our evaluation uses, among other things, the terms of the underlying instruments, the credit ratings of the issuers, current market conditions, and other relevant factors. Based on these factors, we assess the risk of realizing expected cash flows and we apply an observable discount rate that reflects this risk. We may also reduce our valuations to reflect a liquidity discount based on the lack of an active market for these securities.

Changes in Level 3 instruments were as follows:

	Level 3 Investment Securities
	(In thousands)
Balance as of December 31, 2012	$ 105,217
Net realized and unrealized gains (losses) included in earnings	10,565
Net realized and unrealized gains (losses) included in other comprehensive income (loss)	3,528
Purchases	—
Settlements	(926)
Issuances	—
Transfers from level 2 to level 3	—
Balance as of June 30, 2013	$ 118,384

During the six months ended June 30, 2013, we had no transfers in and out of Level 1 and Level 2 fair value measurements.

Gains and Losses on Sales and Changes in Carrying Values of Investments

"Other, net" within "Other Income (Expense)" included on our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss) included primarily changes in the carrying amount of our marketable and non-marketable investments as follows:

	For the Three Months Ended June 30,		For the Six Months Ended June 30,	
Other Income (Expense):	**2013**	**2012**	**2013**	**2012**
	(In thousands)			
Marketable investment securities - gains (losses) on sales/exchanges	$ 13,625	$ 3,117	$ 14,182	$ 7,736
Marketable investment securities - unrealized gains (losses) on investments accounted for at fair value	6,220	(11,541)	10,486	(3,062)
Marketable investment securities - gains (losses) on conversion of DBSD North America Notes (1)	—	—	—	99,445
Derivative financial instruments - unrealized gains (losses) (2)	76,273	—	84,531	—
Marketable investment securities - other-than-temporary impairments	—	—	(1,919)	(2,481)
Other	1,123	976	(299)	1,196
Total	$ 97,241	$ (7,448)	$ 106,981	$ 102,834

(1) During the six months ended June 30, 2012, we recognized a $99 million non-cash gain related to the conversion of our DBSD North America 7.5% Convertible Senior Secured Notes due 2009 in connection with the completion of the DBSD Transaction.
(2) During the three and six months ended June 30, 2013, we recorded unrealized gains of $76 million and $85 million, respectively, on our derivative financial instruments that are indexed to the trading price of the common equity securities of Sprint.

Table of Contents

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued
(Unaudited)

6. Inventory

Inventory consisted of the following:

	As of June 30, 2013	As of December 31, 2012
	(In thousands)	
DISH:		
Finished goods - DBS	$ 254,277	$ 259,307
Raw materials	141,899	122,769
Work-in-process	99,962	82,361
Total DISH inventory	496,138	464,437
Blockbuster:		
Rental library	41,565	81,956
Merchandise	39,585	76,180
Total Blockbuster inventory (1)	81,150	158,136
Wireless:		
Finished goods	—	1,147
Total Wireless inventory	—	1,147
Total inventory	$ 577,288	$ 623,720

(1) The decrease for the six months ended June 30, 2013 primarily related to the deconsolidation of Blockbuster UK on January 16, 2013 and Blockbuster domestic store closings during the six months ended June 30, 2013. See Note 9 for further information.

7. Property and Equipment and Intangible Assets

Property and Equipment

As we prepare for commercialization of our AWS-4 wireless spectrum licenses which are recorded in FCC Authorizations, interest expense related to their carrying value is being capitalized within "Property and equipment, net" on our Condensed Consolidated Balance Sheets based on our average borrowing rate for our debt. During the three months ended June 30, 2013 and 2012, we recorded capitalized interest of $34 million and $39 million, respectively. During the six months ended June 30, 2013 and 2012, we recorded capitalized interest of $69 million and $39 million, respectively.

Depreciation and amortization expense consisted of the following:

	For the Three Months Ended June 30, 2013	For the Three Months Ended June 30, 2012	For the Six Months Ended June 30, 2013	For the Six Months Ended June 30, 2012
	(In thousands)			
Equipment leased to customers	$ 192,598	$ 163,474	$ 359,810	$ 315,917
Satellites	33,866	38,616	67,732	72,453
Buildings, furniture, fixtures, equipment and other (1)	74,010	29,253	107,259	51,671
148 degree orbital location	—	67,776	—	67,776
Total depreciation and amortization	$ 300,474	$ 299,119	$ 534,801	$ 507,817

(1) During the second quarter 2013, we ceased operations of our TerreStar MSS business. As a result, we accelerated the depreciable lives of certain assets designed to support this business and the remaining net book value of $53 million was fully depreciated in the second quarter 2013.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued
(Unaudited)

Cost of sales and operating expense categories included in our accompanying Condensed Consolidated Statements of Operations and Comprehensive Income (Loss) do not include depreciation expense related to satellites or equipment leased to customers.

DBS Satellites. We currently utilize 15 satellites in geostationary orbit approximately 22,300 miles above the equator, six of which we own and depreciate over the useful life of each satellite. We currently utilize capacity on seven satellites from EchoStar, which are accounted for as operating leases. See Note 14 for further discussion of our satellite leases with EchoStar. We also lease two satellites from third parties, which are accounted for as capital leases and are depreciated over the shorter of the economic life of the satellite or the term of the satellite agreement.

AWS-4 Satellites. As a result of the DBSD Transaction and the TerreStar Transaction, three AWS-4 satellites were added to our satellite fleet, including two in-orbit satellites (D1 and T1) and one satellite under construction (T2). Based on the FCC's recently issued rules applicable to our AWS-4 authorizations no longer requiring an integrated satellite component or ground spare and on our evaluation of the satellite capacity needed for our wireless segment, among other things, we have now concluded that T2 and D1 represent excess satellite capacity for the potential commercialization of our wireless spectrum. As a result, we have written down the net book value of T2 from $270 million to $40 million and the net book value of D1 from $358 million to $150 million, and have recorded an impairment charge in our wireless segment of $438 million in "Impairment of long-lived assets" on our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss) for the three and six months ended June 30, 2013. Our fair value estimates for these satellites were determined based upon, among other things, probability-weighted analyses utilizing the income and/or the cost approaches. The estimates used in our fair value analysis are considered Level 3 in the fair value hierarchy. While the FCC's recently issued rules applicable to our AWS-4 authorizations no longer require an integrated satellite component or ground spare, we are currently planning on using T1 in the commercialization of our wireless spectrum or for other commercial purposes. If T1 is not used in the commercialization of our wireless spectrum, we may need to impair it in the future. As of June 30, 2013, the net book value for T1 was $366 million.

Satellite Anomalies. Operation of our DISH branded pay-TV service requires that we have adequate DBS satellite transmission capacity for the programming we offer. Moreover, current competitive conditions require that we continue to expand our offering of new programming. While we generally have had in-orbit DBS satellite capacity sufficient to transmit our existing channels and some backup capacity to recover the transmission of certain critical programming, our backup capacity is limited.

In the event of a failure or loss of any of our satellites, we may need to acquire or lease additional satellite capacity or relocate one of our other satellites and use it as a replacement for the failed or lost satellite. Such a failure could result in a prolonged loss of critical programming or a significant delay in our plans to expand programming as necessary to remain competitive and thus may have a material adverse effect on our business, financial condition and results of operations.

Prior to 2013, certain of our owned and leased satellites have experienced anomalies, some of which have had a significant adverse impact on their remaining useful life and/or commercial operation. There can be no assurance that future anomalies will not further impact the remaining useful life and/or commercial operation of any of the satellites in our fleet. See "*Long-Lived DBS Satellite Assets*" below for further discussion of evaluation of impairment of our DISH branded pay-TV DBS satellite fleet. There can be no assurance that we can recover critical transmission capacity in the event one or more of our in-orbit satellites were to fail. We generally do not carry commercial insurance for any of the in-orbit satellites that we use, other than certain satellites leased from third parties, and therefore, we will bear the risk associated with any uninsured in-orbit satellite failures. Recent developments with respect to certain of our satellites are discussed below.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued
(Unaudited)

Leased Satellites

EchoStar XII. Prior to 2010, EchoStar XII experienced anomalies resulting in the loss of electrical power available from its solar arrays, which reduced the number of transponders that could be operated. In September 2012, November 2012, and January 2013, EchoStar XII experienced additional solar array anomalies, which further reduced the electrical power available. EchoStar has informed us that EchoStar XII will likely experience further loss of available electrical power that will impact its operational capability, and EchoStar has reduced the remaining estimated useful life of the satellite to 18 months. Pursuant to our satellite lease agreement with EchoStar, we are entitled to a reduction in our monthly recurring lease payments in the event of a partial loss of satellite capacity or complete failure of the satellite. Since the number of useable transponders on EchoStar XII depends on, among other things, whether EchoStar XII is operated in CONUS, spot beam, or hybrid CONUS/spot beam mode, we are unable to determine at this time the actual number of transponders that will be available at any given time or how many transponders can be used during the remaining estimated life of the satellite. This satellite is currently not in service and serves as an in-orbit spare.

Long-Lived DBS Satellite Assets. We evaluate our DISH branded pay-TV DBS satellite fleet for impairment as one asset group and test for recoverability whenever events or changes in circumstances indicate that its carrying amount may not be recoverable. While certain of the anomalies discussed above, and previously disclosed, may be considered to represent a significant adverse change in the physical condition of an individual satellite, based on the redundancy designed within each satellite and considering the asset grouping, these anomalies are not considered to be significant events that would require evaluation for impairment recognition. Unless and until a specific satellite is abandoned or otherwise determined to have no service potential, the net carrying amount related to the satellite would not be written off.

Intangible Assets

As of June 30, 2013 and December 31, 2012, our identifiable intangibles subject to amortization consisted of the following:

	As of			
	June 30, 2013		December 31, 2012	
	Intangible Assets	Accumulated Amortization	Intangible Assets	Accumulated Amortization
	(In thousands)			
Technology-based	$ 35,078	$ (9,182)	$ 39,066	$ (8,345)
Trademarks	18,236	(5,199)	18,236	(3,907)
Contract-based	11,283	(10,515)	11,275	(10,127)
Customer relationships	6,974	(6,710)	6,974	(5,736)
Total	$ 71,571	$ (31,606)	$ 75,551	$ (28,115)

Amortization of these intangible assets is recorded on a straight line basis over an average finite useful life primarily ranging from approximately one to ten years. Amortization was $3 million and $3 million for the three months ended June 30, 2013 and 2012, respectively. Amortization was $7 million and $6 million for the six months ended June 30, 2013 and 2012, respectively.

Table of Contents

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued
(Unaudited)

Estimated future amortization of our identifiable intangible assets as of June 30, 2013 is as follows (in thousands):

For the Years Ended December 31,		
2013 (remaining six months)	$	5,269
2014		9,871
2015		9,150
2016		8,362
2017		3,138
Thereafter		4,175
Total	$	39,965

Goodwill

The excess of our investments in consolidated subsidiaries over net tangible and identifiable intangible asset value at the time of the investment is recorded as goodwill and is not subject to amortization but is subject to impairment testing annually or whenever indicators of impairment arise. In conducting our annual impairment test in 2012, we determined that the fair value is substantially in excess of the carrying value. As of June 30, 2013 and December 31, 2012, our goodwill was $126 million, which primarily related to our wireless segment.

8. Acquisitions

DBSD North America and TerreStar Transactions

On March 2, 2012, the FCC approved the transfer of 40 MHz of AWS-4 wireless spectrum licenses held by DBSD North America and TerreStar to us. On March 9, 2012, we completed the DBSD Transaction and the TerreStar Transaction, pursuant to which we acquired, among other things, certain satellite assets and wireless spectrum licenses held by DBSD North America and TerreStar. In addition, during the fourth quarter 2011, we and Sprint entered into a mutual release and settlement agreement (the "Sprint Settlement Agreement") pursuant to which all issues then being disputed relating to the DBSD Transaction and the TerreStar Transaction were resolved between us and Sprint, including, but not limited to, issues relating to costs allegedly incurred by Sprint to relocate users from the spectrum then licensed to DBSD North America and TerreStar. The total consideration to acquire the DBSD North America and TerreStar assets was approximately $2.860 billion. This amount includes $1.364 billion for the DBSD Transaction, $1.382 billion for the TerreStar Transaction, and the net payment of $114 million to Sprint pursuant to the Sprint Settlement Agreement.

Our consolidated FCC applications for approval of the license transfers from DBSD North America and TerreStar were accompanied by requests for waiver of the FCC's MSS "integrated service" and spare satellite requirements and various technical provisions. On March 21, 2012, the FCC released a Notice of Proposed Rule Making proposing the elimination of the integrated service, spare satellite and various technical requirements associated with the AWS-4 licenses. On December 11, 2012, the FCC approved rules that eliminated these requirements and gave notice of its proposed modification of our AWS-4 authorizations to, among other things, allow us to offer single-mode terrestrial terminals to customers who do not desire satellite functionality. On February 15, 2013, the FCC issued an order, which became effective on March 7, 2013, modifying our AWS-4 licenses to expand our terrestrial operating authority. The FCC's order of modification has imposed certain limitations on the use of a portion of this spectrum, including interference protections for other spectrum users and power and emission limits that we presently believe could render 5 MHz of our uplink spectrum (2000-2005 MHz) effectively unusable for terrestrial services and limit our ability to fully utilize the remaining 15 MHz of our uplink spectrum (2005-2020 MHz) for terrestrial services. These limitations could, among other things, impact the ongoing development of technical standards associated with our wireless business, and may have a material adverse effect on our ability to commercialize these licenses. The new rules also mandate certain interim and final build-out requirements for the licenses. By March 2017, we must provide terrestrial signal coverage and offer terrestrial service to at least 40% of the aggregate population represented by all of the areas covered by the licenses (the "AWS-4 Interim Build-out

Table of Contents

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued
(Unaudited)

Requirement"). By March 2020, we must provide terrestrial signal coverage and offer terrestrial service to at least 70% of the population in each area covered by an individual license (the "AWS-4 Final Build-out Requirement"). If we fail to meet the AWS-4 Interim Build-out Requirement, the AWS-4 Final Build-out Requirement will be accelerated by one year, from March 2020 to March 2019. If we fail to meet the AWS-4 Final Build-out Requirement, our terrestrial authorization for each license area in which we fail to meet the requirement will terminate. In addition, the FCC has adopted rules for a spectrum band that is adjacent to our AWS-4 licenses, known as the "H Block." Depending on the outcome of the standard-setting process for the H Block, the rules that the FCC adopted could further impact the remaining 15 MHz of our uplink spectrum (2005-2020 MHz), which may have a material adverse effect on our ability to commercialize the AWS-4 licenses.

We will need to make significant additional investments or partner with others to, among other things, finance the commercialization and build-out requirements of these licenses and our integration efforts including compliance with regulations applicable to the acquired licenses. Depending on the nature and scope of such commercialization, build-out, and integration efforts, any such investment or partnership could vary significantly. There can be no assurance that we will be able to develop and implement a business model that will realize a return on these spectrum licenses or that we will be able to profitably deploy the assets represented by these spectrum licenses, which may affect the carrying value of these assets and our future financial condition or results of operations.

Sprint/Clearwire

On April 15, 2013, we submitted a merger proposal to Sprint for a total consideration of $25.5 billion. On June 21, 2013, we decided to abandon our efforts to acquire Sprint, and Sprint completed its merger with SoftBank on July 10, 2013. In addition, on May 30, 2013, we, through a wholly-owned subsidiary, commenced a tender offer to purchase all outstanding shares of Class A Common Stock of Clearwire, including any Class A Common Stock issued in respect of outstanding shares of Class B Common Stock, for $4.40 per share in cash. We withdrew our tender offer on June 26, 2013, and Clearwire completed its merger with Sprint on July 9, 2013.

9. Blockbuster UK Administration

Blockbuster Entertainment Limited and Blockbuster GB Limited, our Blockbuster operating subsidiaries in the United Kingdom (collectively, the "Blockbuster UK Operating Entities"), entered into administration proceedings in the United Kingdom on January 16, 2013 (the "Administration"). Administrators were appointed by the English courts to sell or liquidate the assets of the Blockbuster UK Operating Entities for the benefit of their creditors. Since we no longer exercise control over operating decisions for the Blockbuster UK Operating Entities, we were required to deconsolidate our Blockbuster entities in the United Kingdom (collectively, "Blockbuster UK") on January 16, 2013. As a result of the Administration, we wrote down the assets of Blockbuster UK to their estimated net realizable value on our Consolidated Balance Sheets as of December 31, 2012, and we recorded a charge to "Cost of sales - equipment, merchandise, services, rental and other" of $21 million during the year ended December 31, 2012 on our Consolidated Statements of Operations and Comprehensive Income (Loss).

As of December 31, 2012, we had intercompany receivables due from Blockbuster UK of approximately $37 million that were previously eliminated in consolidation on our Consolidated Balance Sheets. As a result of deconsolidation of Blockbuster UK on January 16, 2013, the intercompany receivables are no longer eliminated in consolidation. We believe we will not receive the entire amount for these intercompany receivables in the Administration and accordingly, we recorded a $25 million impairment charge related to these intercompany receivables, to adjust these amounts to their estimated net realizable value for the year ended December 31, 2012. This impairment charge was recorded in "Other, net" within "Other Income (Expense)" on our Consolidated Statements of Operations and Comprehensive Income (Loss) and the resulting liability was recorded in "Other accrued expenses" on our Consolidated Balance Sheets as of December 31, 2012. In total, we recorded charges described above of approximately $46 million on a pre-tax basis on our Consolidated Statements of Operations and Comprehensive Income (Loss) for the year ended December 31, 2012 related to the Administration.

Table of Contents

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued
(Unaudited)

As of December 31, 2012, Blockbuster UK had total assets and liabilities as follows (in thousands):

Cash	$	14,072
Trade accounts receivable		1,153
Inventory		34,937
Other current assets		10,243
Restricted cash and marketable securities		484
Property and equipment		186
Trade accounts payable		(13,081)
Intercompany payable		(36,676)
Deferred revenue and other		(1,369)
Other accrued expenses		(9,949)
Total net assets	$	—

Upon deconsolidation on January 16, 2013, the above amounts were combined into one net asset and the intercompany receivables of $37 million, net of the impairment liability of $25 million described above, were recorded in "Other noncurrent assets, net" on our Condensed Consolidated Balance Sheets as a component of our investment in Blockbuster UK.

On March 25, 2013, Gordon Brothers Europe purchased certain assets and assumed certain liabilities of the Blockbuster UK Operating Entities through the Administration. As a result, we recorded an additional $2 million impairment charge related to the intercompany receivables, to adjust these amounts to their estimated net realizable value. This impairment charge was recorded in "Other, net" within "Other Income (Expense)" on our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss) for the three months ended March 31, 2013. In total, as of June 30, 2013, we have recorded charges of approximately $48 million on a pre-tax basis related to the Administration. The proceeds that we actually receive from the Administration and the actual impairment charge may differ from our estimates.

For the three and six months ended June 30, 2012, Blockbuster UK had $70 million and $140 million, respectively, of revenue and an operating loss of less than $1 million and $5 million, respectively. Upon deconsolidation on January 16, 2013, the revenue and expenses related to the operations of Blockbuster UK are no longer recorded in our Condensed Consolidated Financial Statements.

10. Long-Term Debt

5% Senior Notes due 2017

On May 28, 2013, we issued $1.25 billion aggregate principal amount of our four-year, 5% Senior Notes due May 15, 2017 at an issue price of 100%. The net proceeds from the 5% Senior Notes due 2017 were placed into escrow to finance a portion of the cash consideration for our proposed merger with Sprint. On June 21, 2013, we abandoned our efforts to acquire Sprint and, on June 24, 2013, we redeemed all of the 5% Senior Notes due 2017 at a redemption price equal to 100% of the aggregate principal amount of the 5% Senior Notes due 2017, plus accrued and unpaid interest.

During each of the three and six months ended June 30, 2013, we recorded $7 million in interest expense and deferred financing costs related to the issuance and redemption of our 5% Senior Notes due 2017 as "Interest expense, net of amounts capitalized" on our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss).

Table of Contents

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued
(Unaudited)

4 1/4% Senior Notes due 2018

On April 5, 2013, we issued $1.2 billion aggregate principal amount of our five-year, 4 1/4% Senior Notes due April 1, 2018 at an issue price of 100%. Interest accrues at an annual rate of 4 1/4% and is payable semi-annually in cash in arrears on April 1 and October 1 of each year, commencing on October 1, 2013.

The 4 1/4% Senior Notes due 2018 are redeemable, in whole or in part, at any time at a redemption price equal to 100% of the principal amount plus a "make-whole" premium, as defined in the related indenture, together with accrued and unpaid interest. Prior to April 1, 2016, we may also redeem up to 35.0% of the 4 1/4% Senior Notes due 2018 at a specified premium with the net cash proceeds from certain equity offerings or capital contributions.

The 4 1/4% Senior Notes due 2018 are:

- general unsecured senior obligations of DISH DBS;
- ranked equally in right of payment with all of DISH DBS' and the guarantors' existing and future unsecured senior debt; and
- ranked effectively junior to DISH DBS' and the guarantors' current and future secured senior indebtedness up to the value of the collateral securing such indebtedness.

The indenture related to the 4 1/4% Senior Notes due 2018 contains restrictive covenants that, among other things, impose limitations on the ability of DISH DBS and its restricted subsidiaries to:

- incur additional debt;
- pay dividends or make distributions on DISH DBS' capital stock or repurchase DISH DBS' capital stock;
- make certain investments;
- create liens or enter into sale and leaseback transactions;
- enter into transactions with affiliates;
- merge or consolidate with another company; and
- transfer or sell assets.

In the event of a change of control, as defined in the related indenture, we would be required to make an offer to repurchase all or any part of a holder's 4 1/4% Senior Notes due 2018 at a purchase price equal to 101% of the aggregate principal amount thereof, together with accrued and unpaid interest thereon, to the date of repurchase.

5 1/8% Senior Notes due 2020

On April 5, 2013, we issued $1.1 billion aggregate principal amount of our seven-year, 5 1/8% Senior Notes due May 1, 2020 at an issue price of 100%. Interest accrues at an annual rate of 5 1/8% and is payable semi-annually in cash in arrears on May 1 and November 1 of each year, commencing on November 1, 2013.

The 5 1/8% Senior Notes due 2020 are redeemable, in whole or in part, at any time at a redemption price equal to 100% of the principal amount plus a "make-whole" premium, as defined in the related indenture, together with accrued and unpaid interest. Prior to May 1, 2016, we may also redeem up to 35.0% of the 5 1/8% Senior Notes due 2020 at a specified premium with the net cash proceeds from certain equity offerings or capital contributions.

Table of Contents

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued
(Unaudited)

The 5 1/8% Senior Notes due 2020 are:

- general unsecured senior obligations of DISH DBS;
- ranked equally in right of payment with all of DISH DBS' and the guarantors' existing and future unsecured senior debt; and
- ranked effectively junior to DISH DBS' and the guarantors' current and future secured senior indebtedness up to the value of the collateral securing such indebtedness.

The indenture related to the 5 1/8% Senior Notes due 2020 contains restrictive covenants that, among other things, impose limitations on the ability of DISH DBS and its restricted subsidiaries to:

- incur additional debt;
- pay dividends or make distributions on DISH DBS' capital stock or repurchase DISH DBS' capital stock;
- make certain investments;
- create liens or enter into sale and leaseback transactions;
- enter into transactions with affiliates;
- merge or consolidate with another company; and
- transfer or sell assets.

In the event of a change of control, as defined in the related indenture, we would be required to make an offer to repurchase all or any part of a holder's 5 1/8% Senior Notes due 2020 at a purchase price equal to 101% of the aggregate principal amount thereof, together with accrued and unpaid interest thereon, to the date of repurchase.

6 1/4% Senior Notes due 2023

On May 28, 2013, we issued $1.35 billion aggregate principal amount of our ten-year, 6 1/4% Senior Notes due May 15, 2023 at an issue price of 100%. The net proceeds from the 6 1/4% Senior Notes due 2023 were placed into escrow to finance a portion of the cash consideration for our proposed merger with Sprint. On June 21, 2013, we abandoned our efforts to acquire Sprint and, on June 24, 2013, we redeemed all of the 6 1/4% Senior Notes due 2023 at a redemption price equal to 101% of the aggregate principal amount of the 6 1/4% Senior Notes due 2023, plus accrued and unpaid interest.

During each of the three and six months ended June 30, 2013, we recorded $23 million in premiums, interest expense and deferred financing costs related to the issuance and redemption of our 6 1/4% Senior Notes due 2023 as "Interest expense, net of amounts capitalized" on our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss).

Table of Contents

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued
(Unaudited)

Fair Value of our Long-Term Debt

The following table summarizes the carrying and fair values of our debt facilities as of June 30, 2013 and December 31, 2012:

	As of			
	June 30, 2013		December 31, 2012	
	Carrying Value	Fair Value	Carrying Value	Fair Value
	(In thousands)			
7 % Senior Notes due 2013 (1)	$ 500,000	$ 505,950	$ 500,000	$ 521,875
6 5/8% Senior Notes due 2014	1,000,000	1,042,500	1,000,000	1,078,500
7 3/4% Senior Notes due 2015	750,000	811,875	750,000	844,725
7 1/8% Senior Notes due 2016	1,500,000	1,623,750	1,500,000	1,683,750
4 5/8% Senior Notes due 2017	900,000	906,750	900,000	940,500
4 1/4% Senior Notes due 2018	1,200,000	1,161,000	—	—
7 7/8% Senior Notes due 2019	1,400,000	1,555,750	1,400,000	1,669,500
5 1/8% Senior Notes due 2020	1,100,000	1,097,250	—	—
6 3/4% Senior Notes due 2021	2,000,000	2,130,000	2,000,000	2,280,000
5 7/8% Senior Notes due 2022	2,000,000	2,030,000	2,000,000	2,150,000
5% Senior Notes due 2023	1,500,000	1,447,500	1,500,000	1,548,750
Mortgages and other notes payable	84,657	84,657	88,955	88,955
Subtotal	13,934,657	$ 14,396,982	11,638,955	$ 12,806,555
Capital lease obligations (2)	234,212	NA	249,145	NA
Total long-term debt and capital lease obligations (including current portion)	$ 14,168,869		$ 11,888,100	

(1) Our 7% Senior Notes with an aggregate principal balance of $500 million mature on October 1, 2013.
(2) Disclosure regarding fair value of capital leases is not required.

We estimated the fair value of our publicly traded long-term debt using market prices in less active markets (Level 2).

11. Stock-Based Compensation

Stock Incentive Plans

We maintain stock incentive plans to attract and retain officers, directors and key employees. Stock awards under these plans include both performance and non-performance based stock incentives. As of June 30, 2013, we had outstanding under these plans stock options to acquire 16.3 million shares of our Class A common stock and 2.0 million restricted stock units. Stock options granted prior to June 30, 2013 were granted with exercise prices equal to or greater than the market value of our Class A common stock at the date of grant and with a maximum term of approximately ten years. While historically we have issued stock awards subject to vesting, typically at the rate of 20% per year, some stock awards have been granted with immediate vesting and other stock awards vest only upon the achievement of certain company-specific subscriber, operational and/or financial goals. As of June 30, 2013, we had 69.6 million shares of our Class A common stock available for future grant under our stock incentive plans.

On December 28, 2012, we paid a dividend in cash of $1.00 per share on our outstanding Class A and Class B common stock to shareholders of record on December 14, 2012. In light of such dividend, during January 2013, the exercise price of 16.3 million stock options, affecting approximately 550 employees, was reduced by $0.77 per share (the "2012 Stock Option Adjustment"). Except as noted below, all information discussed below reflects the 2012 Stock Option Adjustment.

Table of Contents

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued
(Unaudited)

On January 1, 2008, we completed the distribution of our technology and set-top box business and certain infrastructure assets (the "Spin-off") into a separate publicly-traded company, EchoStar. In connection with the Spin-off, each DISH Network stock award was converted into an adjusted DISH Network stock award and a new EchoStar stock award consistent with the Spin-off exchange ratio. We are responsible for fulfilling all stock awards related to DISH Network common stock and EchoStar is responsible for fulfilling all stock awards related to EchoStar common stock, regardless of whether such stock awards are held by our or EchoStar's employees. Notwithstanding the foregoing, our stock-based compensation expense, resulting from stock awards outstanding at the Spin-off date, is based on the stock awards held by our employees regardless of whether such stock awards were issued by DISH Network or EchoStar. Accordingly, stock-based compensation that we expense with respect to EchoStar stock awards is included in "Additional paid-in capital" on our Condensed Consolidated Balance Sheets. As of March 31, 2013, we have recognized all of our stock-based compensation expense resulting from EchoStar stock awards outstanding at the Spin-off date held by our employees except for the 2005 LTIP performance awards, which were determined not to be probable as of June 30, 2013. See discussion of the 2005 LTIP below.

The following stock awards were outstanding:

	As of June 30, 2013			
	DISH Network Awards		EchoStar Awards	
Stock Awards Outstanding	Stock Options	Restricted Stock Units	Stock Options	Restricted Stock Units
Held by DISH Network employees	14,405,832	1,909,831	675,041	44,954
Held by EchoStar employees	1,890,855	76,999	N/A	N/A
Total	16,296,687	1,986,830	675,041	44,954

Stock Award Activity

Our stock option activity was as follows:

	For the Six Months Ended June 30, 2013	
	Options	Weighted-Average Exercise Price
Total options outstanding, beginning of period (1)	16,399,870	$ 19.04
Granted	2,206,500	$ 36.68
Exercised	(2,218,683)	$ 15.69
Forfeited and cancelled	(91,000)	$ 19.01
Total options outstanding, end of period	16,296,687	$ 21.07
Performance-based options outstanding, end of period (2)	7,840,500	$ 24.06
Exercisable at end of period	6,451,286	$ 16.80

(1) The beginning of period weighted-average exercise price of $19.04 does not reflect the 2012 Stock Option Adjustment, which occurred subsequent to December 31, 2012.

(2) These stock options are included in the caption "Total options outstanding, end of period." See discussion of the 2005 LTIP, 2008 LTIP, 2013 LTIP and other employee performance awards below.

Table of Contents

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued
(Unaudited)

We realized tax benefits from stock awards exercised as follows:

	For the Three Months Ended June 30,		For the Six Months Ended June 30,	
	2013	2012	2013	2012
	(In thousands)			
Tax benefit from stock awards exercised	$ 15,275	$ 10,204	$ 17,097	$ 11,947

Based on the closing market price of our Class A common stock on June 30, 2013, the aggregate intrinsic value of our stock options was as follows:

	As of June 30, 2013	
	Options Outstanding	Options Exercisable
	(In thousands)	
Aggregate intrinsic value	$ 349,508	$ 165,916

Our restricted stock unit activity was as follows:

	For the Six Months Ended June 30, 2013	
	Restricted Stock Units	Weighted-Average Grant Date Fair Value
Total restricted stock units outstanding, beginning of period	1,185,080	$ 22.99
Granted	985,000	$ 36.48
Vested	(125,250)	$ 29.07
Forfeited and cancelled	(58,000)	$ 30.25
Total restricted stock units outstanding, end of period	1,986,830	$ 28.96
Restricted Performance Units outstanding, end of period (1)	1,986,830	$ 28.96

(1) These Restricted Performance Units are included in the caption "Total restricted stock units outstanding, end of period." See discussion of the 2005 LTIP, 2008 LTIP, 2013 LTIP and other employee performance awards below.

Long-Term Performance-Based Plans

2005 LTIP. During 2005, we adopted a long-term, performance-based stock incentive plan (the "2005 LTIP"). The 2005 LTIP provides stock options and restricted stock units, either alone or in combination, which vest over seven years at the rate of 10% per year during the first four years, and at the rate of 20% per year thereafter. Exercise of the stock awards is subject to the foregoing vesting schedule and a performance condition that a company-specific subscriber goal is achieved by March 31, 2015.

Contingent compensation related to the 2005 LTIP will not be recorded in our financial statements unless and until management concludes achievement of the performance condition is probable. Given the competitive nature of our business, small variations in subscriber churn, gross new subscriber activation rates and certain other factors can significantly impact subscriber growth. Consequently, while it was determined that achievement of the goal was not probable as of June 30, 2013, that assessment could change in the future.

Table of Contents

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued
(Unaudited)

If all of the stock awards under the 2005 LTIP were vested and the goal had been met or if we had determined that achievement of the goal was probable during the six months ended June 30, 2013, we would have recorded total non-cash, stock-based compensation expense for our employees as indicated in the table below. If the goal is met and there are unvested stock awards at that time, the vested amounts would be expensed immediately on our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss), with the unvested portion recognized ratably over the remaining vesting period.

	2005 LTIP	
	Total	Vested Portion (1)
	(In thousands)	
DISH Network awards held by DISH Network employees	$ 36,924	$ 34,856
EchoStar awards held by DISH Network employees	6,372	6,115
Total	$ 43,296	$ 40,971

(1) Represents the amount of this award that has met the foregoing vesting schedule and would therefore vest upon achievement of the performance condition.

2008 LTIP. During 2008, we adopted a long-term, performance-based stock incentive plan (the "2008 LTIP"). The 2008 LTIP provided stock options and restricted stock units, either alone or in combination, which vested based on company-specific subscriber and financial goals.

As of June 30, 2013, 100% of the eligible 2008 LTIP awards had vested and all the associated non-cash stock-based compensation expense had been recognized on our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss).

Although no awards vested until the Company attained the performance goals, compensation related to the 2008 LTIP had been recorded based on management's assessment of the probability of meeting the remaining goals. We recognized the associated non-cash, stock-based compensation expense on our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss) over the estimated period to achieve the goals.

2013 LTIP. During 2013, we adopted a long-term, performance-based stock incentive plan (the "2013 LTIP"). The 2013 LTIP provides stock options and restricted stock units in combination, which vest based on company-specific subscriber and financial goals. Exercise of the stock awards is contingent on achieving these goals by September 30, 2022. Regardless of when achieved, no vesting will occur or payment will be made under the 2013 LTIP for any performance goals prior to March 31, 2014.

Although no awards vest until the Company attains the performance goals, compensation related to the 2013 LTIP will be recorded based on management's assessment of the probability of meeting the goals. If the goals are probable of being achieved, we will begin recognizing the associated non-cash, stock-based compensation expense on our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss) over the estimated period to achieve the goal. While we determined that achievement of any of these goals was not probable as of June 30, 2013, that assessment could change in the future.

Table of Contents

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued
(Unaudited)

Other Employee Performance Awards. In addition to the above long-term, performance stock incentive plans, we have other stock awards that vest based on certain other company-specific subscriber, operational and/or financial goals. Exercise of these stock awards is contingent on achieving certain performance goals.

Additional compensation related to these awards will be recorded based on management's assessment of the probability of meeting the remaining performance goals. If the remaining goals are probable of being achieved, we will begin recognizing the associated non-cash, stock-based compensation expense on our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss) over the estimated period to achieve the goal. See table below titled "Estimated Remaining Non-Cash, Stock-Based Compensation Expense."

Although no awards vest until the performance goals are attained, we determined that certain goals were probable of achievement and, as a result, recorded non-cash, stock-based compensation expense for the three and six months ended June 30, 2013 and 2012, as indicated in the table below titled "Non-Cash, Stock-Based Compensation Expense Recognized."

Given the competitive nature of our business, small variations in subscriber churn, gross new subscriber activation rates and certain other factors can significantly impact subscriber growth. Consequently, while it was determined that achievement of certain other company-specific subscriber, operational and/or financial goals was not probable as of June 30, 2013, that assessment could change in the future.

The non-cash stock-based compensation expense associated with these awards was as follows:

Non-Cash, Stock-Based Compensation Expense Recognized	For the Three Months Ended June 30, 2013	For the Three Months Ended June 30, 2012	For the Six Months Ended June 30, 2013	For the Six Months Ended June 30, 2012
	(In thousands)			
2008 LTIP	$ 1,061	$ 2,340	$ 3,071	$ 8,179
Other employee performance awards	862	1,433	2,863	4,572
Total non-cash, stock-based compensation expense recognized for performance-based awards	$ 1,923	$ 3,773	$ 5,934	$ 12,751

Estimated Remaining Non-Cash, Stock-Based Compensation Expense	2013 LTIP	Other Employee Performance Awards
	(In thousands)	
Remaining expense estimated to be recognized during 2013	$ —	$ 271
Estimated contingent expense subsequent to 2013	67,024	43,074
Total estimated remaining expense over the term of the plan	$ 67,024	$ 43,345

Table of Contents

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued
(Unaudited)

Of the 16.3 million stock options and 2.0 million restricted stock units outstanding under our stock incentive plans, the following awards were outstanding pursuant to our performance-based stock incentive plans:

	As of June 30, 2013	
Performance-Based Stock Options	**Number of Awards**	**Weighted-Average Exercise Price**
2005 LTIP	3,200,500	$ 20.33
2013 LTIP	1,940,000	$ 36.48
Other employee performance awards	2,700,000	$ 19.55
Total	7,840,500	$ 24.06
Restricted Performance Units		
2005 LTIP	301,830	
2013 LTIP	970,000	
Other employee performance awards	715,000	
Total	1,986,830	

Stock-Based Compensation

In connection with the 2012 Stock Option Adjustment, discussed previously, we recognized incremental non-cash, stock-based compensation expense of $5 million during the first quarter 2013 and will expense an additional $3 million over the remaining vesting period of the respective stock awards.

Total non-cash, stock-based compensation expense for all of our employees is shown in the following table and was allocated to the same expense categories as the base compensation for such employees:

	For the Three Months Ended June 30,		For the Six Months Ended June 30,	
	2013	2012	2013	2012
	(In thousands)			
Subscriber-related	$ 225	$ 357	$ 669	$ 1,194
General and administrative	3,817	6,660	14,693	29,005
Total non-cash, stock-based compensation	$ 4,042	$ 7,017	$ 15,362	$ 30,199

As of June 30, 2013, our total unrecognized compensation cost related to our non-performance based unvested stock awards was $18 million. This cost is based on an estimated future forfeiture rate of approximately 4.7% per year and will be recognized over a weighted-average period of approximately two years. Share-based compensation expense is recognized based on stock awards ultimately expected to vest and is reduced for estimated forfeitures. Forfeitures are estimated at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates. Changes in the estimated forfeiture rate can have a significant effect on share-based compensation expense since the effect of adjusting the rate is recognized in the period the forfeiture estimate is changed.

Table of Contents

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued
(Unaudited)

Valuation

The fair value of each stock option for the three and six months ended June 30, 2013 and 2012 was originally estimated at the date of the grant using a Black-Scholes option valuation model with the following assumptions:

	For the Three Months Ended June 30,		For the Six Months Ended June 30,	
Stock Options	**2013**	**2012**	**2013**	**2012**
Risk-free interest rate	0.91% - 1.86%	0.41% - 0.87%	0.91% - 1.93%	0.41% - 1.29%
Volatility factor	32.44% - 39.87%	33.15% - 38.87%	32.37% - 39.87%	33.15% - 39.34%
Expected term of options in years	5.7 - 9.8	3.1 - 5.8	5.7 - 10.0	3.1 - 5.9
Weighted-average fair value of options granted	\$14.49 - \$16.85	\$6.72 - \$10.72	\$14.49 - \$16.85	\$6.72 - \$12.69

On December 28, 2012 and December 1, 2011, we paid a \$1.00 and a \$2.00 cash dividend per share on our outstanding Class A and Class B common stock, respectively. While we currently do not intend to declare additional dividends on our common stock, we may elect to do so from time to time. Accordingly, the dividend yield percentage used in the Black-Scholes option valuation model is set at zero for all periods. The Black-Scholes option valuation model was developed for use in estimating the fair value of traded stock options which have no vesting restrictions and are fully transferable. Consequently, our estimate of fair value may differ from other valuation models. Further, the Black-Scholes option valuation model requires the input of highly subjective assumptions. Changes in the subjective input assumptions can materially affect the fair value estimate.

We will continue to evaluate the assumptions used to derive the estimated fair value of our stock options as new events or changes in circumstances become known.

12. Commitments and Contingencies

Wireless Spectrum

On March 2, 2012, the FCC approved the transfer of 40 MHz of AWS-4 wireless spectrum licenses held by DBSD North America and TerreStar to us. On March 9, 2012, we completed the DBSD Transaction and the TerreStar Transaction, pursuant to which we acquired, among other things, certain satellite assets and wireless spectrum licenses held by DBSD North America and TerreStar. The total consideration to acquire the DBSD North America and TerreStar assets was approximately \$2.860 billion.

On February 15, 2013, the FCC issued an order, which became effective on March 7, 2013, modifying our AWS-4 licenses to expand our terrestrial operating authority. The FCC's order of modification has imposed certain limitations on the use of a portion of this spectrum, including interference protections for other spectrum users and power and emission limits that we presently believe could render 5 MHz of our uplink spectrum (2000-2005 MHz) effectively unusable for terrestrial services and limit our ability to fully utilize the remaining 15 MHz of our uplink spectrum (2005-2020 MHz) for terrestrial services. These limitations could, among other things, impact the ongoing development of technical standards associated with our wireless business, and may have a material adverse effect on our ability to commercialize these licenses. The new rules also mandate certain interim and final build-out requirements for the licenses. By March 2017, we must provide terrestrial signal coverage and offer terrestrial service to at least 40% of the aggregate population represented by all of the areas covered by the licenses (the "AWS-4 Interim Build-out Requirement"). By March 2020, we must provide terrestrial signal coverage and offer terrestrial service to at least 70% of the population in each area covered by an individual license (the "AWS-4 Final Build-out Requirement"). If we fail to meet the AWS-4 Interim Build-out Requirement, the AWS-4 Final Build-out Requirement will be accelerated by one year, from March 2020 to March 2019. If we fail to meet the AWS-4 Final Build-out Requirement, our terrestrial authorization for each license area in which we fail to meet the requirement will terminate. In addition, the FCC has adopted rules for a spectrum band that is adjacent to our AWS-4 licenses,

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued
(Unaudited)

known as the "H Block." Depending on the outcome of the standard-setting process for the H Block, the rules that the FCC adopted could further impact the remaining 15 MHz of our uplink spectrum (2005-2020 MHz), which may have a material adverse effect on our ability to commercialize the AWS-4 licenses. See Note 8 for further information.

In 2008, we paid $712 million to acquire certain 700 MHz wireless spectrum licenses, which were granted to us by the FCC in February 2009. These licenses mandate certain interim and final build-out requirements. By June 2013, we must provide signal coverage and offer service to at least 35% of the geographic area in each area covered by each individual license (the "700 MHz Interim Build-out Requirement"). By the end of our license term (June 2019), we must provide signal coverage and offer service to at least 70% of the geographic area in each area covered by each individual license (the "700 MHz Final Build-out Requirement"). We have recently notified the FCC of our plans to commence signal coverage in select cities within certain of these areas, but we have not yet developed plans for providing signal coverage and offering service in all of these areas. If we fail to meet the 700 MHz Interim Build-out Requirement, the term of our licenses will be reduced, from June 2019 to June 2017, and we could face possible fines and the reduction of license area(s). On June 12, 2013, we filed a request with the FCC for an extension of the 700 MHz Interim Build-out Requirement. We cannot predict the timing or outcome of any FCC action on our extension request. If we fail to meet the 700 MHz Final Build-out Requirement, our authorization for each license area in which we fail to meet the requirement will terminate.

We will need to make significant additional investments or partner with others to, among other things, finance the commercialization and build-out requirements of these licenses and our integration efforts including compliance with regulations applicable to the acquired licenses. Depending on the nature and scope of such commercialization, build-out, and integration efforts, any such investment or partnership could vary significantly. There can be no assurance that we will be able to develop and implement a business model that will realize a return on these spectrum licenses or that we will be able to profitably deploy the assets represented by these spectrum licenses, which may affect the carrying value of these assets and our future financial condition or results of operations.

Guarantees

In connection with the Spin-off, we distributed certain satellite lease agreements to EchoStar and remained the guarantor under those capital leases for payments totaling approximately $77 million over approximately the next 20 months.

In addition, during the third quarter 2009, EchoStar entered into a new satellite transponder service agreement for Nimiq 5 through 2024. We sublease this capacity from EchoStar and also guarantee a certain portion of EchoStar's obligation under their satellite transponder service agreement through 2019. As of June 30, 2013, the remaining obligation of our guarantee is $407 million.

As of June 30, 2013, we have not recorded a liability on the balance sheet for any of these guarantees.

Contingencies

Separation Agreement

In connection with the Spin-off, we entered into a separation agreement with EchoStar that provides, among other things, for the division of certain liabilities, including liabilities resulting from litigation. Under the terms of the separation agreement, EchoStar has assumed certain liabilities that relate to its business including certain designated liabilities for acts or omissions that occurred prior to the Spin-off. Certain specific provisions govern intellectual property related claims under which, generally, EchoStar will only be liable for its acts or omissions following the Spin-off and we will indemnify EchoStar for any liabilities or damages resulting from intellectual property claims relating to the period prior to the Spin-off as well as our acts or omissions following the Spin-off.

Table of Contents

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued
(Unaudited)

Litigation

We are involved in a number of legal proceedings (including those described below) concerning matters arising in connection with the conduct of our business activities. Many of these proceedings are at preliminary stages, and many of these proceedings seek an indeterminate amount of damages. We regularly evaluate the status of the legal proceedings in which we are involved to assess whether a loss is probable or there is a reasonable possibility that a loss or an additional loss may have been incurred and to determine if accruals are appropriate. If accruals are not appropriate, we further evaluate each legal proceeding to assess whether an estimate of the possible loss or range of possible loss can be made.

For certain cases described on the following pages, management is unable to provide a meaningful estimate of the possible loss or range of possible loss because, among other reasons, (i) the proceedings are in various stages; (ii) damages have not been sought; (iii) damages are unsupported and/or exaggerated; (iv) there is uncertainty as to the outcome of pending appeals or motions; (v) there are significant factual issues to be resolved; and/or (vi) there are novel legal issues or unsettled legal theories to be presented or a large number of parties (as with many patent-related cases). For these cases, however, management does not believe, based on currently available information, that the outcomes of these proceedings will have a material adverse effect on our financial condition, though the outcomes could be material to our operating results for any particular period, depending, in part, upon the operating results for such period.

c4cast.com, Inc.

On May 7, 2012, c4cast.com, Inc. filed a complaint against us and our wholly-owned subsidiary, Blockbuster L.L.C., in the United States District Court for the Eastern District of Texas alleging infringement of United States Patent No. 7,958,204 (the "204 patent"), which is entitled "Community-Selected Content." The 204 patent relates to systems, methods and techniques for providing resources to participants over an electronic network.

We intend to vigorously defend this case. In the event that a court ultimately determines that we infringe the asserted patent, we may be subject to substantial damages, which may include treble damages, and/or an injunction that could require us to materially modify certain features that we currently offer to consumers. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

ESPN

During 2008, our wholly-owned subsidiary, DISH Network L.L.C., filed a lawsuit against ESPN, Inc., ESPN Classic, Inc., ABC Cable Networks Group, Soapnet L.L.C. and International Family Entertainment (collectively, "ESPN") for breach of contract in New York State Supreme Court. Our complaint alleges that ESPN failed to provide us with certain HD feeds of the Disney Channel, ESPN News, Toon and ABC Family. In October 2011, the jury returned a verdict in favor of the defendants, which the New York State Supreme Court, Appellate Division, First Department (the "First Department") affirmed on April 2, 2013. We have sought leave to further appeal.

ESPN had asserted a counterclaim alleging that we owed approximately $35 million under the applicable affiliation agreements. On April 15, 2009, the New York State Supreme Court granted, in part, ESPN's motion for summary judgment on the counterclaim, finding that we are liable for some of the amount alleged to be owing but that the actual amount owing is disputed. On December 29, 2010, the First Department affirmed the partial grant of ESPN's motion for summary judgment on the counterclaim. After the partial grant of ESPN's motion for summary judgment, ESPN sought an additional $30 million under the applicable affiliation agreements. On March 15, 2010, the New York State Supreme Court ruled that we owe the full amount of approximately $66 million under the applicable affiliation agreements. As of December 31, 2010, we had $42 million recorded as a "Litigation accrual" on our Consolidated Balance Sheets.

Table of Contents

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued
(Unaudited)

On June 21, 2011, the First Department affirmed the New York State Supreme Court's ruling that we owe approximately $66 million under the applicable affiliation agreements and, on October 18, 2011, denied our motion for leave to appeal that decision to New York's highest court, the New York Court of Appeals. We sought leave to appeal directly to the New York Court of Appeals and, on January 10, 2012, the New York Court of Appeals dismissed our motion for leave on the ground that the ruling upon which we appealed does not fully resolve all claims in the action. As a result of the First Department's June 2011 ruling, during 2011, we recorded $24 million of "Litigation Expense" on our Consolidated Statements of Operations and Comprehensive Income (Loss). On October 11, 2012, the New York State Supreme Court awarded ESPN $5 million in attorneys' fees as the prevailing party on both our claim and ESPN's counterclaim. As a result, we recorded $5 million of "General and administrative expenses" and increased our "Litigation accrual" to a total of $71 million related to this case as of December 31, 2012. During the first quarter 2013, we paid $71 million to ESPN related to the counterclaim and attorneys' fees and $12 million for accrued interest, which amounts we may be able to recover if our further appeals are successful. We intend to vigorously prosecute and defend this case.

The Hopper Litigation

On May 24, 2012, our wholly-owned subsidiary, DISH Network L.L.C., filed a lawsuit in the United States District Court for the Southern District of New York against American Broadcasting Companies, Inc., CBS Corporation, Fox Entertainment Group, Inc., Fox Television Holdings, Inc., Fox Cable Network Services, L.L.C. and NBCUniversal, LLC. In the lawsuit, we are seeking a declaratory judgment that we are not infringing any defendant's copyright, or breaching any defendant's retransmission consent agreement, by virtue of the PrimeTime Anytime™ and AutoHop™ features of our Hopper® set-top box. A consumer can use the PrimeTime Anytime feature, at his or her option, to record certain primetime programs airing on ABC, CBS, Fox, and/or NBC up to every night, and to store those recordings for up to eight days. A consumer can use the AutoHop feature, at his or her option, to watch certain recordings the subscriber made with our PrimeTime Anytime feature, commercial-free, if played back the next day after the show's original airing.

Later on May 24, 2012, (i) Fox Broadcasting Company, Twentieth Century Fox Film Corp. and Fox Television Holdings, Inc. filed a lawsuit against us and DISH Network L.L.C. in the United States District Court for the Central District of California, alleging that the PrimeTime Anytime feature, the AutoHop feature, as well as Sling placeshifting functionality infringe their copyrights and breach their retransmission consent agreements, (ii) NBC Studios LLC, Universal Network Television, LLC, Open 4 Business Productions LLC and NBCUniversal LLC filed a lawsuit against us and DISH Network L.L.C. in the United States District Court for the Central District of California, alleging that the PrimeTime Anytime feature and the AutoHop feature infringe their copyrights, and (iii) CBS Broadcasting Inc., CBS Studios Inc. and Survivor Productions LLC filed a lawsuit against us and DISH Network L.L.C. in the United States District Court for the Central District of California, alleging that the PrimeTime Anytime feature and the AutoHop feature infringe their copyrights. The Central District of California matters have been assigned to a single judge, but remain separate cases.

As a result of certain parties' competing venue-related motions brought in both the New York and California actions, and certain networks' filing various counterclaims and amended complaints, the claims are presently pending in the following venues: (1) the copyright and contract claims regarding the ABC and CBS parties are pending in New York; and (2) the copyright and contract claims regarding the Fox and NBC parties are pending in California. The NBC plaintiffs and Fox plaintiffs have filed amended complaints in their respective California actions adding copyright claims against EchoStar and EchoStar Technologies L.L.C. ("EchoStar Technologies"), a wholly-owned subsidiary of EchoStar. In addition, the Fox plaintiffs' amended complaint added claims challenging the Hopper Transfers™ feature of our second-generation Hopper set-top box. Additionally, both the ABC and CBS parties have filed counterclaims in the New York action adding copyright claims against EchoStar Technologies, and the CBS parties have filed a counterclaim alleging that we fraudulently concealed the AutoHop feature when negotiating renewal of our CBS retransmission consent agreement.

Table of Contents

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued
(Unaudited)

On September 21, 2012, the California court heard the Fox plaintiffs' motion for a preliminary injunction to enjoin the Hopper set-top box's PrimeTime Anytime and AutoHop features and, on November 7, 2012, entered an order denying the motion. The Fox plaintiffs appealed this order. On July 24, 2013, the United States Court of Appeals for the Ninth Circuit affirmed the denial of the Fox plaintiffs' motion for a preliminary injunction as to the PrimeTime Anytime and AutoHop features. On March 27, 2013, at the request of the parties, the Central District of California granted a stay of all proceedings in the action brought by the NBC plaintiffs, pending resolution of the appeal by the Fox plaintiffs.

On November 23, 2012, the ABC plaintiffs filed a motion in the New York action for a preliminary injunction to enjoin the Hopper set-top box's PrimeTime Anytime and AutoHop features, and we and the ABC plaintiffs have filed briefs related to that motion. On February 21, 2013, the Fox plaintiffs filed a second motion for preliminary injunction against: (i) us seeking to enjoin the Hopper Transfers feature in our second-generation Hopper set-top box, alleging breach of their retransmission consent agreement; and (ii) us and EchoStar Technologies seeking to enjoin the Sling placeshifting functionality in our second-generation Hopper set-top box, alleging copyright infringement and breach of their retransmission consent agreement. A hearing on that motion was held on April 19, 2013 and the court has not ruled on the motion.

We intend to vigorously prosecute and defend our position in these cases. In the event that a court ultimately determines that we infringe the asserted copyrights, or are in breach of any of the retransmission consent agreements, we may be subject to substantial damages, and/or an injunction that could require us to materially modify certain features that we currently offer to consumers. In addition, as a result of this litigation, we may not be able to renew certain of our retransmission consent agreements and other programming agreements on favorable terms or at all. If we are unable to renew these agreements, there can be no assurance that we would be able to obtain substitute programming, or that such substitute programming would be comparable in quality or cost to our existing programming. Loss of access to existing programming could have a material adverse effect on our business, financial condition and results of operations, including, among other things, our gross new subscriber activations and subscriber churn rate. We cannot predict with any degree of certainty the outcome of these suits or determine the extent of any potential liability or damages.

Norman IP Holdings, LLC

On September 15, 2011, Norman IP Holdings, LLC ("Norman") filed a patent infringement complaint (the "2011 Action") against Lexmark International Corporation ("Lexmark") and Brother International Corporation ("Brother") in the United States District Court for the Eastern District of Texas alleging infringement of U.S. Patent No. 5,592,555 (the "555 patent"), U.S. Patent No. 5,530,597 (the "597 patent") and U.S. Patent No. 5,502,689 (the "689 patent") by Lexmark, and infringement of the 555 patent and the 689 patent by Brother. On January 27, 2012, Norman filed a second amended complaint in the 2011 Action that added us as a defendant, among others, in which it asserted the 555 patent and the 689 patent against us. On September 21, 2012, Norman served us with preliminary infringement contentions related to the 555 patent and the 689 patent, as well as the 597 patent, which outlined Norman's claims with respect to certain DISH products. On February 8, 2013, Norman filed a third amended complaint in the 2011 Action, in which it added claims against us alleging infringement of the 597 patent. On April 8, 2013, Norman filed a fourth amended complaint in the 2011 Action, in which it added new claims against us alleging infringement of additional DISH products. On May 1, 2013, Norman filed a fifth amended complaint in the 2011 Action, in which it named Mercedes-Benz USA, LLC, Volkswagen Group of America, Inc., Xerox Corporation, ZTE (USA) Inc., and ZTE Solutions, Inc. as defendants, in addition to us. On July 9, 2013, the Court ordered Norman to file a new sixth amended complaint limiting Norman's claims against us to those specifically referenced in the September 21, 2012 preliminary infringement contentions. As a result, on July 10, 2013, Norman filed a sixth amended complaint in the 2011 Action, in which it asserted claims against our wholly-owned subsidiary, DISH Network L.L.C., replacing us as defendant, alleging that the use of certain Broadcom chipsets in DISH DVR systems infringes the 689 patent. In addition, Norman withdrew all infringement claims against us regarding the 555 patent and the 597 patent. On July 12, 2013, we filed a motion to dismiss the 2011 Action,

Table of Contents

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued
(Unaudited)

because Norman failed to comply with the Court's July 9, 2013 order. Our motion to dismiss is pending, and a trial date in the 2011 Action has been set for January 5, 2015.

In addition, on May 10, 2013, Norman filed a separate patent infringement complaint (the "2013 Action") against us in the United States District Court for the Eastern District of Texas, asserting infringement of the 555, 597 and 689 patents, as well as U.S. Patent No. 5,608,873 (the "873 patent") and U.S. Patent Number 5,771,394 (the "394 patent"). The infringement claims asserted in the 2013 Action relate to different DISH products than Norman identified in the 2011 Action. On June 26, 2013, we filed a motion to dismiss the 2013 Action, because Norman failed to join necessary parties. Our motion to dismiss is pending, and no trial date has been set for the 2013 Action.

The 689 patent, which is asserted in the 2011 Action and the 2013 Action, relates to a clock generator capable of shut-down mode and clock generation method. In the 2013 Action, the 555 patent relates to a wireless communications privacy method and system, the 597 patent relates to an interrupt enable circuit that allows devices to exit processes without using a hardware reset, the 873 patent relates to a device and method for providing inter-processor communication in a multi-processor architecture, and the 394 patent relates to a servo loop control apparatus having a master microprocessor and at least one autonomous streamlined signal processor. Norman is an entity that seeks to license an acquired patent portfolio without itself practicing any of the claims recited therein.

We intend to vigorously defend these cases. In the event that a court ultimately determines that we infringe any of the asserted patents, we may be subject to substantial damages, which may include treble damages, and/or an injunction that could cause us to materially modify certain features that we currently offer to consumers. We cannot predict with any degree of certainty the outcome of these suits or determine the extent of any potential liability or damages.

Olympic Developments AG, LLC

On January 20, 2011, Olympic Developments AG, LLC ("Olympic") filed suit against our wholly-owned subsidiary, DISH Network L.L.C., Atlantic Broadband, Inc., Bright House Networks, LLC, Cable One, Inc., Cequel Communications Holdings I, LLC, CSC Holdings, LLC, GCI Communication Corp., Insight Communications Company, Inc., Knology, Inc., Mediacom Communications Corporation and RCN Telecom Services, LLC in the United States District Court for the Central District of California alleging infringement of United States Patent Nos. 5,475,585 and 6,246,400. The patents relate to on-demand services. Olympic is an entity that seeks to license an acquired patent portfolio without itself practicing any of the claims recited therein. On June 13, 2011, the case was transferred to the Northern District of California. On November 7, 2011, the case was stayed pending reexamination by the U.S. Patent and Trademark Office. On March 12, 2013, Olympic voluntarily dismissed its claims against us without prejudice.

Personalized Media Communications, Inc.

During 2008, Personalized Media Communications, Inc. ("PMC") filed suit against us, EchoStar and Motorola Inc. in the United States District Court for the Eastern District of Texas alleging infringement of United States Patent Nos. 5,109,414, 4,965,825, 5,233,654, 5,335,277, and 5,887,243, which relate to satellite signal processing. PMC is an entity that seeks to license an acquired patent portfolio without itself practicing any of the claims recited therein. Subsequently, Motorola Inc. settled with PMC, leaving EchoStar and us as defendants. On July 18, 2012, pursuant to a Court order, PMC filed a Second Amended Complaint that added Rovi Guides, Inc. (f/k/a/ Gemstar-TV Guide International, Inc.) and TVG-PMC, Inc. (collectively, "Gemstar") as a party, and added a new claim against all defendants seeking a declaratory judgment as to the scope of Gemstar's license to the patents in suit, under which we and EchoStar are sublicensees. A new trial date has not yet been set.

We intend to vigorously defend this case. In the event that a court ultimately determines that we infringe any of the asserted patents, we may be subject to substantial damages, which may include treble damages, and/or an injunction

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued
(Unaudited)

that could cause us to materially modify certain features that we currently offer to consumers. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

Pragmatus Telecom, LLC

On December 5, 2012, Pragmatus Telecom, LLC ("Pragmatus") filed a patent infringement lawsuit against us in the United States District Court for the District of Delaware alleging infringement of United States Patent Nos. 6,311,231, 6,668,286, and 7,159,043. Pragmatus alleges that the click-to-chat and click-to-call customer support features of the DISH web site and call center management systems infringe these patents. Pragmatus has brought similar complaints against more than 40 other companies, including Comcast, AT&T, Sprint, Frontier Communications, Bright House, UPS, FedEx, GM and Ford. Pragmatus is an entity that seeks to license an acquired patent portfolio without itself practicing any of the claims recited therein. On March 5, 2013, Pragmatus voluntarily dismissed with prejudice all claims in the action relating to allegedly infringing features provided by certain of our vendors. Pragmatus also voluntarily dismissed without prejudice all remaining claims in the action.

Premier International Associates, LLC

On August 3, 2012, Premier International Associates, LLC ("Premier International Associates") filed a complaint against us, our wholly-owned subsidiaries, DISH DBS and DISH Network L.L.C., and EchoStar and its wholly-owned subsidiary, EchoStar Technologies L.L.C., in the United States District Court for the Northern District of Illinois alleging infringement of United States Patent No. 6,243,725 (the "725 patent"), which is entitled "List Building System." The 725 patent relates to a system for building an inventory of audio/visual works. Premier International Associates is an entity that seeks to license an acquired patent portfolio without itself practicing any of the claims recited therein. On March 27, 2013, Premier International Associates dismissed the action against us and the EchoStar defendants with prejudice, pursuant to a settlement under which we and the EchoStar defendants made an immaterial payment in exchange for a license to certain patents and patent applications.

Preservation Technologies, LLC

In December 2011, Preservation Technologies, LLC ("Preservation Technologies") filed suit against us in the United States District Court for the Central District of California. In the Operative Seventh Amended Complaint, filed on March 22, 2013, Preservation Technologies also names Netflix, Inc., Hulu, LLC, AT&T Services, Inc., Cox Communications, Inc., Disney Online, American Broadcasting Companies, Inc., Yahoo! Inc., Wal-Mart Stores, Inc., Vudu, Inc. and ESPN Internet Ventures as defendants. Preservation Technologies alleges that our BLOCKBUSTER On Demand, DISH branded pay-TV and DISH Online services and our Hopper and Joey® set-top boxes infringe U.S. Patent Nos. 5,813,014, 5,832,499, 6,092,080, 6,353,831, 6,574,638, 6,199,060, 5,832,495, 6,549,911, 6,212,527 and 6,477,537. The patents relate to digital libraries, the management of multimedia assets, and the cataloging of multimedia data. Preservation Technologies is an entity that seeks to license an acquired patent portfolio without itself practicing any of the claims recited therein.

We intend to vigorously defend this case. In the event that a court ultimately determines that we infringe any of the asserted patents, we may be subject to substantial damages, which may include treble damages, and/or an injunction that could cause us to materially modify certain features that we currently offer to consumers. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

Ronald A. Katz Technology Licensing, L.P.

During 2007, Ronald A. Katz Technology Licensing, L.P. ("Katz") filed a patent infringement action against our wholly-owned subsidiary, DISH Network L.L.C., in the United States District Court for the Northern District of California. The suit originally alleged infringement of 19 patents owned by Katz. The patents relate to interactive voice response, or IVR, technology. The case has been transferred and consolidated for pretrial purposes in the

Table of Contents

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued
(Unaudited)

United States District Court for the Central District of California by order of the Judicial Panel on Multidistrict Litigation. Only four patents remain in the case against us, of which all are expired and two are subject to granted reexamination proceedings before the U.S. Patent and Trademark Office.

We intend to vigorously defend this case. In the event that a court ultimately determines that we infringe any of the asserted patents, we may be subject to substantial damages, which may include treble damages, and/or an injunction that could cause us to materially modify certain features that we currently offer to consumers. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

Technology Development and Licensing L.L.C.

On January 22, 2009, Technology Development and Licensing L.L.C. ("TDL") filed suit against us and EchoStar in the United States District Court for the Northern District of Illinois alleging infringement of United States Patent No. Re. 35,952, which relates to certain favorite channel features. TDL is an entity that seeks to license an acquired patent portfolio without itself practicing any of the claims recited therein. In July 2009, the Court granted our motion to stay the case pending two reexamination petitions before the U.S. Patent and Trademark Office.

We intend to vigorously defend this case. In the event that a court ultimately determines that we infringe the asserted patent, we may be subject to substantial damages, which may include treble damages, and/or an injunction that could cause us to materially modify certain features that we currently offer to consumers. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

TQP Development, LLC

On April 4, 2012, TQP Development, LLC ("TQP Development") filed suit against our wholly-owned subsidiary, DISH Network L.L.C., in the United States District Court for the Eastern District of Texas alleging infringement of United States Patent No. 5,412,730 titled "Encrypted Data Transmission System Employing Means for Randomly Altering the Encryption Keys." TQP Development is an entity that seeks to license an acquired patent portfolio without itself practicing any of the claims recited therein. The trial date has been set for January 6, 2014.

We intend to vigorously defend this case. In the event that a court ultimately determines that we infringe the asserted patent, we may be subject to substantial damages, which may include treble damages, and/or an injunction that could cause us to materially modify certain features that we currently offer to consumers. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

Tse

On May 30, 2012, Ho Keung Tse filed a complaint against our wholly-owned subsidiary, Blockbuster L.L.C., in the United States District Court for the Eastern District of Texas alleging infringement of United States Patent No. 6,665,797, which is entitled "Protection of Software Again [sic] Against Unauthorized Use." Mr. Tse is the named inventor on the patent. On the same day that he sued Blockbuster, Mr. Tse filed a separate action in the same court alleging infringement of the same patent against Google, Samsung and HTC. He also has earlier-filed litigation on the same patent pending in the United States District Court for the Northern District of California against Sony Connect, Inc., Napster, Inc., Apple Computer, Inc., Realnetworks, Inc., and MusicMatch, Inc. On March 8, 2013, the Court granted Blockbuster L.L.C.'s motion to transfer the matter to the United States District Court for the Northern District of California, the same venue where the matter against Google, Samsung and HTC also was transferred. On July 26, 2013, we filed a summary judgment motion, which is scheduled for a hearing on August 30, 2013.

We intend to vigorously defend this case. In the event that a court ultimately determines that we infringe the asserted patent, we may be subject to substantial damages, which may include treble damages, and/or an injunction

Table of Contents

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued
(Unaudited)

that could require us to materially modify certain features that we currently offer to consumers. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

Other

In addition to the above actions, we are subject to various other legal proceedings and claims which arise in the ordinary course of business, including, among other things, disputes with programmers regarding fees. In our opinion, the amount of ultimate liability with respect to any of these actions is unlikely to materially affect our financial position, results of operations or liquidity, though the outcomes could be material to our operating results for any particular period, depending, in part, upon the operating results for such period.

13. Segment Reporting

Operating segments are components of an enterprise for which separate financial information is available and regularly evaluated by the chief operating decision maker(s) of an enterprise. Operating income is the primary measure used by our chief operating decision maker to evaluate segment operating performance. We operate three primary business segments.

- ***DISH.*** The DISH branded DBS pay-TV service had 14.014 million subscribers in the United States as of June 30, 2013. The DISH branded pay-TV service consists of FCC licenses authorizing us to use DBS and FSS spectrum, our owned and leased satellites, receiver systems, third party broadcast operations, customer service facilities, a leased fiber network, in-home service and call center operations, and certain other assets utilized in our operations. In addition, we market broadband services under the dishNET brand.

- ***Blockbuster.*** On April 26, 2011, we completed the Blockbuster Acquisition. The financial results of our Blockbuster operations are included in our financial results beginning April 26, 2011. Blockbuster primarily offers movies and video games for sale and rental through multiple distribution channels such as retail stores, by-mail, digital devices, the blockbuster.com website and the BLOCKBUSTER On Demand service.

- ***Wireless.*** In 2008, we paid $712 million to acquire certain 700 MHz wireless spectrum licenses, which were granted to us by the FCC in February 2009 subject to certain interim and final build-out requirements. On March 9, 2012, we completed the DBSD Transaction and the TerreStar Transaction, pursuant to which we acquired, among other things, 40 MHz of AWS-4 wireless spectrum licenses held by DBSD North America and TerreStar. The financial results of DBSD North America and TerreStar are included in our financial results beginning March 9, 2012. The total consideration to acquire the DBSD North America and TerreStar assets was approximately $2.860 billion. On February 15, 2013, the FCC issued an order, which became effective on March 7, 2013, modifying our AWS-4 licenses to expand our terrestrial operating authority. The FCC's order of modification has imposed certain limitations on the use of a portion of the spectrum and also mandated certain interim and final build-out requirements for the licenses. See Note 8 for further information.

  During the second quarter 2013, we ceased operations of our TerreStar MSS business, which had less than 2,000 customers and had less than $1 million in revenue for each of the three and six months ended June 30, 2013. We currently generate an immaterial amount of revenue and incur expenses associated with certain satellite operations and regulatory compliance matters from our wireless spectrum assets. As we review our options for the commercialization of this wireless spectrum, we may incur significant additional expenses and may have to make significant investments related to, among other things, research and development, wireless testing and wireless network infrastructure.

Table of Contents

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued
(Unaudited)

The total assets, revenue and operating income by segment were as follows:

	As of	
	June 30, 2013	December 31, 2012
	(In thousands)	
Total assets:		
DISH	$ 19,684,811	$ 16,427,735
Blockbuster (1)	261,548	357,267
Wireless	4,445,901	4,062,383
Eliminations	(4,326,459)	(3,467,777)
Total assets	$ 20,065,801	$ 17,379,608

	For the Three Months Ended June 30,		For the Six Months Ended June 30,	
	2013	2012	2013	2012
	(In thousands)			
Revenue:				
DISH	$ 3,489,269	$ 3,324,099	$ 6,868,312	$ 6,577,021
Blockbuster (2)	120,608	253,312	300,932	587,303
Wireless (3)	562	296	1,212	329
Eliminations	(4,306)	(5,941)	(9,099)	(11,018)
Total revenue	$ 3,606,133	$ 3,571,766	$ 7,161,357	$ 7,153,635
Operating income (loss):				
DISH	$ 550,716	$ 499,373	$ 1,020,348	$ 1,065,918
Blockbuster	(5,034)	(13,333)	(4,411)	624
Wireless (3)(4)	(525,009)	(17,688)	(543,011)	(25,779)
Total operating income (loss)	$ 20,673	$ 468,352	$ 472,926	$ 1,040,763

(1) The decrease in assets from December 31, 2012 to June 30, 2013 primarily related to the deconsolidation of Blockbuster UK on January 16, 2013 and Blockbuster domestic store closings during the six months ended June 30, 2013. See Note 9 for further information.

(2) The decrease in revenue for the three and six months ended June 30, 2013 primarily related to the deconsolidation of Blockbuster UK on January 16, 2013 and Blockbuster domestic store closings during 2013 and 2012. See Note 9 for further information.

(3) The three and six months ended June 30, 2012 included Wireless results from the acquisitions of DBSD North America and TerreStar on March 9, 2012.

(4) The three and six months ended June 30, 2013 included a $438 million impairment charge for the T2 and D1 satellites, $53 million of additional depreciation expense related to the accelerated depreciable lives of certain assets designed to support the TerreStar MSS business and $18 million of legal and financial advisory fees related to our proposed merger with Sprint. See Note 7 for further information.

Table of Contents

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued
(Unaudited)

Geographic Information. Revenues are attributed to geographic regions based upon the location where the products are delivered and services are provided. The following table summarizes revenue attributed to the United States and foreign locations.

	For the Three Months Ended June 30, 2013	For the Three Months Ended June 30, 2012	For the Six Months Ended June 30, 2013	For the Six Months Ended June 30, 2012
	(In thousands)			
Revenue:				
United States	$ 3,562,528	$ 3,453,353	$ 7,053,003	$ 6,909,992
United Kingdom (1)	—	69,523	10,883	140,234
Mexico	34,257	35,383	79,586	76,689
Other	9,348	13,507	17,885	26,720
Total revenue	$ 3,606,133	$ 3,571,766	$ 7,161,357	$ 7,153,635

(1) The decrease for the three and six months ended June 30, 2013 related to the deconsolidation of Blockbuster UK on January 16, 2013. See Note 9 for further information.

14. Related Party Transactions

Related Party Transactions with EchoStar

Following the Spin-off, EchoStar has operated as a separate public company, and we have no continued ownership interest in EchoStar. 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 key supplier of 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 position and results of operations.

"Equipment sales - EchoStar"

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 2012, we and EchoStar extended this agreement until December 31, 2013. EchoStar may terminate the remanufactured receiver agreement for any reason upon at least 60 days notice to us. We may also terminate this agreement if certain entities acquire us.

Table of Contents

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued
(Unaudited)

"Services and other revenue - EchoStar"

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, 2013 for an additional one-year period until January 1, 2014 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.

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 are primarily legal and accounting services) to EchoStar. Specifically, Paul W. Orban remains employed by us, but also served as EchoStar's Senior Vice President and Controller through April 2012. EchoStar makes 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 are based upon the estimated percentages of time to be spent by our executive officers performing services for EchoStar under the Management Services Agreement. EchoStar also reimburses us for direct out-of-pocket costs incurred by us for management services provided to EchoStar. We and EchoStar evaluate all charges for reasonableness at least annually and make any adjustments to these charges as we and EchoStar mutually agree upon.

The Management Services Agreement automatically renewed on January 1, 2013 for an additional one-year period until January 1, 2014 and renews automatically for successive one-year periods thereafter, unless terminated earlier: (i) by EchoStar at any time upon at least 30 days notice; (ii) by us at the end of any renewal term, upon at least 180 days notice; or (iii) by us upon notice to EchoStar, following certain changes in control. Effective June 15, 2013, the Management Services Agreement was terminated by EchoStar.

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 and the length of the lease. The term of each lease is set forth below:

EchoStar I. During 2009, we entered into a satellite capacity agreement pursuant to which EchoStar leases certain satellite capacity from us on EchoStar I. We and EchoStar mutually agreed to terminate this satellite capacity agreement effective as of July 1, 2012.

D1. Effective November 1, 2012, we entered into a satellite capacity agreement pursuant to which Hughes Network Systems, LLC ("HNS"), a wholly-owned subsidiary of Hughes Communications, Inc. ("Hughes"), 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) December 31, 2013.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued
(Unaudited)

EchoStar XV. During May 2013, we began leasing certain satellite capacity to EchoStar on EchoStar XV and relocated the satellite for testing at EchoStar's Brazilian authorization at the 45 degree orbital location. Subject to certain conditions, (i) this lease terminates on February 1, 2014, (ii) EchoStar has certain rights to extend the service term of this lease for three years, and (iii) we have the right to terminate this lease prior to the date of expiration and have the satellite relocated from the 45 degree orbital location.

Real Estate Lease Agreements. 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 areas, and EchoStar is responsible for its portion of the taxes, insurance, utilities and maintenance of the premises. The term of each lease is set forth below:

Varick Sublease Agreement. During 2008, we subleased certain space at 185 Varick Street, New York, New York to EchoStar for a period of approximately seven years.

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.

"Satellite and transmission expenses — EchoStar"

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.

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.

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 and the length of the lease. 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

Table of Contents

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued
(Unaudited)

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. Subject to certain conditions, this lease terminates on February 1, 2014.

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. See discussion under "Guarantees" in Note 12.

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 it 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 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.

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 of the 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 back to EchoStar five of the 24 DBS transponders on the QuetzSat-1 satellite. Rental income generated from this sublease is recorded as revenue within "Services and other revenue — EchoStar" on our Condensed Consolidated Statements of

Table of Contents

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued
(Unaudited)

Operations and Comprehensive Income (Loss). During January 2013, QuetzSat-1 was moved to the 77 degree orbital location and we commenced commercial operations at that 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. We will make a 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 in "Other noncurrent assets, net" on our Condensed Consolidated Balance Sheets and recorded the amount in excess of EchoStar's net book value 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.

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.

DBSD North America Agreement. On March 9, 2012, we completed the DBSD Transaction. 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, 2014, and renews for three successive one-year periods unless terminated by DBSD North America upon at least 30 days notice prior to the expiration of any renewal term.

TerreStar Agreement. On March 9, 2012, we completed the TerreStar Transaction. 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

Table of Contents

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued
(Unaudited)

services for TerreStar's satellite gateway and associated ground infrastructure. These agreements generally may be terminated by us at any time for convenience.

"General and administrative expenses — EchoStar"

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 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.

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. The term of each of the leases 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.

- *Cheyenne Lease Agreement.* The lease for certain space at 530 EchoStar Drive in Cheyenne, Wyoming is for a period ending on December 31, 2031.

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 2012, we exercised our right to renew this agreement for a one-year period ending on December 31, 2013.

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 and may be terminated for any reason upon at least 120 days notice to EchoStar.

Table of Contents

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued
(Unaudited)

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 and may be terminated for any reason upon at least 120 days notice to EchoStar.

Blockbuster. On April 26, 2011, we completed the Blockbuster Acquisition. During the second quarter 2011, EchoStar acquired Hughes. Blockbuster purchased certain broadband products and services from HNS 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. Blockbuster has the option to renew the agreement for an additional one-year period.

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. Since this is a formation of an entity under common control and a step-up in basis is not allowed, each party's contributions were recorded at historical book value for accounting purposes. We consolidated DISH Digital with EchoStar's ownership position recorded as non-controlling interest.

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.

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.

Other Agreements — EchoStar

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

Table of Contents

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued
(Unaudited)

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.

For the three months ended June 30, 2013 and 2012, we purchased set-top boxes and other equipment from EchoStar of $309 million and $253 million, respectively. For the six months ended June 30, 2013 and 2012, we purchased set-top boxes and other equipment from EchoStar of $606 million and $491 million, respectively. These amounts are initially included in "Inventory" and are subsequently capitalized as "Property and equipment, net" on our Condensed Consolidated Balance Sheets or expensed as "Subscriber acquisition costs" on our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss) when the equipment is deployed.

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. This will result in a reduction of our recorded unrecognized tax benefits and this amount will be reclassified to a long-term payable to EchoStar within "Long-term deferred revenue, distribution and carriage payments and other long-term liabilities" on our Condensed Consolidated Balance Sheets during the third quarter 2013. 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.

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 implement our RUS program. The initial term of the RUS Agreement shall continue until the earlier of: (i) September 24, 2013; or (ii) the date that the Grant Funds have been exhausted. In addition, DISH Broadband may terminate the RUS Agreement for convenience upon 45 days' prior written notice to HNS. During the three months

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued
(Unaudited)

ended June 30, 2013 and 2012, we expensed $2 million under this agreement which is included in "Cost of sales — equipment, merchandise, services, rental and other" on our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss). During the six months ended June 30, 2013 and 2012, we expensed $3 million under this agreement. The RUS Agreement expired during June 2013 when the Grant Funds were exhausted.

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 $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.

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.

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 has 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. 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. During the three and six months ended June 30, 2013, we paid $6 million and $10 million, respectively, for these services from HNS, included in "Subscriber-related expenses" on the Condensed Consolidated Statements of Operations and Comprehensive Income (Loss). Since this Distribution Agreement was entered into effective October 1, 2012, we did not incur any expense for the three and six months ended June 30, 2012.

For the three and six months ended June 30, 2013, we purchased broadband equipment from HNS of $25 million and $37 million, respectively. These amounts are initially included in "Inventory" and are subsequently capitalized as "Property and equipment, net" on our Condensed Consolidated Balance Sheets or expensed as "Subscriber

Table of Contents

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued
(Unaudited)

acquisition costs" on our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss) when the equipment is deployed. Since this Distribution Agreement was entered into effective October 1, 2012, we did not incur any expense for the three and six months ended June 30, 2012.

Voom Settlement Agreement. On October 21, 2012, we entered into the Voom Settlement Agreement with Voom and Cablevision, and for certain limited purposes, MSG Holdings, L.P., The Madison Square Garden Company and EchoStar. The Voom Settlement Agreement resolved the litigation between the parties relating to the Voom programming services. EchoStar was a party to the Voom Settlement Agreement solely for the purposes of executing a mutual release of claims with Voom, Cablevision, MSG Holdings, L.P. and The Madison Square Garden Company relating to the Voom programming services.

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. As of June 30, 2013 and December 31, 2012, we had capitalized in total $8 million and $3 million, respectively, for these services, included in "Property and equipment, net" on our Condensed Consolidated Balance Sheets.

Other Agreements

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 DISH Network and EchoStar. Mr. Lynch's compensation consists of cash and equity compensation and is borne by both EchoStar and DISH Network.

Related Party Transactions with NagraStar L.L.C.

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.

The table below summarizes our transactions with NagraStar.

	For the Three Months Ended June 30,		For the Six Months Ended June 30,	
	2013	2012	2013	2012
	(In thousands)			
Purchases (including fees):				
Purchases from NagraStar	$ 24,547	$ 17,355	$ 46,566	$ 34,839

	As of	
	June 30, 2013	December 31, 2012
	(In thousands)	
Amounts Payable and Commitments:		
Amounts payable to NagraStar	$ 20,188	$ 21,930

Table of Contents

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued
(Unaudited)

15. Subsequent Events

On July 23, 2013, L-Band Acquisition, LLC ("L-Band"), our wholly-owned subsidiary, formed to make a bid to acquire assets of LightSquared LP, entered into a Plan Support Agreement (the "PSA") with certain senior secured lenders to LightSquared LP, which contemplates the purchase by L-Band of substantially all of the assets of the LightSquared LP Entities (as defined below) 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 "Proposed APA"). SP Special Opportunities, LLC, an entity controlled by Charles W. Ergen, our Chairman, is a senior secured lender to LightSquared LP and holds a substantial portion of LightSquared LP's senior secured debt. We are a party to the PSA solely with respect to certain guaranty obligations. Our Board of Directors (the "Board") approved entering into the PSA, which would implement the Proposed APA, based, among other things, on the recommendation of a special committee of the Board (the "Special Committee") and a fairness opinion that was prepared by a financial advisory firm at the request of the Special Committee.

Pursuant to the PSA, L-Band and such lenders have agreed, subject to the terms and conditions set forth therein, to support and pursue confirmation of a plan of reorganization (the "LightSquared LP Plan") for LightSquared LP and certain of its subsidiaries that are debtors and debtors in possession (collectively, the "LightSquared LP Entities") in pending bankruptcy cases under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"), which cases are jointly administered under the caption In re LightSquared Inc., et. al., Case No. 12-12080 (SCC).

L-Band's purchase offer under the LightSquared LP Plan is subject to the submission of higher and better offers in accordance with certain bid procedures to be proposed in connection with the LightSquared LP Plan. In addition, the LightSquared LP Plan is subject to confirmation by the Bankruptcy Court. The Proposed APA has not been negotiated with, or executed by, the LightSquared LP Entities. Consummation of the acquisition contemplated under the Proposed APA is subject to, among other things, Bankruptcy Court, FCC and Canadian federal Department of Industry ("Industry Canada") approvals. However, funding of the purchase price under the Proposed APA is not conditioned upon receipt of approvals from the FCC or Industry Canada. We would be a party to the Proposed APA solely with respect to certain guaranty obligations.

There can be no assurance that we will ultimately be able to complete the acquisition contemplated under the Proposed APA. Further, to the extent that we complete the acquisition contemplated under the Proposed APA, there can be no assurance that we would be able to develop and implement a business model that would realize a return on the acquired assets or that we would be able to profitably deploy the acquired assets, which could affect the carrying value of these assets and our future financial condition or results of operations. If we are unable to successfully address these challenges and risks, our business, financial condition or results of operations could suffer.

Furthermore, if we enter into the Proposed APA, funding of the purchase price is not conditioned upon receipt of approvals from the FCC or Industry Canada. If the required approvals are not obtained, subject to certain exceptions, we would have the right to direct and require a sale of some or all of the assets of the LightSquared Entities to a third party and we would be entitled to the proceeds of such a sale. These proceeds could, however, be substantially less than amounts we would have funded under the Proposed APA. Therefore, if we fail to obtain these necessary regulatory approvals, we may suffer significant financial losses.

Table of Contents

Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

You should read the following management's discussion and analysis of our financial condition and results of operations together with the condensed consolidated financial statements and notes to our financial statements included elsewhere in this quarterly report. This management's discussion and analysis is intended to help provide an understanding of our financial condition, changes in financial condition and results of our operations and contains forward-looking statements that involve risks and uncertainties. The forward-looking statements are not historical facts, but rather are based on current expectations, estimates, assumptions and projections about our industry, business and future financial results. Our actual results could differ materially from the results contemplated by these forward-looking statements due to a number of factors, including those discussed in our Annual Report on Form 10-K for the year ended December 31, 2012, our Quarterly Report on Form 10-Q for the three months ended March 31, 2013 and this Quarterly Report on Form 10-Q under the caption "Item 1A. Risk Factors."

EXECUTIVE SUMMARY

Overview

DISH lost approximately 78,000 net Pay-TV subscribers during the three months ended June 30, 2013, compared to the loss of approximately 10,000 net Pay-TV subscribers during the same period in 2012. The increase in the number of net Pay-TV subscribers lost versus the same period in 2012 resulted from lower gross new Pay-TV subscriber activations and an increase in our Pay-TV churn rate.

During the three months ended June 30, 2013, DISH added approximately 624,000 gross new Pay-TV subscribers compared to the addition of approximately 665,000 gross new Pay-TV subscribers during the same period in 2012, a decrease of 6.2%. Our gross new Pay-TV subscriber activations continue to be negatively impacted by increased competitive pressures, including aggressive marketing and discounted promotional offers. In addition, our gross new Pay-TV subscriber activations continue to be adversely affected by sustained economic weakness and uncertainty.

Our Pay-TV churn rate for the three months ended June 30, 2013 was 1.67% compared to 1.60% for the same period in 2012. Our Pay-TV churn rate was negatively impacted in part because we had a programming package price increase in the first quarter 2013 and did not during the same period in 2012. Churn continues to be adversely affected by increased competitive pressures, including aggressive marketing and discounted promotional offers. Our Pay-TV churn rate is also impacted by, among other things, the credit quality of previously acquired subscribers, our ability to consistently provide outstanding customer service, the aggressiveness of competitor subscriber acquisition efforts, and our ability to control piracy and other forms of fraud.

DISH lost approximately 42,000 net Pay-TV subscribers during the six months ended June 30, 2013, compared to the addition of approximately 94,000 net Pay-TV subscribers during the same period in 2012. The decrease versus the same period in 2012 resulted from an increase in our Pay-TV churn rate and lower gross new Pay-TV subscriber activations. Our Pay-TV churn rate for the six months ended June 30, 2013 was 1.57% compared to 1.48% for the same period in 2012. Our Pay-TV churn rate was negatively impacted in part because we had a programming package price increase in the first quarter 2013 and did not during the same period in 2012. During the six months ended June 30, 2013, DISH added approximately 1.278 million gross new Pay-TV subscribers compared to approximately 1.338 million gross new Pay-TV subscribers during the same period in 2012, a decrease of 4.5%. Our gross new Pay-TV subscriber activations continue to be negatively impacted by increased competitive pressures, including aggressive marketing and discounted promotional offers. In addition, our gross new Pay-TV subscriber activations continue to be adversely affected by sustained economic weakness and uncertainty.

On September 27, 2012, we began marketing our satellite broadband service under the dishNET™ brand. This service leverages advanced technology and high-powered satellites launched by Hughes and ViaSat to provide broadband coverage nationwide. This service primarily targets approximately 15 million rural residents that are underserved, or unserved, by wireline broadband, and provides download speeds of up to 10 Mbps. We lease the customer premise equipment to subscribers and generally pay Hughes and ViaSat a wholesale rate per subscriber on a monthly basis. Currently, we generally utilize our existing DISH distribution channels under similar incentive arrangements as our pay-TV business to acquire new Broadband subscribers.