independent member of the SLC, Charles M. Lillis, to the board on November 5, 2013 and to the SLC on December 9, 2013.

C. The Court-Ordered Demand on the SLC

It is undisputed that the plaintiff made no pre-suit demand on DISH's board prior to filing the original complaint or the First Amended Complaint. At a September 19, 2013 hearing on various motions filed in this action, the Court found that "the formation of a Special Litigation Committee is an important step for the company" and ordered that the derivative plaintiff "will make a DEMAND of the Special Litigation Committee." (Court Minutes (Sept. 19, 2013)) Further, the Court ordered that "the Special Litigation Committee will RESPOND to the demand by October 3, 2013," though "this does not mean they have to complete their investigation," and ordered that the parties file a Status Report on October 3, 2013. (*Id.*; *see also* September 29, 2013 Transcript at 65)

Pursuant to the Court's order, the plaintiff made a written demand (the "Demand") on the SLC on September 23, 2013, demanding that the SLC pursue, or support the plaintiff's pursuit of, all claims in the First Amended Complaint. (SAC Ex. 1) In the Demand, the derivative plaintiff further demanded that the SLC seek the immediate reconstitution of DISH's Special Transaction Committee with complete control over DISH's bidding in the upcoming auction for the sale of LightSquared L.P. ("LightSquared"). Counsel for the derivative plaintiff subsequently clarified by telephone that the immediate action sought by the plaintiff need not take the form of reconstituting the Special Transaction Committee, but that it would be sufficient for the SLC to take any immediate action that would provide the relief sought by the derivative plaintiff's motion for preliminary injunction. The Demand also requested information concerning the SLC, including its authorizing board resolutions, which have been provided. In its response on October 3, 2013, the SLC informed the plaintiff that it took seriously the claims and would investigate them thoroughly to decide whether they should be pursued, stayed or dismissed in the best interest of DISH and its stockholders.

The SLC subsequently took a position only on the request for preliminary relief. (Report of the Special Litigation Committee of DISH Network Corporation Regarding

HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134

Plaintiff's Motion for Preliminary Injunction (Nov. 20, 2013) ("November SLC Report")) As set forth in the November SLC Report, the SLC believed that the relief requested in the plaintiff's motion for preliminary injunction was not appropriate or in the best interest of DISH and requested that the Court deny the plaintiff's motion. (November SLC Report at 41) The SLC did not take a position on the merits of the derivative action or the plaintiff's request for monetary damages.

D. The Court's Ruling on the Plaintiff's Preliminary Injunction Request

On November 27, 2013, after oral argument, the Court denied in part and granted in limited part the plaintiff's motion for preliminary injunction. It granted the motion only to the limited extent that "Charles Ergen or anyone acting on his behalf is enjoined from participation, including any review, comment, or negotiations related to the release contained in the Ad Hoc LP Secured Group Plan pending before the Bankruptcy Court for any conduct which was outside or beyond the scope of his activities related to DISH and LBAC." (Findings of Fact and Conclusions of Law at pp. 15-16 (Nov. 27, 2013) ("Preliminary Injunction Decision")) On February 5, 2014, this Court entered the parties' stipulated scheduling order that provided that the plaintiff would file a second amended complaint no later than five days after the Bankruptcy Court issued a ruling to resolve the ongoing plan confirmation hearing, including the adversary proceedings. (Notice of Entry of Stipulation and Order (Feb. 5, 2014))

E. The Claims of the Second Amended Complaint

On July 25, 2014, the derivative plaintiff filed the Second Amended Complaint. The Complaint asserts claims against pre-existing defendants, Ergen and directors DeFranco, Cantey Ergen, Vogel, Moskowitz and Ortolf. It also asserts claims against new defendants, new directors Brokaw and Lillis and officers Kiser, Cullen and Dodge. Counts I, II and V are asserted against Ergen for breach of fiduciary duty and unjust enrichment. Count III is asserted against the director defendants for breach of fiduciary duty, and Count IV is asserted against the officer defendants for breach of fiduciary duty. Each of the Counts contains multiple

HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134

claims. The types of claims and the extent to which they are new to the Second Amended Complaint are described below:

First, Counts I and III allege that Ergen and the DISH board respectively breached fiduciary duties in failing to consummate DISH's $2.22 billion bid for the allegedly more valuable LightSquared assets. The same Counts further allege that Ergen and the DISH board breached fiduciary duties by including and not removing a release in the draft Asset Purchase Agreement for the bid, which allegedly interfered with DISH's ability to consummate the bid.[4] The allegations about the release and the termination of the bid do not appear in the Prior Complaints. They rather address a later time period than the allegations addressed by the Prior Complaints and therefore involve different facts and, in some instances, different defendants.[5]

Second, Counts II and V, III and IV respectively assert claims against Ergen, the DISH board and the DISH officers for breach of fiduciary duty for allegedly failing to make disclosures to various persons concerning Ergen's acquisitions of secured debt of LightSquared. The Prior Complaints contain no such disclosure claims.

Third, these same Counts assert claims against the same defendants for breach of fiduciary duty based upon the alleged use of DISH corporate resources by Ergen and Kiser in

---

4 The same Counts allege that the "disbandment" of the Special Transaction Committee contributed to breaches by Ergen and the board in connection with the release contained in the draft Asset Purchase Agreement, the cancellation of the auction and the termination of DISH's bid for LightSquared. If Ergen and the board committed such breaches, the breaches would be actionable regardless of whether the "disbandment" of the Special Transaction Committee had contributed to them. If instead there were no such breaches, the "disbandment" of the Special Transaction Committee would have produced no actionable harm. The Complaint does not allege that the "disbandment" of the Special Transaction Committee standing alone produced any actionable harm to DISH. If demand futility therefore is not established for the claims of breach predicated upon the release, the cancellation of the auction and the bid termination, those claims must be dismissed and the allegations concerning the "disbandment" of the Special Transaction Committee will be moot. The demand futility analysis therefore must focus on the claims concerning the release, the cancellation of the auction and the bid termination, rather than on the allegations concerning the "disbandment" of the Special Transaction Committee.

5 They also concern a diametrically opposed legal theory. The Prior Complaints had relied upon the notion that the $2.22 bid was or might be *higher* than the value of LightSquared's assets, and therefore *unfavorable* to DISH's minority stockholders, *because* it was intended to support the value of Ergen's secured debt of LightSquared. This theory was rendered untenable by the withdrawal of the bid. The Second Amended Complaint therefore relies upon the notion that the bid was *lower* than the value of LightSquared's assets and therefore *favorable* to DISH's minority stockholders, and therefore *could not have* supported the value of Ergen's secured debt of LightSquared.

HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134

making Ergen's allegedly personal investments in LightSquared. The Prior Complaints similarly contain no such corporate resource claims.

Fourth, the same Counts assert claims against the same defendants based upon Ergen's alleged usurpation of a DISH corporate opportunity: for DISH to make a non-controlling financial investment in an "affiliate" that might hold secured debt of LightSquared. The Prior Complaints contain no such corporate opportunity claims. The Prior Complaints had asserted claims against a subset of these defendants based upon Ergen's alleged usurpation of a different alleged corporate opportunity: for DISH to make a strategic, controlling investment directly in the secured debt of LightSquared. The Bankruptcy Court's ruling that DISH could not make such an investment rendered the pre-existing corporate opportunity claim moot.

Fifth, the same Counts assert claims against the same defendants based upon Ergen's alleged misuse of confidential DISH information in acquiring the LightSquared secured debt. This claim relies upon substantially the same factual predicate as a similar claim in the Prior Complaints.

Finally, Count II asserts a claim against Ergen for breach of fiduciary duty, by purchasing the secured debt while allegedly knowing that the purchases might subject DISH to an increased risk of greater legal fees in its efforts to acquire LightSquared's assets. This claim relies also upon substantially the same factual predicate as a similar claim in the Prior Complaints.[6]

F. The Demand Futility Allegations

For the reasons set forth in the Argument section below, the demand futility allegations concerning directors other than the members of the SLC are not relevant to the demand futility analysis. As for the members of the SLC, the Second Amended Complaint alleges the following:

[6] The Prior Complaints included a claim that Ergen knowingly exposed DISH to an increased risk that the Bankruptcy Court would prevent DISH from bidding for LightSquared's assets at all or that DISH would be required to pay billions of dollars in damages on the Harbinger adversary claims. These claims were dropped when the posited risks did not materialize.

HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134

1. Mr. Lillis

The Second Amended Complaint does not allege that Mr. Lillis has any relationship with Ergen, apart from having contributed to the same charity and having served on the DISH board since November 2013. (SAC ¶¶ 311-12) The derivative plaintiff previously proposed that Lillis serve as a member of the special transaction committee that the plaintiff contended was needed to protect DISH from Ergen's control of DISH's bid for LightSquared. (Transcript of Hearing on Motion for Preliminary Injunction at 130-32 (Nov. 25, 2013) ("Preliminary Injunction Hearing Transcript"))

The Second Amended Complaint rather alleges that Lillis has had "professional relationships" with Vogel and Cullen. (SAC ¶ 309) According to the Complaint, when Lillis was chairman and chief executive officer of MediaOne Group, Inc., that business was sold to AT&T, where Vogel had "just served" as an officer. (SAC ¶ 310) It further alleges that, in October 2003, Lillis was on the board of directors of Charter Communications, Inc., where Vogel was chairman and chief executive officer. (SAC ¶ 310) It alleges that Lillis "played a role" in "awarding Vogel a $500,000 special bonus in July 2004" (presumably by approving the bonus as a member of Charter's board). (SAC ¶ 310) It alleges that Lillis "resigned from the Charter board to protest the termination of Vogel, and sent his fellow directors an email 'berating' them for a poor performance review of Vogel." (SAC ¶ 310) Finally, it alleges that "Vogel also serves as a member of the board of directors of the National Cable & Telecommunications Association, a trade organization to which Lillis belongs." (SAC ¶ 312)

Concerning Lillis's professional relationship with Cullen, the Second Amended Complaint alleges that, while Lillis was chairman and chief executive of MediaOne, until about 15 years ago, Lillis "worked closely with and supervised Cullen." (SAC ¶ 310) It further alleges that, while Lillis was on the board of Charter, Cullen also worked there. (SAC ¶ 310) Finally, the Complaint alleges, "In July 2000, following AT&T's acquisition of MediaOne, Lillis and Cullen formed private equity firm LoneTree Capital." (SAC ¶ 310) There are no allegations that LoneTree Capital was ever successful or even continues to exist.

HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134

2. Mr. Brokaw

As for Mr. Brokaw, the Second Amended Complaint alleges no financial relationship with Ergen.[7] To the contrary, it alleges only that "Brokaw has provided Ergen with free professional advice on multiple occasions." (SAC ¶ 308) The Second Amended Complaint incorrectly infers from the disclosed existence of a godparent relationship between Brokaw's son and Cantey Ergen that "Brokaw has entrusted the Ergens to raise his son in the event something tragic would happen to Brokaw and his wife." (SAC ¶ 308) If something tragic would happen, the relevant documents rather provide that the son would be raised by Mr. Brokaw's family, specifically his brother. (Declaration of George R. Brokaw (Aug. 29, 2014 (attached hereto as Exhibit A)); *see* NRS 47.130(2)(b) ("A judicially noticed fact must be: . . . (b) Capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, so that the fact is not subject to reasonable dispute").[8]

3. Mr. Ortolf

As for Mr. Ortolf, the Second Amended Complaint alleges that he worked at DISH, as its president and chief operating officer, more than twenty years ago, from 1988 until 1991. (SAC ¶¶ 32, 306) It further alleges that, since joining the DISH board in 2005 and the Echostar board in 2007, Ortolf has earned directors fees. (SAC ¶¶ 32, 306) Finally, the Complaint alleges that one of Ortolf's children works at DISH. (SAC ¶ 307) There are no allegations that the child works in anything other than an entry-level position, Ortolf is beholden to her or her income would be material to him.[9]

---

7 Over the years, Brokaw "has served on the boards of directors of multiple companies, including Capital Business Credit LLC, Timberstar, Value Place Holdings LLC and North American Energy Partners Inc. (a NYSE-listed company), where he served on the audit committee. He is deeply experienced in investment and mergers and acquisition matters, having most recently served as Managing Director of Highbridge Principal Strategies, LLC, until September 30, 2013. Between 2005 and 2012, Mr. Brokaw was a Managing Partner and Head of Private Equity at Perry Capital, L.L.C. Prior to joining Perry Capital, in 2005, Brokaw was Managing Director (Mergers & Acquisitions) of Lazard Frères & Co. LLC." (Status Report at 8 (Oct. 3, 2013) ("October SLC Report"))

8 There was no basis for the derivative plaintiff to infer a legal guardian relationship from a godparent relationship. In the SLC Status Report, on which the Second Amended Complaint relies, the SLC did not suggest that the Ergens could become legal guardians of Mr. Brokaw's son.

9 The Second Amended Complaint correctly alleges that Mr. Ortolf did not serve as a member of the Special Transaction Committee because he was a director of Echostar. After Echostar disavowed any interest in LightSquared, the potential conflict that prevented him from serving on the STC ceased. The Second Amended

ARGUMENT

I. THE SECOND AMENDED COMPLAINT MUST BE DISMISSED BECAUSE THE PLAINTIFF FAILED TO MAKE PRE-SUIT DEMAND AND DEMAND WAS NOT EXCUSED.

A. Nevada Law Requires the Plaintiff To Make Demand on the SLC Before Bringing Suit on Behalf of a Corporation Unless Demand Is Shown with Particularity To Be Futile.

"[U]nder Nevada's corporations laws, a corporation's 'board of directors has full control over the affairs of the corporation.'" *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 632, 137 P.3d 1171, 1178 (Nev. 2006) (quoting NRS 78.120(1)). Therefore, in "managing the corporation's affairs, the board of directors may generally decide whether to take legal action on the corporation's behalf." *Shoen*, 122 Nev. at 632, 137 P.3d at 1179; *In re AMERCO Deriv. Litig.*, 252 P.3d 681, 705 (Nev. 2011) ("Among the matters entrusted to a corporation's directors is the decision to litigate – or not to litigate – a claim by the corporation against third parties."); *In re Citigroup Inc. S'holder Deriv. Litig.*, 964 A.2d 106, 120 (Del. Ch. 2009) ("The decision whether to initiate or pursue a lawsuit on behalf of the corporation is generally within the power and responsibility of the board of directors.").

For this reason, a shareholder who desires that the corporation file suit generally must first "make a demand on the board . . . to obtain the action that the shareholder desires." *Shoen*, 122 Nev. at 633, 137 P.3d at 1179. The purpose for the demand requirement was described as follows by the Nevada Supreme Court,

> This demand requirement recognizes the corporate form in two ways. First, a demand informs the directors of the complaining shareholder's concerns and gives them an opportunity to control any acts needed to correct improper conduct or actions, including any necessary litigation. . . . Second, the demand requirement protects clearly discretionary directorial conduct and corporate assets by discouraging unnecessary, unfounded, or improper shareholder actions. Thus, "in promoting . . . alternate dispute resolution, rather than immediate recourse to litigation, the demand requirement is a recognition of the fundamental precept that directors manage the business and affairs of corporations."

Id. (internal footnote omitted); *see also Aronson v. Lewis*, 473 A.2d 805, 811-12 (Del. 1983) ("[T]he demand requirement . . . exists at the threshold, first to insure that a stockholder

---

Complaint contains no allegation that Echostar has any ongoing interest in the matters alleged that would have prevented Ortolf from independently considering a demand.

exhausts his intercorporate remedies, and then to provide a safeguard against strike suits."). "A shareholder's failure to sufficiently plead compliance with the demand requirement deprives the shareholder of standing and justifies dismissal of the complaint for failure to state a claim upon which relief may be granted." *Shoen*, 122 Nev. at 634, 137 P.3d at 1180-81 (internal footnote omitted); *see also Gaubert v. Fed. Home Loan Bank Bd.*, 863 F.2d 59, 64-65 (D.C. Cir. 1988); Order Granting Motion to Dismiss and Dismissing Complaint Without Leave to Amend, *Kim v. Murren ("MGM Mirage Deriv. Litig.")*, No. A-09-599937-C (Nev. Dist. Ct. May 11, 2012); Decision and Order, *In re Las Vegas Sands Corp. Deriv. Litig.*, No. A576669 (Nev. Dist. Ct. Nov. 4, 2009).

In this case, the derivative plaintiff did not make pre-suit demand on the DISH board of directors or the SLC. The plaintiff nonetheless may pursue claims on behalf of DISH if it establishes that demand was excused. *See Shoen*, 122 Nev. at 645, 137 P.3d at 1187 ("If the district court should find the pleadings provide sufficient particularized facts to show demand futility, it must later conduct an evidentiary hearing to determine, as a matter of law, whether the demand requirement nevertheless deprives the shareholder of his or her standing to sue."). To establish at the pleading stage that demand was excused, the plaintiff must set forth in its complaint "particularized factual statements . . . that making a demand would be futile or otherwise inappropriate." *Shoen*, 122 Nev. at 634, 137 P.3d at 1179-80 (internal quotation marks omitted). "[M]ere conclusory allegations will not suffice under NRCP 23.1's 'with particularity' standard." *Id.*; *see also* NRCP 23.1 ("The complaint shall also allege with particularity the efforts, if any, made by the plaintiff to obtain the action the plaintiff desires from the directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for the plaintiff's failure to obtain the action or for not making the effort.").

Nevada applies the pleading standards employed by the Delaware courts to determine whether demand was futile and thus excused. *See Shoen*,122 Nev. at 641, 137 P.3d at 1184 (following *Aronson v. Lewis,* 473 A.2d 805 (Del.1984), *overruled in part on other grounds by Brehm v. Eisner*, 746 A.2d 244 (Del. 2000), and *Rales v. Blasband*, 634 A.2d 927 (Del. 1993));

HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134

La. Mun. Police Emps. Ret. Sys. v. Wynn, No. 2:12-CV-509 JCM (GWF), 2014 WL 994616, at *3 (D. Nev. Mar. 13, 2014) ("In determining whether a complaint adequately alleges a demand was futile, Nevada courts will apply the standards articulated by the Delaware Supreme Court."). "Demand futility analysis is conducted on a claim-by-claim basis." *Beam ex rel. Martha Stewart Living Omnimedia, Inc. v. Stewart*, 833 A.2d 961, 977 n.48 (Del. Ch. 2003), *aff'd*, 845 A.2d 1040 (Del. 2004).

B. The Plaintiff Must Establish Demand Futility with Respect to the SLC.

Since the composition of boards sometimes changes over time and boards sometimes delegate their authority to committees, a question sometimes arises concerning the identity of the board or committee as to which a prospective derivative plaintiff must establish demand futility. The board or committee as to which a prospective derivative plaintiff must establish demand futility is the board or committee that would have responded to the demand if it had been made. If a claim is first asserted in an amended complaint, the plaintiff must establish demand futility as to the board or committee in place when the amended complaint was filed. *Braddock v. Zimmerman,* 906 A.2d 776, 786 (Del. 2006) ("[W]hen an amended derivative complaint is filed, the existence of a new independent board of directors is relevant to a Rule 23.1 demand inquiry" for "claims in the amended complaint that are not already validly in litigation."); *see also Harris v. Carter*, 582 A.2d 222, 230 (Del. Ch. 1990) ("In the special case, however, where there is a change in board control between the date of the challenged transaction and the date of suit, it might open the way to error to focus on the board existing at the time of the challenged transaction.").

For purposes of determining whether a claim was already included in a prior complaint, only claims that challenge the same "acts and transactions" as the prior complaint, whether or not based upon the same legal theories, will be considered to have been included in the prior complaint. *Harris*, 582 A.2d at 231. As the Delaware Court of Chancery has further explained,

> Thus, an amendment or supplement to a complaint that *elaborates* upon facts relating to acts or transactions alleged in the original pleading, or asserts new legal theories of recovery *based upon the acts or transactions* that formed the

> substance of the original pleading, would not, in my opinion, constitute a matter that would require a derivative plaintiff to bring any part of an amended or supplemental complaint to the board prior to filing.

Id. at 231 (emphasis added).

Claims in an amended complaint that challenge different acts and transactions than addressed by a prior complaint require either a new demand on the board or committee in place at the time the amended complaint is filed or the establishment of demand futility as to that board or committee. *See id.* As detailed above, the Second Amended Complaint challenges primarily different acts and transactions than were challenged by the Prior Complaints, such as the usurpation of an opportunity to invest in an affiliate of DISH, the alleged failures to disclose information and the termination of the bid. *See supra* pp. 9-11. For these new claims, the derivative plaintiff must establish demand futility as to the DISH board or committee at the time the Second Amended Complaint was filed.

In this case, when the Second Amended Complaint was filed, the DISH board had already delegated to the SLC its authority to decide whether DISH should pursue any claims asserted in this litigation, including any claims asserted in any amended complaint. For this reason, the derivative plaintiff was required to make demand on the SLC. Since it did not make such a demand, it must establish that demand on the SLC would have been futile. *See, e.g., In re UnitedHealth Group Inc.*, No. 27 CV 06-8085, 2007 WL 5557050 (D. Minn. Feb. 6, 2007) ("[T]he Court need not at this point reach the question of whether the Directors are disinterested, and rejects Plaintiffs' claims of demand futility solely on the basis that the Directors were not disinterested. Rather, the Court will consider whether it would have been futile for Plaintiffs to make a demand upon the SLC."). The plaintiff must establish demand futility as to the SLC also for purposes of the two claims that had already been included in the Prior Complaints, the claims concerning Ergen's alleged misuse of confidential information and his alleged creation of an increased risk of greater legal fees. The Court has previously determined that demand for these claims as presented in the Prior Complaints should be made on the SLC. The demand futility analysis for these claims therefore must also focus on the SLC.

C. The Plaintiff Must Establish that a Majority of the SLC Lacked Independence.

For all the claims in the Second Amended Complaint, to establish demand futility, the Second Amended Complaint must allege particularized facts showing that a majority of the members of the SLC lack independence.

1. The Claims Other than the Bid Termination Claim

With the exception of the bid termination claim, which will be addressed separately below, the Second Amended Complaint does not challenge decisions made by the DISH board; it rather addresses inaction by the DISH board and conduct of persons other than the board, specifically Ergen and DISH management. For such claims, as the Nevada Supreme Court held in *Shoen*, the applicable pleading standard for demand futility is the standard set forth in *Rales v. Blasband*, 634 A.2d 927, 936 (Del. 1993). *Shoen*, 122 Nev. at 641, 137 P.3d at 1184 (applying the *Rales* standard because the complaint did not "challenge any board-considered business decision").

Under the *Rales* standard, a derivative plaintiff may establish demand futility by meeting either of two requirements. The derivative plaintiff may, by the allegation of particularized facts, show that the board – or in this case, committee – on which demand was to be made has personal interests at stake in responding to the demand. *In re AMERCO*, 252 P.3d at 697 ("Under the *Rales* test, we evaluate whether particularized facts in the shareholder derivative complaint 'raise[] a reasonable doubt that the current board of directors would be able to exercise its independent and disinterested business judgment in responding to a demand.'"). Alternatively, the derivative plaintiff may, by the allegation of particularized facts, show that such board – or in this case, committee – lacks independence from someone who has personal interests at stake. *Id.*

To establish demand futility based upon director interest, the derivative plaintiff must allege particularized facts showing that a majority of the board or committee is personally interested in the decision whether to assert claims in response to the demand. *In re AMERCO*, 252 P.3d at 698 ("[D]irector interestedness can be demonstrated through alleged facts

HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134

indicating that a majority of the board members would be materially affected, either to their benefit or detriment, by a decision of the board, in a manner not shared by the corporation and the stockholders." (alteration and internal quotation marks omitted)); *Wynn*, 2014 WL 994616, at *4 ("'No issue' of self-interest exists where directors did not stand on both sides of the transaction or receive any personal financial benefit.").

A director is interested only if "he or she will receive a personal financial benefit from a transaction that is not equally shared by the shareholders or a corporate decision will have a materially detrimental impact on a director, but not on the corporation and the stockholders." *In re AMERCO*, 252 P.3d at 706 (Pickering, J., concurring in part and dissenting in part) (internal quotation marks omitted). In this case, such allegations are not present: The Second Amended Complaint does not allege any facts indicating that any member of the SLC was personally interested in any of the challenged transactions or conduct. The Second Amended Complaint therefore does not establish demand futility based upon director interest.

Allegations that members of the board that would consider the demand – or in this case, the committee – participated in the alleged misconduct are irrelevant to determining whether demand would have been futile. As the Nevada Supreme Court explained in *Shoen*, in overruling the contrary rule set forth in *Johnson v. Steel, Inc.*, 100 Nev. 181, 184, 678 P.2d 676, 679 (1984),

> The *Johnson* directive, broadly interpreted, suggests that the demand prerequisite could be excused with a mere allegation of participation. Such a broad reading could subject the board to immediate litigation, and thereby eviscerate the purpose behind the demand requirement and the business judgment rule. . . . Accordingly, to the extent that *Johnson* suggests that the demand requirement is excused as to the board of directors merely because the shareholder derivative complaint alleges that a majority of the directors participated in wrongful acts, without regard to their impartiality or to the protections of the business judgment rule, it is overruled.

Shoen, 122 Nev. at 635, 137 P.3d at 1180. The allegations of the Second Amended Complaint concerning any participation by the members of the SLC in the alleged misconduct are therefore irrelevant for purposes of determining whether demand is excused. In all events, for

HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134

all but the bid termination claim, Messrs. Lillis and Brokaw are not alleged to have participated, having joined the board only after the alleged misconduct.[10]

Since the Second Amended Complaint does not allege that a majority of the members of the SLC were personally interested in the challenged transactions and conduct, the derivative plaintiff must meet the alternative requirement for demand excusal under *Rales*: The Second Amended Complaint must allege that a majority of the members of the SLC lack independence. Specifically, it must allege "particularized facts" indicating that a "majority is 'beholden to' directors who would be liable." *Shoen*, 122 Nev. at 639, 641, 137 P.3d at 1183-84; *Freedman v. Adams*, No. 4199-VCN, 2012 WL 1345638, at *6 (Del. Ch. Mar. 30, 2012), *aff'd* 58 A.3d 414 (Del. 2013) ("The plaintiff may show control by pleading facts that establish that the directors are beholden to the controlling person or so under their influence that their discretion would be sterilized. Simply reciting the shorthand shibboleth of dominated and controlled directors is insufficient." (alterations, internal quotation marks, and citations omitted)). The Complaint therefore must allege particularized facts demonstrating that a majority of the members of the SLC is beholden to Ergen or the other defendants. As detailed further below, *see infra* pp. 22-25, the Complaint does not allege such facts.

[10] Although the mere allegation of participation in the challenged conduct does not suffice to establish demand futility, a derivative plaintiff may satisfy the demand requirement, under the progeny of *Rales*, by alleging particularized facts showing that a majority of the board – or the committee – faced a substantial likelihood of material personal liability. *See Guttman v. Huang*, 823 A.2d 492, 501 (Del. Ch. 2003) ("[I]f the directors face a 'substantial likelihood' of personal liability, their ability to consider a demand impartially is compromised under Rales, excusing demand."); *In re AMERCO*, 252 P.3d at 706 (Pickering, J., concurring in part and dissenting in part) (A director may be interested if "a corporate decision will have a materially detrimental impact on a director, but not on the corporation and the stockholders."). The Second Amended Complaint does not contain such allegations. For all but the bid termination claim, a majority of the SLC consisting of Messrs. Lillis and Brokaw had not yet even joined the board and therefore do not face any prospect of liability. As for the bid termination claim, the Second Amended Complaint does not allege facts indicating that any member of the SLC faces a substantial likelihood of material personal liability. This is so, among other reasons, because, as explained below, *see infra* pp. 21-22, the Second Amended Complaint does not allege facts raising a reasonable doubt that the decision to terminate the bid was not protected by the business judgment rule. Although this pleading deficiency bars the derivative plaintiff from pursuing the bid termination claim, it does not bar the SLC from pursuing the claim. Despite the pleading deficiency, the SLC is investigating the claim. If the SLC concludes that the claim has merit and should be pursued, it will pursue the claim itself on behalf of DISH.

2. The Bid Termination Claim

For the bid termination claim, because it addresses a decision by the existing board, the applicable pleading standard may not be the *Rales* standard described above, but instead may be the standard set forth in *Aronson v. Lewis*. *In re AMERCO*, 252 P.3d 697 ("The *Aronson* test applies '[w]hen the alleged wrongs constitute a business decision by the board of directors.'" (quoting *Shoen*, 122 Nev. at 636, 137 P.3d at 1181)). However, even if *Aronson* applies to the bid termination claim, the Complaint must still allege, to establish demand futility for that claim, particularized facts showing that a majority of the members of the SLC lack independence, as explained below.[11]

Under *Aronson*, a derivative plaintiff may establish demand futility by satisfying either of two tests. Under one test, the derivative plaintiff must plead "particularized facts" that raise a "reasonable doubt" that the "challenged transaction was . . . the product of a valid exercise of business judgment." *Aronson*, 473 A.2d at 814. In other words, the complaint must plead particularized facts to raise a "reasonable doubt as to the applicability of the business judgment rule" to the board decision challenged by the claim. *Id.* at 818. The Complaint does not plead such facts. This is so because it does not allege any conflict of interest in the bid termination. The Complaint does not allege – even in conclusory fashion – that the bid termination benefitted Ergen. To the contrary, it alleges that, before the bid was terminated, the bid had supported the value of Ergen's personal investments in LightSquared. (SAC ¶ 123) If this were true, the termination of the bid harmed Ergen by eliminating that support. The Complaint also alleges that the bid included a release of the adversary claims against Ergen. The termination of the bid eliminated the possibility for such release. The Complaint therefore does not satisfy one of *Aronson's* alternative tests for establishing demand futility.

---

[11] It is not clear whether *Aronson* or *Rales* applies to the bid termination claim. The claim involved a decision of the same board of directors in place when the Second Amended Complaint was filed, which would suggest that *Aronson* would apply. But a demand that the claim be brought would have been evaluated by a different body, the SLC, which would suggest that *Rales* would apply. Since, for purposes of this motion, it is unnecessary to determine whether *Aronson* or *Rales* applies to the bid termination claim, the SLC takes no position on this issue.

The only other test under *Aronson* that the Second Amended Complaint might satisfy is substantially identical to the requirements of the *Rales* standard: The derivative plaintiff must plead "particularized facts" that raise a "reasonable doubt" that the directors who would consider the demand are "disinterested and independent." *Aronson*, 473 A.2d at 814. Since the Complaint does not allege any facts indicating that any member of the SLC had any personal interest in the bid termination, to establish demand futility, the Complaint must allege particularized facts establishing that a majority of the members of the SLC lacked independence from someone who had such a personal interest. Since no defendant, including Ergen, is alleged to have had a personal interest in the bid termination, demand futility is not established for purposes of the bid termination claim. In all events, as detailed below, the Complaint does not allege particularized facts establishing that a majority of the SLC lacks independence from Eregn or any other defendant.

D. Plaintiff Has Not Met Its Burden to Allege Particularized Facts Showing that a Majority of the SLC Was Not Independent.

The Second Amended Complaint does not allege particularized facts indicating that a majority of the members of the SLC – or any member of the SLC – lacks independence from Ergen or any other relevant party. "In order to show lack of independence, the complaint of a stockholder-plaintiff must create a reasonable doubt that a director is not so 'beholden' to an interested director . . . that his or her 'discretion would be sterilized.'" *Beam v. Stewart*, 845 A.2d 1040, 1050 (Del. 2004). "[A] plaintiff must plead facts that would support the inference that because of the nature of a relationship or additional circumstances other than the interested director's stock ownership or voting power, the non-interested director would be more willing to risk his or her reputation than risk the relationship with the interested director." *Id.* at 1052. A "close family relationship can disqualify a director." *In re AMERCO*, 252 P.3d at 706 (Pickering, J., concurring in part and dissenting in part). However, "business, social, and more remote family relationships are not disqualifying, without more." *Id.*

As detailed below, the Nevada and other courts have held insufficient to excuse demand allegations that are substantially identical to those concerning the SLC members.

1. The Plaintiff's Allegations Do Not Establish that Mr. Lillis Lacks Independence.

As for Mr. Lillis, the Complaint does not even attempt to allege that he lacks independence from Ergen. It contains no allegations whatsoever concerning any financial or personal relationship between him and Ergen. Presumably, for this reason, the plaintiff proposed that Lillis serve on the special transaction committee that it unsuccessfully sought on the motion for preliminary injunction. (Preliminary Injunction Hearing Transcript 130-33)[12]

Nor do the allegations of the Complaint establish that Lillis lacks independence from Vogel and Cullen. Its allegations that Lillis has had "professional relationships" with them do not establish a lack of independence, as a matter of law. As the Delaware Court of Chancery has explained, "It is well settled that the naked assertion of a previous business relationship is not enough to overcome the presumption of a director's independence." *Highland Legacy Ltd. v. Singer*, No. Civ.A. 1566–N, 2006 WL 741939, at *5 (Del. Ch. Mar. 17, 2006) (internal quotation marks omitted);[13] *Wynn*, 2014 WL 994616, at *7 ("[D]emonstrated lengthy personal and business relationships between board members and [the controlling shareholder] . . . do not rise to the level to indicate [the board members] lacked independence or were unable to objectively consider a transaction."); *In re Oracle Sec. Litig.*, 852 F. Supp. 1437, 1442 (N.D. Cal. 1994) ("Business dealings seldom take place between complete strangers and it would be a strained and artificial rule which required a director to be unacquainted or uninvolved with fellow directors in order to be regarded as independent.").

For this reason, the allegation that, nearly fifteen years ago, Lillis founded a private equity firm with Cullen does not establish a lack of independence, particularly in the absence

---

12 The allegation that Lillis was elected by Ergen to the DISH board does not establish a lack of independence. *Aronson*, 473 A.2d at 814 ("[I]t is not enough to charge that a director was nominated by or elected at the behest of those controlling the outcome of a corporate election. That is the usual way a person becomes a corporate director."). Similarly, the allegations that Lillis was identified as a candidate for the DISH board by Vogel and Cullen do not establish a lack of independence. *Id.* ("It is the care, attention and sense of individual responsibility to the performance of one's duties, not the method of election, that generally touches on independence.").

13 *See also Orman v. Cullman*, 794 A.2d 5, 27 (Del. Ch. 2002) ("The naked assertion of a previous business relationship is not enough to overcome the presumption of a director's independence. The law in Delaware is well-settled on this point.").

HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134

of any allegation that the firm ever conducted business or even continues to exist. *Wynn*, 2014 WL 994616, at *7 (Allegations that a "business agreement previously existed between [the director and the interested party] where both parties could benefit financially" did "not border on familial loyalty or closeness," such that the director lacked independence for demand futility purposes. (alteration and internal quotation marks omitted)). There is nothing in the allegations concerning the professional relationships to suggest that Lillis might be beholden to Vogel or Cullen. The Complaint does not allege that Lillis lacks independence from any relevant person.

2. The Plaintiff's Allegations Do Not Establish that Mr. Brokaw Lacks Independence.

As for Mr. Brokaw, the Second Amended Complaint contains no allegations of any financial relationship between him and Ergen. At most, the allegation of the godparent relationship between Brokaw's son and Cantey Ergen suggests friendship (in this case, derived from a relationship between Mr. Brokaw's mother-in-law and Cantey Ergen). The law is well-settled that allegations of friendship, even long friendship, do not establish a lack of independence. *Wynn*, 2014 WL 994616, at *6 ("Allegations of a long friendship, alone, are insufficient" to establish a lack of independence for demand futility purposes.); *In re AMERCO*, 252 P.3d at 706 (Pickering, J., concurring in part and dissenting in part) ("While a close family relationship can disqualify a director . . . , business, social, and more remote family relationships are not disqualifying, without more."). The Second Amended Complaint does not allege facts indicating that Brokaw would be "more willing to risk his . . . reputation than risk [his] relationship with [Ergen]." *Beam*, 845 A.2d at 1052. The Complaint therefore does not allege that Brokaw lacked independence from Ergen or any relevant person.

3. The Plaintiff's Allegations Do Not Establish that Mr. Ortolf Lacks Independence.

Finally, as to Mr. Ortolf, the allegation that he worked at DISH more than twenty years ago, as president and chief operating officer, does not establish a lack of independence from Ergen. As detailed above, allegations of prior professional relationships do not establish a lack of independence. *See supra* pp. 23-24. Also, as detailed above, this is true even as to business

HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134

relationships from which the parties benefit financially.[14] The allegation that Ortolf receives director's fees similarly does not establish a lack of independence. *Fosbre v. Matthews*, No. 3:09-CV-0467-ECR-RAM, 2010 WL 2696615, at *5 (D. Nev. July 2, 2010) ("[A]llegations 'that directors are paid for their services as directors . . . without more, do not establish' a disabling interest or lack of independence on the part of the director." (quoting *Grobow v. Perot*, 539 A.2d 180, 188 (Del. 1988) (alterations in original))), *aff'd sub nom. Israni v. Bittman*, 473 F. App'x 548 (9th Cir. 2012). This is so even though some of Ortolf's director's fees were received from an affiliate of DISH. *In re Ltd., Inc.*, No. CIV.A. 17148-NC, 2002 WL 537692, at *5 (Del. Ch. Mar. 27, 2002) ("Similarly, the receipt of director's fees from a subsidiary does not, in the absence of other facts suggesting a lack of independence, demonstrate a reasonable doubt as to that director's loyalty."). Finally, the allegation that Ortolf's daughter works at DISH does not establish a lack of independence. *See In re J.P. Morgan Chase & Co. S'holder Litig.*, 906 A.2d 808, 823 (Del. Ch. 2005) (Allegation that director lacked independence "because his son is employed [by the corporation]" did not establish a lack of independence for demand futility purposes when the "son [was] not an executive officer" of the corporation and the "complaint does not allege that [the director] and his son live in the same household.").[15] The Complaint does not satisfy the pleading requirements for alleging that Ortolf lacked independence from Ergen.[16]

HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134

---

[14] *See In re BHC Commc'ns. S'holder Litig.*, 789 A.2d 1, 10 n.18 (Del. Ch. 2001) ("In their brief, the BHC plaintiffs argue that defendants Kashdin and Greene are not independent of Chris-Craft. The only facts alleged to support this inference are that Kashdin is a former senior officer of Chris-Craft and that Greene is employed as a consultant by BHC. These facts are plainly inadequate to raise any question about the independence of either man.").

[15] The allegation concerning the son's employment did not render the director lacking in independence for demand futility purposes also because the employment did not render the director lacking in independence under the rules of the New York Stock Exchange. The same is true as to Mr. Ortolf. Like the director in *J.P. Morgan Chase*, Ortolf has been determined to satisfy the independence requirements of the exchange on which DISH's shares are listed. As noted in DISH's March 22, 2013 Proxy Statement, "The Board has determined that Mr. Ortolf meets the independence requirements of NASDAQ and SEC rules and regulations." (DISH Network Corp., Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934, at 5 (March 22, 2013) at 5 (attached hereto as Exhibit B); *see also* NASDAQ Listing Rules, Rule 5605(a)(2), *available at* http://nasdaq.cchwallstreet.com/NASDAQTools/PlatformViewer.asp?selectednode=chp%5F1%5F1%5F4%5F3&manual=%2Fnasdaq%2Fmain%2Fnasdaq%2Dequityrules%2F).

[16] The allegation that Ortolf voted to terminate the special transaction committee does not establish a lack of independence. *See, e.g., Kaplan v. Wyatt*, 499 A.2d 1184, 1189 (Del. 1985) ("Even a director's approval of the transaction in question does not establish a lack of independence.").

4. The Plaintiff's Allegations that the SLC Has Not Acted Independently Are Contradicted by the Record.

The allegations in the Second Amended Complaint that the SLC has not acted independently are squarely contradicted by the record. For example, according to the Complaint, upon the motion for preliminary injunction, the SLC "proclaimed that none of the Defendants had breached their fiduciary duties." (SAC ¶ 208) In fact, the SLC made no such proclamation. The SLC rather opposed only the specific preliminary relief sought: an injunction barring all but one of the pre-existing directors from participating in DISH's bid for LightSquared. As it explained at the time, it did so because it did "not believe that the requested relief, if granted, would serve the best interest of DISH." (October SLC Report at 4; *see also* November SLC Report at 41) The Court agreed, explaining, "Issuing the broad injunctive relief sought by Plaintiff could lead to significant harm to DISH." (Preliminary Injunction Decision at p. 13)

The SLC expressly reserved on the issue whether Mr. Ergen had breached fiduciary duties.[17] As for any breaches by the board, the SLC argued only that it was too late to remedy any such alleged breaches by *injunctive relief*[18] and that, in all events, the conduct of the board had not produced an unfair bid.[19] The SLC did not address the breaches alleged in the Second Amended Complaint because they had not yet even been alleged (with the exceptions of the claims for misuse of confidential information and knowingly causing an increased risk of greater legal fees, which the SLC certainly did not address on the motion for preliminary injunction).

---

[17] The SLC explained, "The SLC's investigation of any claims that DISH may have against Mr. Ergen arising from his purchase of LightSquared debt remains ongoing. . . . [T]he SLC is not waiving or surrendering any legal or equitable claims that DISH may have." (November SLC Report at 38 n.168)

[18] The SLC explained, "If Ergen or any of the director defendants breached fiduciary duties in connection with the Special Transaction Committee, such a breach can no longer be remedied by injunctive relief. The SLC has not had sufficient time to investigate the circumstances of the discontinuance of the Special Transaction Committee. The SLC will be investigating those circumstances in the coming weeks and months because they may be relevant to the derivative plaintiff's claims for money damages." October SLC Report at 13.

[19] (*See* SAC ¶ 208 ("There's not a breach of fiduciary duty if the transaction was fair; there's not a breach of fiduciary duty if the value was fair . . . ."))

HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134

There is no merit to the allegations in the Second Amended Complaint that the few factual determinations made by the SLC were incorrect or constituted "false assurances." Rather, they have been confirmed by the factual findings of the Bankruptcy Court or otherwise borne out by subsequent events. For example, the Complaint alleges that the SLC "misled this Court" that "DISH and any subsidiary of DISH were Ineligible Transferees [of the secured debt] at the time that the secured debt was transferred to Mr. Ergen." (SAC ¶¶ 88-89 (emphasis omitted)) In fact, the SLC was correct. The Bankruptcy Court later expressly held that as "'Disqualified Companies' . . . DISH and EchoStar were not permitted to purchase the LP debt." (Post-Trial Findings of Fact and Conclusions of Law at 96-97, *LightSquared LP v. SP Special Opportunities LLC* (*In re LightSquared Inc.*), No. 12-12080 (SCC), Adv. Pro. No. 13-01390 (SCC) (Bankr. S.D.N.Y. June 10, 2014) ("Bankruptcy Decision")) It is difficult to understand how the Complaint could allege that the SLC "misled this Court" when the Bankruptcy Court had already established that the SLC's statement was precisely right.

The Complaint also chastises the SLC for having stated that "[i]f the transaction [with LightSquared] is consummated on the basis of its current terms, the transaction will be fair." (SAC ¶ 206 (alterations in original) (internal quotation marks omitted)) This statement also was correct. In fact, the Complaint now alleges that the $2.22 billion bid was *lower* than the actual value of LightSquared, with the result that the bid was so fair that it should never have been terminated.[20] (*E.g.*, SAC ¶¶ 254, 373-74)

The Complaint alleges that the SLC "completely and unequivocally dismissed the possibility that Ergen could have a conflicting personal interest." (SAC ¶ 218) In fact, the SLC never made such a broad determination. It rather asserted only that "Ergen Does Not Have a Conflict of Interest as to DISH Increasing Its Bid." (November SLC Report at 38)

[20] The Second Amended Complaint alleges that the SLC's statement somehow "undermined" the Special Transaction Committee's determination concerning the bid, but this is not so. (SAC ¶ 206) The Special Transaction Committee recommended that the bid be made. (SAC ¶ 170) To the extent that, in recommending the bid, the Special Transaction Committee specifically reserved for further consideration what it viewed as the related issue of the fairness of Ergen's acquisition of the secured debt, the SLC has similarly reserved on that issue.

This was correct. The Court agreed, declining to enjoin Ergen from participating in discussions concerning any increase in the bid. (Preliminary Injunction Decision at pp. 15-16)

The Complaint further alleges that the SLC "falsely assured this Court that . . . Ergen's participation [in the Bankruptcy Proceedings] does not threaten to impair DISH's efforts to acquire LightSquared." (SAC ¶ 203 (alteration in original)) The assurance was correct. The statement was later borne out when the Bankruptcy Court dismissed the adversary claims against DISH. (Bankruptcy Decision at 99 n.48 ("Because the Court finds no breach of an express term of a contract, the Court also finds that Plaintiffs have failed to prove their claims against DISH, EchoStar, and Mr. Ergen for tortious interference with contract.")) The Bankruptcy Court never suggested that it would bar DISH from acquiring LightSquared, much less due to alleged improprieties in DISH's corporate governance. The Bankruptcy Court expressly declined to address DISH's corporate governance. (Bankruptcy Decision at 102, 119)[21]

The Complaint alleges that the SLC "dismissed" the plaintiff's concerns and "represent[ed] to this Court that the release of the *disallowance* claim [asserted against Ergen's SPSO in the adversary proceeding] is not likely to have a material impact" on DISH's ability to acquire LightSquared. (SAC ¶ 211 (emphasis omitted in part)) In fact, the SLC certainly believed the advice when it gave it, and the advice has been borne out in the sense that it was intended. When the SLC gave the advice, the SLC believed that the Bankruptcy Court would either (a) dismiss the disallowance claim, rendering the release of the claim irrelevant or (b) reduce the scope of the release, if it had not previously been reduced through negotiation, as a condition to confirming the plan that concerned DISH's bid for LightSquared. The advice was borne out when the Bankruptcy Court indeed dismissed the disallowance claim, rendering the release of the claim irrelevant. Now that the Complaint has alleged that the existence of the

[21] For purposes of determining whether DISH was a good faith purchaser, the Bankruptcy Court did not concern itself with any alleged interference by Ergen or the directors in the process of the Special Transaction Committee. It rather considered the alleged conduct only for purposes of determining whether Ergen's secured debt of LightSquared should be disallowed or subordinated. (Bankruptcy Decision at 102, 119.)

release in the draft Asset Purchase Agreement prevented DISH from acquiring LightSquared at auction, the SLC is investigating that allegation.

The Complaint alleges that the SLC "falsely represented to this Court that Ergen had never conditioned DISH's bid for LightSquared's spectrum on receiving payment of his personal claims of LightSquared debt." (SAC ¶ 19) The SLC never made such a representation. The SLC's counsel rather stated that "nobody from DISH" said that DISH "would pull its bid if the release is changed." (Transcript of Hearing on Motion for Reconsideration at 25 (Dec. 19, 2013)) The Complaint does not contain any particularized allegations that such a threat was made before the SLC's counsel made this statement, thereby possibly rendering the statement incorrect. The SLC is now investigating whether such a threat was made after the SLC's counsel made his statement.[22]

Finally, the Second Amended Complaint alleges that the SLC failed to speak up when Willkie Farr, as counsel for LBAC, "refus[ed] to modify the release and threaten[ed] to withdraw the bid unless LightSquared dropped its claims against Ergen." (SAC ¶ 18) The Complaint does not specify when or where such a threat was made. The SLC certainly did not witness such a threat. If it had, it would have taken appropriate remedial action.

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

---

[22] The SLC is also reviewing additional information to see whether there is any need for the SLC to revise its counsel's statement. At the present time, it is not aware of any information that would suggest that the statement was incorrect.

HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134

CONCLUSION

The SLC, on behalf of DISH, respectfully requests that the Court dismiss the Second Amended Complaint for failure to plead a legally sufficient excuse for the plaintiff's failure to make a pre-suit demand on the SLC.

DATED this 29th day of August, 2014

J. Stephen Peek
Nevada Bar No. 1758
Robert J. Cassity
Nevada Bar No. 9779
HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134

Holly Stein Sollod (*Pro Hac Vice*)
HOLLAND & HART LLP
555 17th Street, Suite 3200
Denver, CO 80202

David C. McBride *(Pro Hac Vice)*
Robert S. Brady *(Pro Hac Vice)*
C. Barr Flinn *(Pro Hac Vice)*
YOUNG, CONWAY, STARGATT & TAYLOR, LLP
Rodney Square
1000 North King Street
Wilmington, DE 19801

Attorneys for the Special Litigation Committee of Dish Network Corporation

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of August, 2014, a true and correct copy of the foregoing **MOTION TO DISMISS FOR FAILURE TO PLEAD DEMAND FUTILITY** was served by the following method(s):

☒ Electronic: by submitting electronically for filing and/or service with the Eighth Judicial District Court's e-filing system and served on counsel electronically in accordance with the E-service list to the following email addresses:

Mark E. Ferrario, Esq.
Jack Burns, Esq.
Greenberg Traurig, LLP
3773 Howard Hughes Pkwy., Suite 400 North
Las Vegas, Nevada 89169
lvlitdock@gtlaw.com
burnsjf@gtlaw.com
rosehilla@gtlaw.com

Gregory A. Markel, Esq.
Martin L. Seidel, Esq.
Cadwalader, Wichersham, & Taft, LLP
One World Financial Center
New York, New York 10281
Admitted Pro Hac Vice

Gregory.Beaman@cwt.com
Ryan.Andreoli@cwt.com
William.Foley@cwt.com

Attorneys for Defendant Steven R. Goodbarn

Joshua H. Reisman, Esq.
Robert R. Warns III, Esq.
Reisman Sorokac
8965 South Eastern Avenue, Suite 382
Las Vegas, Nevada 89123
jreisman@rsnvlaw.com

James C. Dugan, Esq.
Tariq Mundiya, Esq.
Willkie, Farr, & Gallagher, LLP
787 Seventh Avenue
New York, New York 10019
Admitted Pro Hac Vice
imundiya@wilkie.com

Attorneys for Charles W. Ergen

Brian W. Boschee, Esq.
Michael D. Navratil, Esq.
William N. Miller, Esq.
Cotton, Driggs, Walch, Holley, Woloson, & Thompson
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
bboschee@nevadafirm.com
wmiller@nevadafirm.com
ddudas@nevadafirm.com

Mark Lebovitch, Esq.
Jeroen Van Kwawegen, Esq.
Jeremy Friedman, Esq.
Bernstein, Litowitz, Berger, & Grossmann, LLP
1285 Avenue of the Americas
New York, New York 10019
Admitted Pro Hac Vice

Adam.hollanher@blbglaw.com
jeroen@blbglaw.com
markl@blbglaw.com

Attorneys for Plaintiff
Kirk B. Lenhard, Esq.
Jeffrey S. Rugg, Esq.
Brownstein Hyatt Faber Schrek
100 North City Parkway, Suite 1600
Las Vegas, Nevada 89106
jrugg@bhfs.com
kmandall@bhfs.com
MFetaz@bhfs.com

Brian T. Frawley, Esq.
Sullivan & Cromwell, LLP
125 Broad Street
New York, New York 10004
Admitted Pro Hac Vice
frawleyb@sullcrom.com

Attorneys for Defendant Dish Network Corporation and Director Defendants

❐ U.S. Mail: by depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

❐ Email: by electronically delivering a copy via email to the following e-mail address:

❐ Facsimile: by faxing a copy to the following numbers referenced below:

Valerie Larsen
An Employee of Holland & Hart LLP

HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134

EXHIBIT A

DECL
J. Stephen Peek
Nevada Bar No. 1758
Robert J. Cassity
Nevada Bar No. 9779
HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
Phone: (702) 669-4600
Fax: (702) 669-4650

Holly Stein Sollod (*Pro Hac Vice*)
HOLLAND & HART LLP
555 17TH STREET, SUITE 3200
DENVER, CO 80202
PHONE: (303) 295-8085
FAX: (303) 975-5395

David C. McBride *(Pro Hac Vice)*
Robert S. Brady *(Pro Hac Vice)*
C. Barr Flinn *(Pro Hac Vice)*
YOUNG, CONWAY, STARGATT & TAYLOR, LLP
Rodney Square
1000 North King Street
Wilmington, DE 19801
Phone: (302) 571-6600
Fax: (302) 571-1253

Attorneys for the Special Litigation Committee of Dish Network Corporation

DISTRICT COURT

CLARK COUNTY, NEVADA

IN RE DISH NETWORK CORPORATION DERIVATIVE LITIGATION	Case No. A-13-686775-B Dept. No. XI **DECLARATION OF GEORGE R. BROKAW**

I, George R. Brokaw, pursuant to NRS 53.045, declare as follows:

1. I am over 18 years of age and am competent to testify to the matters set forth in this Declaration.

2. I have personal knowledge of the matters set forth in this Declaration.

3. A true and correct copy of the first page and signature pages of the last will and testament of George R. Brokaw, dated October 26, 2007 (the "Brokaw Will"), are attached to this Declaration as Exhibit 1. Portions of the Brokaw Will that are unrelated to the guardianship of my children upon my wife's and my demise have been redacted.

4. My wife, Alison Morse Brokaw, does not have a will.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

EXECUTED this 29th day of August, 2014 at 12:12, pm.

George R. Brokaw

HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134

EXHIBIT 1

[redacted]

I, GEORGE R. BROKAW, of New York, New York, declare this to be my last will and testament.

FIRST: I revoke all wills and codicils which I have heretofore made.

SECOND: [redacted]

(B) If my wife, ALLISON MORSE BROKAW ("my wife"), shall not survive me, I appoint my brother, CLIFFORD V. BROKAW, as the guardian of the person and property of any minor child of mine.

DS GB
KCH MEK

(C) [redacted]

(D) [redacted]

(E) [redacted]

(F) [redacted]

[[3023185v2]]

10-26-2007

(8) words in either the singular or the plural number shall be deemed to include both the singular and the plural numbers.

IN WITNESS WHEREOF, I have subscribed this will under my seal

this 26th day of October 2007.

[illegible]

On the date last above written, GEORGE R. BROKAW, in our presence, subscribed and sealed the foregoing instrument, declared it to be his last will and testament and requested us to witness it, whereupon we, still in his presence and in the presence of each other, have signed our names below.

[illegible] residing at 5 The Hemlocks
Roslyn NY 11576

[illegible] residing at 166 W. 53rd St Apt 41D
New York, NY 10019

Michelle E Kaltzen residing at 310 Greenwich St 32F
New York, NY 10013

STATE OF)
) ss.:
COUNTY OF)

We, the undersigned, being duly sworn, depose and say:

1. We witnessed the execution of the last will and testament (the Will) of GEORGE BROKAW (the Testator) to which this affidavit is annexed.

2. On October 26, 2007, at Cravath, Swaine & Moore LLP, 825 8th Ave, NY, NY, in our presence, the Testator signed the Will, declared it to be the Testator's last will and testament and requested us to witness it, and we thereupon, in the presence of the Testator and in the presence of each other, signed our names as witnesses to the Will.

3. At the time of executing the Will, the Testator was over the age of 18 years and, in our opinion, of sound mind, memory and understanding, and not under any restraint or in any respect incompetent to make a will.

4. We make this affidavit at the request of the Testator, with whom we are acquainted. The Testator can read and speak English, and can see and hear.

5. The undersigned, David S. Finkelstein, is an attorney admitted to practice in the State of New York, and supervised the execution of the Will in accordance with the requirements of the Estates, Powers and Trusts Law.

David Finkelstein

[signature]

Michelle E Kaltgen

Subscribed and sworn to before me)
)
this 26th day of October 2007.)

Claire M. Kelly
Notary Public

CLAIRE M. KELLY
Notary Public, State of New York
No. 31-4676918
Certificate Filed in New York County
Commission Expires January 31, 2011

[[3023185v2]]

EXHIBIT B

DEF 14A 1 a13-1215_4def14a.htm DEF 14A

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE 14A

Proxy Statement Pursuant to Section 14(a) of
the Securities Exchange Act of 1934 (Amendment No.)

Filed by the Registrant ☒

Filed by a Party other than the Registrant ☐

Check the appropriate box:
☐ Preliminary Proxy Statement
☐ **Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**
☒ Definitive Proxy Statement
☐ Definitive Additional Materials
☐ Soliciting Material Pursuant to §240.14a-12

DISH Network Corporation
(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):
☒ No fee required.
☐ Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.
(1) Title of each class of securities to which transaction applies:
(2) Aggregate number of securities to which transaction applies:
(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):
(4) Proposed maximum aggregate value of transaction:
(5) Total fee paid:

☐ Fee paid previously with preliminary materials.
☐ Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.
(1) Amount Previously Paid:
(2) Form, Schedule or Registration Statement No.:
(3) Filing Party:
(4) Date Filed:

March 22, 2013

DEAR SHAREHOLDER:

It is a pleasure for me to extend to you an invitation to attend the 2013 Annual Meeting of Shareholders of DISH Network Corporation. The Annual Meeting will be held on May 2, 2013, at 1:00 p.m., local time, at DISH Network's headquarters located at 9601 S. Meridian Blvd., Englewood, Colorado 80112.

The enclosed Notice of 2013 Annual Meeting of Shareholders and Proxy Statement describe the proposals to be considered and voted upon at the Annual Meeting. During the Annual Meeting, we will also review DISH Network's operations and other items of general interest regarding the corporation.

We hope that all shareholders will be able to attend the Annual Meeting. Whether or not you plan to attend the Annual Meeting personally, it is important that you be represented. To ensure that your vote will be received and counted, please vote online, by mail or telephone, by following the instructions included with the proxy card.

On behalf of the Board of Directors and senior management, I would like to express our appreciation for your support and interest in DISH Network. I look forward to seeing you at the Annual Meeting.

CHARLES W. ERGEN
Chairman of the Board of Directors

NOTICE OF 2013 ANNUAL MEETING OF SHAREHOLDERS

TO THE SHAREHOLDERS OF DISH NETWORK CORPORATION:

The Annual Meeting of Shareholders of DISH Network Corporation will be held on May 2, 2013, at 1:00 p.m., local time, at our headquarters located at 9601 S. Meridian Blvd., Englewood, Colorado 80112, for the following purposes:

1. To elect nine directors to our Board of Directors;

2. To ratify the appointment of KPMG LLP as our independent registered public accounting firm for the fiscal year ending December 31, 2013;

3. To amend and restate our Employee Stock Purchase Plan; and

4. To consider and act upon any other business that may properly come before the Annual Meeting or any adjournment or postponement of the Annual Meeting.

You may vote on these matters in person or by proxy. Whether or not you plan to attend the Annual Meeting, we ask that you vote by one of the following methods to ensure that your shares will be represented at the meeting in accordance with your wishes:

- Vote online or by telephone, by following the instructions included with the proxy card; or

- Vote by mail, by completing and returning the enclosed proxy card in the enclosed addressed stamped envelope.

Only shareholders of record at the close of business on March 7, 2013 are entitled to notice of, and to vote at, the Annual Meeting or any adjournment or postponement of the meeting. This proxy statement and the proxy card were either made available to you online or mailed to you beginning on or about March 22, 2013.

By Order of the Board of Directors

R. STANTON DODGE
Executive Vice President, General Counsel
and Secretary

March 22, 2013

9601 S. Meridian Blvd. • Englewood, Colorado 80112 • Tel: (303) 723-1000 • Fax: (303) 723-1999

PROXY STATEMENT
OF
DISH NETWORK CORPORATION

GENERAL INFORMATION

This Proxy Statement and the accompanying proxy card are being furnished to you in connection with the 2013 Annual Meeting of Shareholders (the "Annual Meeting") of DISH Network Corporation ("DISH Network," "we," "us," "our" or the "Corporation"). The Annual Meeting will be held on May 2, 2013, at 1:00 p.m., local time, at our headquarters located at 9601 S. Meridian Blvd., Englewood, Colorado 80112.

This Proxy Statement is being sent or provided on or about March 22, 2013, to holders of record at the close of business on March 7, 2013 (the "Record Date") of our Class A Common Stock (the "Class A Shares") and Class B Common Stock (the "Class B Shares").

Your proxy is being solicited by our Board of Directors (the "Board" or "Board of Directors"). It may be revoked by written notice given to our Secretary at our headquarters at any time before being voted. You may also revoke your proxy by submitting a proxy with a later date or by voting in person at the Annual Meeting. To vote online or by telephone, please refer to the instructions included with the proxy card. To vote by mail, please complete the accompanying proxy card and return it to us as instructed in the proxy card. Votes submitted online or by telephone or mail must be received by 11:59 p.m., Eastern Time, on May 1, 2013. Submitting your vote online or by telephone or mail will not affect your right to vote in person, if you choose to do so. Proxies that are properly delivered to us and not revoked before the closing of the polls during the Annual Meeting will be voted for the proposals described in this Proxy Statement in accordance with the instructions set forth on the proxy card. The Board is currently not aware of any matters proposed to be presented at the Annual Meeting other than the election of nine directors, the ratification of KPMG LLP as our independent registered public accounting firm for the fiscal year ending December 31, 2013, and the amendment and restatement of our Employee Stock Purchase Plan. If any other matter is properly presented at the Annual Meeting, the persons named in the accompanying proxy card will have discretionary authority to vote on that matter. Your presence at the Annual Meeting does not of itself revoke your proxy.

Attendance at the Meeting

All of our shareholders of record at the close of business on the Record Date, or their duly appointed proxies, may attend the Annual Meeting. Seating is limited, however, and admission to the Annual Meeting will be on a first-come, first-served basis. Registration and seating will begin at 12:30 p.m., local time, and the Annual Meeting will begin at 1:00 p.m., local time. Each shareholder may be asked to present a valid government issued photo identification confirming his or her identity as a shareholder of record, such as a driver's license or passport. Cameras, recording devices, and other electronic devices will not be permitted at the Annual Meeting.

If your shares are held by a broker, bank, or other nominee (often referred to as holding in "street name") and you desire to attend the Annual Meeting, you will need to bring a legal proxy or a copy of a brokerage or bank statement reflecting your share ownership as of the Record Date. All shareholders must check in at the registration desk at the Annual Meeting.

Securities Entitled to Vote

Shareholder of Record. If your shares are registered directly in your name with our transfer agent, Computershare Trust Company, N.A., you are considered the "shareholder of record," with respect to those shares. Shareholders of record receive this Proxy Statement and the accompanying 2012 Annual Report and the proxy card directly from us.

Beneficial Owner. If your shares are held in a stock brokerage account or by a bank or other nominee, you are considered the "beneficial owner" of shares held in street name. Your broker, bank or other nominee, who is considered with respect to those shares the shareholder of record, should have forwarded the Notice of Internet Availability of Proxy Materials to you. As the beneficial owner, you have the right to direct your broker, bank or other nominee on how to vote your shares by completing the voting instruction form.

Only shareholders of record at the close of business on the Record Date are entitled to notice of the Annual Meeting. Such shareholders may vote shares held by them at the close of business on the Record Date at the Annual Meeting. At the close of business on the Record Date, 214,868,520 Class A Shares and 238,435,208 Class B Shares were outstanding. Each of the Class A Shares is entitled to one vote per share on each proposal to be considered by our shareholders. Each of the Class B Shares is entitled to ten votes per share on each proposal to be considered by our shareholders.

Vote Required

In accordance with our Amended and Restated Articles of Incorporation (our "Articles of Incorporation"), the presence at the Annual Meeting, in person or by proxy, of the holders of a majority of the total voting power of all classes of our voting stock taken together shall constitute a quorum for the transaction of business at the Annual Meeting.

The affirmative vote of a plurality of the total votes cast for directors at the Annual Meeting is necessary to elect a director. No cumulative voting is permitted. The nine nominees receiving the highest number of votes cast "for" will be elected.

The affirmative vote of a majority of the voting power represented at the Annual Meeting is required to approve the ratification of the appointment of KPMG LLP as our independent registered public accounting firm and the amendment and restatement of our Employee Stock Purchase Plan. The total number of votes cast "for" will be counted for purposes of determining whether sufficient affirmative votes have been cast to approve the ratification of the appointment of KPMG LLP as our independent registered public accounting firm and the amendment and restatement of our Employee Stock Purchase Plan.

Abstentions from voting on a proposal by a shareholder at the Annual Meeting, as well as broker nonvotes, will be considered for purposes of determining the number of total votes present at the Annual Meeting. Abstentions will have the same effect as votes "against" the ratification of the appointment of KPMG LLP as our independent registered public accounting firm and the amendment and restatement of our Employee Stock Purchase Plan. However, abstentions will not be counted as "against" or "for" the election of directors. Broker nonvotes will not be considered in determining the election of directors, the ratification of the appointment of KPMG LLP as our independent registered public accounting firm or the amendment and restatement of our Employee Stock Purchase Plan.

Charles W. Ergen, our Chairman, currently possesses approximately 88.0% of the total voting power. Please see "Security Ownership of Certain Beneficial Owners and Management" below. Mr. Ergen has indicated his intention to vote: (1) for the election of each of the nine director nominees, (2) for the ratification of the appointment of KPMG LLP as our independent registered public accounting firm, and (3) for the amendment and restatement of our Employee Stock Purchase Plan. Accordingly, the election of each of the director nominees, the ratification of the appointment of KPMG LLP as our independent registered public accounting firm, and the amendment and restatement of our Employee Stock Purchase Plan, are assured notwithstanding a contrary vote by any or all shareholders other than Mr. Ergen.

Householding

We have adopted a procedure approved by the Securities and Exchange Commission ("SEC") called "householding." Under this procedure, service providers that deliver our communications to shareholders may deliver a single copy of our Annual Report, Proxy Statement or Notice of Internet Availability of Proxy Materials to multiple shareholders sharing the same address, unless one or more of these shareholders notifies us that they wish to continue receiving individual copies. Shareholders who participate in householding will continue to receive separate proxy cards. This householding procedure reduces our printing costs and postage fees.

We will deliver promptly upon written or oral request a separate copy of our Annual Report, Proxy Statement or Notice of Internet Availability of Proxy Materials, as applicable, to a shareholder at a shared address to which a single copy of the documents was delivered. Please notify Broadridge Financial Solutions at 51 Mercedes Way, Edgewood, NY 11717 or (800) 542-1061 to receive a separate copy of our Annual Report, Proxy Statement or Notice of Internet Availability of Proxy Materials.

If you are eligible for householding, but you and other shareholders with whom you share an address currently receive multiple copies of our annual reports, proxy statements and/or Notices of Internet Availability of Proxy Materials, or if you hold stock in more than one account, and in either case you wish to receive only a single copy of our Annual Report, Proxy Statement or Notice of Internet Availability of Proxy Materials for your household, please contact Broadridge Financial Solutions at the address or phone number provided above.

Our Mailing Address

Our mailing address is 9601 S. Meridian Blvd., Englewood, Colorado 80112.

PROPOSAL NO. 1 — ELECTION OF DIRECTORS

Nominees

Our shareholders will elect a board of nine directors at the Annual Meeting. Each of the directors is expected to hold office until the next annual meeting of our shareholders or until his or her respective successor shall be duly elected and qualified. The affirmative vote of a plurality of the total votes cast for directors is necessary to elect a director. This means that the nine nominees who receive the most votes will be elected to the nine open directorships even if they get less than a majority of the votes cast. Each nominee has consented to his or her nomination and has advised us that he or she intends to serve if elected. If at the time of the Annual Meeting one or more of the nominees have become unable to serve: (i) shares represented by proxies will be voted for the remaining nominees and for any substitute nominee or nominees; or (ii) the Board of Directors may, in accordance with our bylaws, reduce the size of the Board of Directors or may leave a vacancy until a nominee is identified.

The nominees for director are as follows:

Name	Age	First Became Director	Position with the Company
Joseph P. Clayton	63	2011	Director, President and Chief Executive Officer
James DeFranco	60	1980	Director and Executive Vice President
Cantey M. Ergen	57	2001	Director and Senior Advisor
Charles W. Ergen	60	1980	Chairman
Steven R. Goodbarn (1)	55	2002	Director
Gary S. Howard (1)	62	2005	Director
David K. Moskowitz	54	1998	Director and Senior Advisor
Tom A. Ortolf (1)	62	2005	Director
Carl E. Vogel	55	2005	Director and Senior Advisor

(1) Member of Audit, Compensation and Nominating Committees.

The following sets forth the business experience of each of the nominees over the last five years:

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

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

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

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

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

Gary S. Howard. Mr. Howard joined the Board in November 2005 and is a member of our Audit Committee, Compensation Committee, and Nominating Committee. Mr. Howard has served on the board of directors of Interval Leisure Group, Inc., since August 2008. Mr. Howard served as Executive Vice President and Chief Operating Officer of Liberty Media Corporation from July 1998 to February 2004 as well as serving on Liberty Media Corporation's board of directors from July 1998 until January 2005. Additionally, Mr. Howard held several executive officer positions with companies affiliated with Liberty Media Corporation. The Board has determined that Mr. Howard meets the independence requirements of NASDAQ and SEC rules and regulations. The Board concluded that Mr. Howard should continue to serve on the Board due to, among other things, his knowledge of DISH Network from his service as a director since 2005 and his experience in the media and telecommunications industries, including his prior service with Liberty Media Corporation.

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

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

Carl E. Vogel. Mr. Vogel has served on the Board since May 2005 and is currently a Senior Advisor to us. He served as our President from September 2006 until February 2008 and served as our Vice Chairman from June 2005 until March 2009. From October 2007 until March 2009, Mr. Vogel served as the Vice Chairman of the board of directors of, and as a Senior Advisor to, EchoStar. From 2001 until 2005, Mr. Vogel served as the President and CEO of Charter Communications Inc. ("Charter"), a publicly-traded company providing cable television and broadband services to approximately six million customers. Prior to joining Charter, Mr. Vogel worked as an executive officer in various capacities for companies affiliated with Liberty Media Corporation. Mr. Vogel was one of our executive officers from 1994 until 1997, including serving as our President from 1995 until 1997. Mr. Vogel is also currently serving on the boards of directors of Shaw Communications, Inc., Sirius, Universal Electronics, Inc. and Ascent Media Corporation. The Board concluded that Mr. Vogel should continue to serve on the Board due to, among other things, his knowledge of DISH Network from his service as a director and officer and his experience in the telecommunications and related industries from his service over the years as a director or officer with a number of different companies in those industries.

Charles W. Ergen, our Chairman, currently possesses approximately 88.0% of the total voting power. Please see "Equity Security Ownership" below. Mr. Ergen has indicated his intention to vote in favor of Proposal No. 1. Accordingly, approval of Proposal No. 1 is assured notwithstanding a contrary vote by any or all shareholders other than Mr. Ergen.

The Board of Directors unanimously recommends a vote FOR the election of all of the nominees named herein (Item No. 1 on the enclosed proxy card).

CORPORATE GOVERNANCE MATTERS

Board of Directors and Committees and Selection Process

Our Board held eight meetings in 2012 and also took action by unanimous written consent on seven occasions during 2012. Each of our directors attended at least 75% of the aggregate of: (i) the total number of meetings of the Board held during the period in which he or she was a director, and (ii) the total number of meetings held by all committees of the Board on which he served. In addition, our non-employee directors held four executive sessions in 2012.

Directors are elected annually and serve until their successors are duly elected and qualified or their earlier resignation or removal. Officers serve at the discretion of the Board.

We are a "controlled company" within the meaning of the NASDAQ Marketplace Rules because more than 50% of our voting power is held by Charles W. Ergen, our Chairman. Mr. Ergen currently beneficially owns approximately 52.1% of our total equity securities and possesses approximately 88.0% of the total voting power. Mr. Ergen's beneficial ownership excludes 9,886,441 of Class A Shares issuable upon conversion of Class B Shares currently held by certain trusts established by Mr. Ergen for the benefit of his family. These trusts beneficially own approximately 4.4% of our total equity securities and possess approximately 3.8% of the total voting power. Please see "Equity Security Ownership" below. Therefore, we are not subject to the NASDAQ listing requirements that would otherwise require us to have: (i) a Board of Directors comprised of a majority of independent directors; (ii) compensation of our executive officers determined by a majority of the independent directors or a compensation committee composed solely of independent directors; and (iii) director nominees selected, or recommended for the Board's selection, either by a majority of the independent directors or a nominating committee composed solely of independent directors. Nevertheless, the Corporation has created an Executive Compensation Committee (the "Compensation Committee") and a Nominating Committee, in addition to an Audit Committee, all of which are composed entirely of independent directors. The charters of our Compensation, Audit, and Nominating Committees are available free of charge on our website at http://www.dish.com. The function and authority of these committees are described below:

Audit Committee. Our Board has established a standing Audit Committee in accordance with NASDAQ rules and Section 10A of the Securities Exchange Act of 1934 (the "Exchange Act") and related SEC rules and regulations. The Audit Committee operates under an Audit Committee Charter adopted by the Board. The principal functions of the Audit Committee are to: (i) select the independent registered public accounting firm and set their compensation; (ii) select the internal auditor; (iii) review and approve management's plan for engaging our independent registered public accounting firm during the year to perform non-audit services and consider what effect these services will have on the independence of our independent registered public accounting firm; (iv) review our annual financial statements and other financial reports that require approval by the Board; (v) oversee the integrity of our financial statements, our systems of disclosure and internal controls, and our compliance with legal and regulatory requirements; (vi) review the scope of our independent registered public accounting firm's audit plans and the results of their audits; and (vii) evaluate the performance of our internal audit function and independent registered public accounting firm.

The Audit Committee held nine meetings and took action by unanimous written consent on four occasions during 2012. The current members of the Audit Committee are Mr. Goodbarn, Mr. Howard and Mr. Ortolf, with Mr. Ortolf serving as Chairman of the Audit Committee and Mr. Goodbarn serving as our "audit committee financial expert". The Board has determined that each of these individuals meets the independence requirements of NASDAQ and SEC rules and regulations. The Board has also determined that each member of our Audit Committee is financially literate and that Mr. Goodbarn qualifies as an "audit committee financial expert" as defined by applicable SEC rules and regulations.

Compensation Committee. The Compensation Committee operates under a Compensation Committee Charter adopted by the Board. The principal functions of the Compensation Committee are, to the extent the Board deems necessary or appropriate, to: (i) make and approve all option grants and other issuances of DISH Network's equity securities to DISH Network's executive officers and Board members other than nonemployee directors; (ii) approve all other option grants and issuances of DISH Network's equity securities, and recommend that the full Board make and approve such grants and issuances; (iii) establish in writing all performance goals for performance-based compensation that together with other compensation to senior executive officers could exceed $1 million annually, other than standard stock incentive plan options that may be paid to DISH Network's executive officers, and certify achievement of such goals prior to payment; and (iv) set the compensation of Mr. Ergen, who is our Chairman. The Compensation Committee held seven meetings and took action by unanimous written consent on four occasions during 2012. The current members of the Compensation Committee are Mr. Goodbarn, Mr. Howard and Mr. Ortolf, with Mr. Goodbarn serving as Chairman of the Compensation Committee. The Board has determined that each of these individuals meets the independence requirements of NASDAQ and SEC rules and regulations.

Nominating Committee. The Nominating Committee operates under a Nominating Committee Charter adopted by the Board. The principal function of the Nominating Committee is to recommend independent director nominees for selection by the Board. The Nominating Committee held two meetings during 2012 and did not take action by written consent during 2012. The current members of the Nominating Committee are Mr. Goodbarn, Mr. Howard and Mr. Ortolf, with Mr. Howard serving as Chairman of the Nominating Committee. The Board has determined that each of these individuals meets the independence requirements of NASDAQ and SEC rules and regulations.

The Nominating Committee will consider candidates suggested by its members, other directors, senior management and shareholders as appropriate. No search firms or other advisors were retained to identify prospective nominees during the past fiscal year. The Nominating Committee has not adopted a written policy with respect to the consideration of candidates proposed by security holders or with respect to nominating anyone to our Board other than nonemployee directors. Director candidates, whether recommended by the Nominating Committee, other directors, senior management or shareholders are currently considered by the Nominating Committee and the Board, as applicable, in light of the entirety of their credentials, including but not limited to the following diverse factors: (i) their reputation and character; (ii) their ability and willingness to devote sufficient time to Board duties; (iii) their educational background; (iv) their business and professional achievements, experience and industry background; (v) their independence from management under listing standards and the Corporation's governance guidelines; and (vi) the needs of the Board and the Corporation.

Board Criteria. In considering whether to recommend a prospective nominee for selection by the Board, including candidates recommended by shareholders, the Nominating Committee does not assign specific weights to particular criteria and no particular criterion is necessarily applicable to all prospective nominees. However, DISH Network believes that the backgrounds and qualifications of the directors, considered as a group, should provide a diverse mix of experience, knowledge and abilities that will allow the Board to fulfill its responsibilities. The Nominating Committee recommends, if necessary, measures to be taken so that the Board reflects the appropriate balance of experience, knowledge and abilities required for the Board as a whole and contains at least the minimum number of independent directors required by applicable laws and regulations.

A shareholder who wishes to recommend a prospective nominee for the Board should notify the Corporation's Secretary or any member of the Nominating Committee in writing with whatever supporting material the shareholder considers appropriate. The Nominating Committee will also consider whether to nominate any person nominated by a shareholder pursuant to the provisions of the Corporation's bylaws relating to shareholder nominations. Communications can be directed to the Corporation's Secretary or any member of the Nominating Committee in accordance with the process described in *"Shareholder Communications"* below.

Board Leadership Structure. The Board currently separates the role of Chairman of the Board from the role of Chief Executive Officer, with Mr. Charles W. Ergen serving as Chairman and Mr. Joseph P. Clayton serving as President and Chief Executive Officer of DISH Network. Mr. Clayton is responsible for the day to day management of the Corporation and Mr. Ergen primarily identifies strategic priorities and leads the discussion and execution of strategy for DISH Network. We believe this leadership structure is appropriate for the Corporation and in the best interest of shareholders, among other reasons, because separating the Chairman and Chief Executive Officer roles allows us to efficiently develop and implement corporate strategy that is consistent with the Board's oversight role, while facilitating strong day-to-day executive leadership. Among other things, separation of these roles allows our Chief Executive Officer and other members of senior management to focus on our day-to-day business, while at the same time the Board is able to take advantage of the unique blend of leadership, experience and knowledge of our industry and business that Mr. Ergen brings to the role of Chairman in providing guidance to, and oversight of, management. In light of the separation of the role of Chairman of the Board from the role of Chief Executive Officer and Mr. Ergen's voting control, we believe that the creation of a lead independent director position is not necessary at this time.

The Board's Role in Risk Oversight

The Board has ultimate responsibility for oversight of the Corporation's risk management processes. The Board discharges this oversight responsibility through regular reports received from and discussions with senior management on areas of material risk exposure to the Corporation. These reports and Board discussions include, among other things, operational, financial, legal and regulatory, and strategic risks. Additionally, the Corporation's risk management processes are intended to identify, manage and control risks so that they are appropriate considering the Corporation's scope, operations and business objectives. The full Board (or the appropriate Committee in the case of risks in areas for which responsibility has been delegated to a particular Committee) engages with the appropriate members of senior management to enable its members to understand and provide input to, and oversight of, our risk identification, risk management and risk mitigation strategies. The Audit Committee also meets regularly in executive session without management present to, among other things, discuss the Corporation's risk management culture and processes. For example, as part of its charter, our Audit Committee is responsible for, among other things, discussing Corporation policies with respect to risk assessment and risk management, and reviewing contingent liabilities and risks that may be material to the Corporation. When a Committee receives a report from a member of management regarding areas of risk, the Chairman of the relevant Committee is expected to report on the discussion to the full Board to the extent necessary or appropriate. This enables the Board to coordinate risk oversight, particularly with respect to interrelated or cumulative risks that may involve multiple areas for which more than one Committee has responsibility. The Board or applicable Committee also has authority to engage external advisors as necessary.

Other Information about Our Board of Directors

Compensation Committee Interlocks and Insider Participation. The Compensation Committee is comprised solely of independent directors. The Compensation Committee members are Mr. Goodbarn, Mr. Howard and Mr. Ortolf. None of these individuals was an officer or employee of DISH Network at any time during the 2012 fiscal year. With the exception of those executive officers and directors who are also executive officers or directors of EchoStar, no executive officer or director of DISH Network served on the board of directors or compensation committee of any other entity that had one or more executive officers who served as a member of DISH Network's Board of Directors or its Compensation Committee during the 2012 fiscal year.

Annual Meeting Attendance. Although we do not have a policy with regard to Board members' attendance at our annual meetings of shareholders, all of our directors are encouraged to attend such meetings. All of our directors were in attendance at our 2012 annual meeting. We expect that all of our directors will attend our 2013 Annual Meeting.

SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The following table sets forth, to the best of our knowledge, the beneficial ownership of our voting securities as of the close of business on the Record Date by: (i) each person known by us to be the beneficial owner of more than five percent of any class of our voting securities; (ii) each of our directors; (iii) our Chief Executive Officer, Chief Financial Officer and three other most highly compensated persons acting as one of our executive officers in 2012 (collectively, the "Named Executive Officers"); and (iv) all of our directors and executive officers as a group. Unless otherwise indicated, each person listed in the following table (alone or with family members) has sole voting and dispositive power over the shares listed opposite such person's name.

Name (1)	Amount and Nature of Beneficial Ownership	Percentage of Class
Class A Common Stock:		
Charles W. Ergen (2), (3)	231,108,004	52.1%
Cantey M. Ergen (4)	230,783,004	52.1%
Putnam Investments, LLC (5)	13,869,600	6.5%
BlackRock, Inc. (6)	13,324,801	6.2%
Dodge & Cox (7)	12,014,917	5.6%
James DeFranco (8)	4,576,027	2.1%
David K. Moskowitz (9)	944,352	*
Bernard L. Han (10)	671,752	*
Thomas A. Cullen (11)	505,841	*
Joseph P. Clayton (12)	371,617	*
Carl E. Vogel (13)	357,244	*
Gary S. Howard (14)	95,100	*
Tom A. Ortolf (15)	75,200	*
Steven R. Goodbarn (16)	20,000	*
Robert E. Olson (17)	10,537	*
All Directors and Executive Officers as a Group (16 persons) (18)	239,583,442	57.4%
Class B Common Stock:		
Charles W. Ergen	228,548,767	95.9%
Cantey M. Ergen	228,548,767	95.9%
Trusts (19)	9,886,441	4.1%
All Directors and Executive Officers as a Group (16 persons) (18)	228,548,767	95.9%

* Less than 1%.

(1) Except as otherwise noted below, the address of each such person is 9601 S. Meridian Blvd., Englewood, Colorado 80112. As of the close of business on the Record Date, there were 214,868,520 outstanding Class A Shares and 238,435,208 outstanding Class B Shares.

(2) Mr. Ergen is deemed to own beneficially all of the Class A Shares owned by his spouse, Cantey M. Ergen. Mr. Ergen's beneficial ownership includes: (i) 2,171,502 Class A Shares; (ii) 19,370 Class A Shares held in the Corporation's 401(k) Employee Savings Plan (the "401(k) Plan"); (iii) 325,000 Class A Shares subject to employee stock options that are either currently exercisable or may become exercisable within 60 days of the Record Date; (iv) 235 Class A Shares held by Mrs. Ergen; (v) 1,810 Class A Shares held in the 401(k) Plan by Mrs. Ergen; (vi) 14,320 Class A Shares held as custodian for Mr. Ergen's children; (vii) 27,000 Class A Shares held by a charitable foundation for which Mr. Ergen is an officer; and (viii) 228,548,767 Class A Shares issuable upon conversion of Mr. Ergen's Class B Shares. Mr. Ergen has sole voting and dispositive power with respect to 198,550,495 Class B Shares. Mr. Ergen's beneficial ownership of Class A Shares excludes 9,886,441 Class A Shares issuable upon conversion of Class B Shares held by certain trusts established by Mr. Ergen for the benefit of his family.

(3) Because each Class B Share is entitled to 10 votes per share, Mr. Ergen owns beneficially equity securities of the Corporation representing approximately 88.0% of the voting power of the Corporation (assuming no conversion of the Class B Shares and after giving effect to the exercise of Mr. Ergen's options that are either currently exercisable or may become exercisable within 60 days of the Record Date). Mr. Ergen's beneficial ownership includes: (i) 8,697,522 Class B Shares owned beneficially by Mrs. Ergen solely by virtue of her position as trustee of the Ergen Three-Year 2010 DISH GRAT; (ii) 10,205,737 Class B Shares owned beneficially by Mrs. Ergen solely by virtue of her position as trustee of the Ergen Four-Year 2010 DISH GRAT; and (iii) 11,095,013 Class B Shares owned beneficially by Mrs. Ergen solely by virtue of her position as trustee of the Ergen Five-Year 2010 DISH GRAT. Mr. Ergen's beneficial ownership excludes 9,886,441 Class A Shares issuable upon conversion of Class B Shares currently held by certain trusts established by Mr. Ergen for the benefit of his family. These trusts beneficially own approximately 4.4% of our total equity securities and possess approximately 3.8% of the total voting power.

(4) Mrs. Ergen beneficially owns all of the Class A Shares owned by her spouse, Mr. Ergen, except for 325,000 Class A Shares subject to employee stock options that are either currently exercisable or may become exercisable within 60 days of the Record Date.

(5) The address of Putnam Investments, LLC ("Putnam Investments") is One Post Office Square, Boston, Massachusetts 02109. Of the Class A Shares beneficially owned, Putnam Investments has sole voting power as to 270,835 Class A Shares and sole dispositive power as to 13,869,600 Class A Shares. The foregoing information is based solely upon a Schedule 13G filed by Putnam Investment with the SEC on February 14, 2013.

(6) The address of BlackRock, Inc. ("BlackRock") is 40 East 52nd Street, New York, New York 10022. BlackRock has sole voting and dispositive power as to all of the 13,324,801 Class A Shares beneficially owned by it. The foregoing information is based solely upon a Schedule 13G filed by BlackRock with the SEC on February 6, 2013.

(7) The address of Dodge & Cox is 555 California Street, 40th Floor, San Francisco, California 94104. Of the Class A Shares beneficially owned, Dodge & Cox has sole voting power as to 11,257,705 Class A Shares and sole dispositive power as to 12,014,917 Class A Shares. The foregoing information is based solely upon a Schedule 13G filed by Dodge & Cox with the SEC on February 13, 2013.

(8) Mr. DeFranco's beneficial ownership includes: (i) 1,129,438 Class A Shares; (ii) 19,370 Class A Shares held in the 401(k) Plan; (iii) 210,000 Class A Shares subject to employee stock options that are either currently exercisable or may become exercisable within 60 days of the Record Date; (iv) 50,000 Class A Shares held by Mr. DeFranco in an irrevocable trust for the benefit of his children and grandchildren; (v) 12,160 Class A Shares held by Mr. DeFranco as custodian for his children; (vi) 1,250,000 Class A Shares controlled by Mr. DeFranco as general partner of a limited partnership; and (vii) 1,905,059 Class A Shares held by Mr. DeFranco as a general partner of a different limited partnership.

(9) Mr. Moskowitz's beneficial ownership includes: (i) 127,779 Class A Shares; (ii) 18,561 Class A Shares held in the 401(k) Plan; (iii) 760,000 Class A Shares subject to employee stock options that are either currently exercisable or may become exercisable within 60 days of the Record Date; (iv) 1,328 Class A Shares held as custodian for his children; (v) 8,184 Class A Shares held as trustee for Mr. Ergen's children; and (vi) 28,500 Class A Shares held by a charitable foundation for which Mr. Moskowitz is a member of the board of directors.

(10) Mr. Han's beneficial ownership includes: (i) 5,911 Class A Shares; (ii) 841 Class A Shares held in the 401(k) Plan; and (iii) 665,000 Class A Shares subject to employee stock options that are either currently exercisable or may become exercisable within 60 days of the Record Date.

(11) Mr. Cullen's beneficial ownership includes: (i) 841 Class A Shares held in the 401(k) Plan; and (ii) 505,000 Class A Shares subject to employee stock options that are either currently exercisable or may become exercisable within 60 days of the Record Date.

(12) Mr. Clayton's beneficial ownership includes: (i) 21,477 Class A Shares; (ii) 140 Class A Shares held in the 401(k) Plan; and (iii) 350,000 Class A Shares subject to employee stock options that are either currently exercisable or may become exercisable within 60 days of the Record Date.

(13) Mr. Vogel's beneficial ownership includes: (i) 10,165 Class A Shares (including 10,000 shares held in an account that is subject to a margin loan); (ii) 1,094 Class A Shares held in the 401(k) Plan; and (iii) 345,985 Class A Shares subject to employee stock options that are either currently exercisable or may become exercisable within 60 days of the Record Date.

(14) Mr. Howard's beneficial ownership includes: (i) 74,500 Class A Shares; (ii) 100 Class A Shares owned by his spouse; (iii) 5,500 Class A Shares held by a charitable foundation for which Mr. Howard is an officer and a member of the

board of directors; and (iv) 15,000 Class A Shares subject to nonemployee director stock options that are either currently exercisable or may become exercisable within 60 days of the Record Date.

(15) Mr. Ortolf's beneficial ownership includes: (i) 15,000 Class A Shares subject to nonemployee director stock options that are either currently exercisable or may become exercisable within 60 days of the Record Date; (ii) 200 Class A Shares held in the name of one of his children; and (iii) 60,000 Class A Shares held by a partnership of which Mr. Ortolf is a partner and that are held as collateral for a margin account.

(16) Mr. Goodbarn's beneficial ownership includes: (i) 5,000 Class A Shares; and (ii) 15,000 Class A Shares subject to nonemployee director stock options that are either currently exercisable or may become exercisable within 60 days of the Record Date.

(17) Mr. Olson's beneficial ownership includes: (i) 537 Class A Shares held in the 401(k) Plan; and (ii) 10,000 Class A Shares subject to employee stock options that are either currently exercisable or may become exercisable within 60 days of the Record Date.

(18) Includes: (i) 3,552,380 Class A Shares; (ii) 67,205 Class A Shares held in the 401(k) Plan; (iii) 4,046,239 Class A Shares subject to employee and nonemployee director stock options that are either currently exercisable or may become exercisable within 60 days of the Record Date; (iv) 3,215,059 Class A Shares held in a partnership; (v) 228,548,767 Class A Shares issuable upon conversion of Class B Shares; (vi) 92,692 Class A Shares held in the name of, or in trust for, children and other family members; (vii) 61,000 Class A Shares held by charitable foundations; and (viii) 100 Class A Shares held by a spouse. Class A Shares and Class B Shares beneficially owned by both Mr. and Mrs. Ergen are only included once in calculating the aggregate number of shares owned by directors and executive officers as a group.

(19) Held by certain trusts established by Mr. Ergen for the benefit of his family.

Section 16(a) Beneficial Ownership Reporting Compliance

Section 16(a) of the Exchange Act requires our directors, executive officers and holders of more than 10% of our common stock to file reports with the SEC regarding their ownership and changes in ownership of our equity securities. We believe that during 2012, our directors, executive officers and 10% shareholders complied with all Section 16(a) filing requirements, with the exception of the inadvertent late filing of one Form 4 by Mr. Roger Lynch, which related to a single transaction. In making these statements, we have relied upon examination of copies of Forms 3, 4 and 5 provided to us and the written representations of our directors and officers.

COMPENSATION DISCUSSION AND ANALYSIS

This Compensation Discussion and Analysis addresses our compensation objectives and policies for our Named Executive Officers, or NEOs, the elements of NEO compensation and the application of those objectives and policies to each element of fiscal 2012 compensation for our NEOs.

This Compensation Discussion and Analysis contains information regarding company performance targets and goals for our executive compensation program. These targets and goals were disclosed to provide information on how executive compensation was determined in 2012 but are not intended to be estimates of future results or other forward-looking guidance. We caution investors against using these targets and goals outside of the context of their use in our executive compensation program as described herein.

Overall Compensation Program Objectives and Policies

Compensation Philosophy

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

- Attraction, retention and motivation of executive officers over the long-term;
- Recognition of individual performance;
- Recognition of the achievement of company-wide performance goals; and
- Creation of shareholder value by aligning the interests of management and DISH Network's shareholders through equity incentives.

General Compensation Levels

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

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

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

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

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

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

Compilation of Certain Proxy Data

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

Deductibility of Compensation

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

Use of Compensation Consultants

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

Implementation of Executive Compensation Program Objectives and Policies

Weighting and Selection of Elements of Compensation

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

Elements of Executive Compensation

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

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

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

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

Base Cash Salary

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

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

Short-Term Incentive Compensation

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

During 2012, the Board of Directors and the Compensation Committee elected not to implement a short-term incentive program. The decision not to implement a short-term incentive program during 2012 was made based upon, among other things, the adoption of the 2008 Long Term Incentive Plan, or 2008 LTIP. The 2008 LTIP is discussed below.

Long-Term Equity Incentive Compensation

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

General Equity Incentives

With respect to equity incentive compensation, DISH Network attempts to ensure that each NEO has equity incentives at any given time that are significant in relation to such individual's annual cash compensation to ensure that each of DISH Network's NEOs has appropriate incentives tied to the performance of DISH Network's Class A Shares. Therefore, DISH Network may grant more options to one particular NEO in a given year if a substantial portion of the NEO's equity incentives are vested and the underlying stock is capable of being sold. In addition, if an NEO recently received a substantial amount of equity incentives, DISH Network may not grant any equity incentives to that particular NEO. In particular, in granting awards for 2012, the Compensation Committee took into account, among other things, the amount necessary to retain our executive officers and that our executive officers had been granted options under the 2008 LTIP.

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

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

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

Practices Regarding Grant of Equity Incentives

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

2009 Stock Incentive Plan

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

Class B Chairman Stock Option Plan

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

Employee Stock Purchase Plan

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

2005 Long-Term Incentive Plan

During January 2005, DISH Network adopted the 2005 Long-Term Incentive Plan, or 2005 LTIP, within the terms of DISH Network's 1999 Stock Incentive Plan. The purpose of the 2005 LTIP is to promote DISH Network's interests and the interests of its shareholders by providing key employees with financial rewards through equity participation upon achievement of DISH Network reaching the milestone of 15 million direct broadcast satellite ("DBS") subscribers. The employees eligible to participate in the 2005 LTIP include DISH Network's executive officers, vice presidents, directors and certain other key employees designated by the Compensation Committee. Awards under the 2005 LTIP consist of a one-time grant of: (a) an option to acquire a specified number of shares priced at the market value as of the last day of the calendar quarter in which the option was granted or the last trading day prior to the date of grant (if the last day of the calendar quarter is not a trading day); (b) rights to acquire for no additional consideration a specified smaller number of DISH Network's Class A Shares; or (c) in some cases, a corresponding combination of a lesser number of option shares and such rights to acquire DISH Network's Class A Shares. The options and rights vest in 10% increments on each of the first four anniversaries of the date of grant and then at the rate of 20% per year thereafter; provided, however, that none of the options or rights shall be exercisable until DISH Network reaches the milestone of 15 million DBS subscribers. The performance goal under the 2005 LTIP was not achieved in 2012. Mr. Ergen has 900,000 stock options under the 2005 LTIP that were granted on September 30, 2005. Mr. Han has 90,000 stock options and 30,000 restricted stock units under the 2005 LTIP that were granted on September 30, 2006. Mr. Cullen has 60,000 restricted stock units under the 2005 LTIP that were granted on December 31, 2006. Mr. Clayton and Mr. Olson do not have any awards under the 2005 LTIP.

2008 Long-Term Incentive Plan

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

In the event that a cumulative free cash flow goal is achieved and the total net DBS subscriber threshold is met as of the last day of any such calendar quarter: (i) the applicable cumulative free cash flow goal will be retired; and (ii) the corresponding increment of the option/restricted stock unit will vest and shall become exercisable contemporaneous with filing of the Form 10-Q or Form 10-K for that quarter or year, as applicable, in accordance with the following schedule (for those employees that received equity awards under the 2008 LTIP before April 1, 2009):

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

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

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

2010 Equity Incentives to Messrs. Cullen and Han

During 2010, based on Mr. Ergen's subjective evaluation of Messrs. Cullen's and Han's respective contributions to the Corporation's performance and to align their interests with the long-term interests of DISH Network's shareholders, Mr. Ergen recommended, and the Compensation Committee agreed, to grant each of Messrs. Cullen and Han 200,000 restricted stock units (RSUs) and an option to purchase 600,000 shares of Class A Shares, with such awards vesting incrementally before June 30, 2020 according to the following vesting schedules. Although he is not an NEO for the year ended December 31, 2012, R. Stanton Dodge, our Executive Vice President, General Counsel and Secretary, also received the same grant of options and RSUs as Messrs. Cullen and Han.

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

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

In the event that the total net subscriber threshold is met and a cumulative free cash flow goal is achieved as of the last day of a given calendar quarter: (i) the applicable cumulative free cash flow goal(s) will be retired; and (ii) the corresponding increment(s) of the option or RSU awards will vest and shall become exercisable contemporaneously with the filing of the Corporation's Form 10-Q or Form 10-K for that quarter or year, as applicable, with the SEC.

The other fifty percent (50%) of the option and RSU awards granted to Messrs. Cullen, Han and Dodge vest based upon achieving the following specified total net subscriber goals while achieving and maintaining the specified cumulative free cash flow goal:

Cumulative Free Cash Flow Goals	Total Net Subscriber Goals	Number of Options Vesting	Number of RSUs Vesting
$250 million	15,250,000	15,000	5,000
$500 million	15,500,000	15,000	5,000
$750 million	15,750,000	15,000	5,000
$1 billion	16,000,000	15,000	5,000
$1.25 billion	16,250,000	15,000	5,000
$1.5 billion	16,500,000	15,000	5,000
$1.75 billion	16,750,000	15,000	5,000
$2 billion	17,000,000	15,000	5,000
$2.25 billion	17,250,000	15,000	5,000
$2.5 billion	17,500,000	15,000	5,000
$2.75 billion	17,750,000	15,000	5,000
$3 billion	18,000,000	15,000	5,000
$3.25 billion	18,250,000	15,000	5,000
$3.5 billion	18,500,000	15,000	5,000
$3.75 billion	18,750,000	15,000	5,000
$4 billion	19,000,000	15,000	5,000
$4.25 billion	19,250,000	15,000	5,000
$4.5 billion	19,500,000	15,000	5,000
$4.75 billion	19,750,000	15,000	5,000
$5 billion	20,000,000	15,000	5,000

In the event that the cumulative free cash flow goal is met (or has already been retired and continues to be met) and a total net subscriber goal is achieved as of the last day of any such calendar quarter: (i) the applicable total net subscriber goal(s) will be retired; and (ii) the corresponding increment of the option or RSU awards will vest and shall become exercisable contemporaneously with the filing of the Corporation's Form 10-Q or Form 10-K for that quarter or year, as applicable, with the SEC.

For purposes of the total net subscriber goal and total net subscriber threshold under these equity incentive grants, the calculation of "subscribers" is a formula that takes into account, among other things, DBS subscribers, broadband subscribers, and certain subscribers from other lines of business.

2011 Equity Incentives to Mr. Ergen

During 2011, the Compensation Committee determined that Mr. Ergen should receive a grant of options to purchase 1,200,000 of the Corporation's Class A Shares, with such award vesting incrementally before June 30, 2021 according to the following vesting schedules.

Fifty percent (50%) of the option awards granted to Mr. Ergen vest based upon achieving the following specified cumulative free cash flow goals while achieving and maintaining a minimum threshold of 14,250,000 total net subscribers:

Cumulative Free Cash Flow Goals	Number of Options Vesting
$250 million	30,000
$500 million	30,000
$750 million	30,000
$1 billion	30,000
$1.25 billion	30,000
$1.5 billion	30,000
$1.75 billion	30,000
$2 billion	30,000
$2.25 billion	30,000
$2.5 billion	30,000
$2.75 billion	30,000
$3 billion	30,000
$3.25 billion	30,000
$3.5 billion	30,000
$3.75 billion	30,000
$4 billion	30,000
$4.25 billion	30,000
$4.5 billion	30,000
$4.75 billion	30,000
$5 billion	30,000

In the event that the total net subscriber threshold is met and a cumulative free cash flow goal is achieved as of the last day of a given calendar quarter: (i) the applicable cumulative free cash flow goal(s) will be retired; and (ii) the corresponding increment of the option will vest and shall become exercisable contemporaneously with the filing of the Corporation's Form 10-Q or Form 10-K for that quarter or year, as applicable, with the SEC.

The other fifty percent (50%) of the option awards granted to Mr. Ergen vest based upon achieving the following specified total net subscriber goals while achieving and maintaining the specified cumulative free cash flow goal:

Cumulative Free Cash Flow Goals	Total Net Subscriber Goals	Number of Options Vesting
$250 million	14,250,000	30,000
$500 million	14,500,000	30,000
$750 million	14,750,000	30,000
$1 billion	15,000,000	30,000
$1.25 billion	15,250,000	30,000
$1.5 billion	15,500,000	30,000
$1.75 billion	15,750,000	30,000
$2 billion	16,000,000	30,000
$2.25 billion	16,250,000	30,000
$2.5 billion	16,500,000	30,000
$2.75 billion	16,750,000	30,000
$3 billion	17,000,000	30,000
$3.25 billion	17,250,000	30,000
$3.5 billion	17,500,000	30,000
$3.75 billion	17,750,000	30,000
$4 billion	18,000,000	30,000
$4.25 billion	18,250,000	30,000
$4.5 billion	18,500,000	30,000
$4.75 billion	18,750,000	30,000
$5 billion	19,000,000	30,000

In the event that the cumulative free cash flow goal is met (or has already been retired and continues to be met) and a total net subscriber goal is achieved as of the last day of any such calendar quarter: (i) the applicable total net subscriber goal(s) will be retired; and (ii) the corresponding increment of the option will vest and shall become exercisable contemporaneously with the filing of the Corporation's Form 10-Q or Form 10-K for that quarter or year, as applicable, with the SEC.

For purposes of the total net subscriber goal and total net subscriber threshold under this equity incentive grant, the calculation of "subscribers" is a formula that takes into account, among other things, DBS subscribers, broadband subscribers, and certain subscribers from other lines of business.

2011 Equity Incentives to Mr. Clayton

During 2011, the Compensation Committee determined that in connection with the commencement of Mr. Clayton's employment as President and Chief Executive Officer of DISH Network in June 2011, he should receive a grant of options to purchase 750,000 of the Corporation's Class A Shares, with such options vesting at the rate of one-third per year commencing December 31, 2011, and a grant of 300,000 restricted stock units (RSUs), with such awards vesting incrementally before December 31, 2013 according to the following vesting schedules.

One hundred thousand (100,000) of the RSU awards granted to Mr. Clayton vest based upon achieving the following specified cumulative free cash flow goals while achieving and maintaining a minimum threshold of 14,250,000 total net subscribers:

Cumulative Free Cash Flow Goals	Number of RSUs Vesting
$250 million	10,000
$500 million	10,000
$750 million	10,000
$1 billion	10,000
$1.25 billion	10,000
$1.5 billion	10,000
$1.75 billion	10,000
$2 billion	10,000
$2.25 billion	10,000
$2.5 billion	10,000

In the event that the total net subscriber threshold is met and a cumulative free cash flow goal is achieved as of the last day of a given calendar quarter: (i) the applicable cumulative free cash flow goal(s) will be retired; and (ii) the corresponding increment(s) of the RSU awards will vest contemporaneously with the filing of the Corporation's Form 10-Q or Form 10-K for that quarter or year, as applicable, with the SEC.

One hundred thousand (100,000) of the RSU awards granted to Mr. Clayton vest based upon achieving the following specified total net subscriber goals while achieving and maintaining the specified cumulative free cash flow goal:

Cumulative Free Cash Flow Goals	Total Net Subscriber Goals	Number of RSUs Vesting
$250 million	14,250,000	10,000
$500 million	14,500,000	10,000
$750 million	14,750,000	10,000
$1 billion	15,000,000	10,000
$1.25 billion	15,250,000	10,000
$1.5 billion	15,500,000	10,000
$1.75 billion	15,750,000	10,000
$2 billion	16,000,000	10,000
$2.25 billion	16,250,000	10,000
$2.5 billion	16,500,000	10,000

In the event that the cumulative free cash flow goal is met (or has already been retired and continues to be met) and a total net subscriber goal is achieved as of the last day of any such calendar quarter: (i) the applicable total net subscriber goal(s) will be retired; and (ii) the corresponding increment of the RSU awards will vest contemporaneously with the filing of the Corporation's Form 10-Q or Form 10-K for that quarter or year, as applicable, with the SEC.

For purposes of the total net subscriber goal and total net subscriber threshold under this equity incentive grant, the calculation of "subscribers" is a formula that takes into account, among other things, DBS subscribers, broadband subscribers, and certain subscribers from other lines of business.

Fifty thousand (50,000) of the RSU awards granted to Mr. Clayton vest at the rate of 5,000 RSUs per quarter when, in any such quarter, (i) the quarterly net U.S. DBS subscriber additions of the Corporation are greater than the quarterly net U.S. DBS subscriber additions of DirecTV, as measured by net U.S. DBS subscriber additions based on the announced U.S. DBS subscriber counts in each company's respective Form 10-Q or 10-K for that quarter or year, as applicable, filed with the SEC; and (ii) the quarterly net U.S. DBS subscriber additions of the Corporation are greater than zero. Mr. Clayton achieved the above criteria for the first quarter 2012, resulting in the vesting of five thousand (5,000) RSUs during 2012.

The remaining fifty thousand (50,000) of the RSU awards granted to Mr. Clayton vest at the rate of 10,000 RSUs for each of the below criteria met in a given year, contemporaneous with the release of the National Quarterly American Customer Satisfaction Index (the "ACSI") scores in May 2012 and May 2013. The criteria are as follow:

1. The ACSI score of the Corporation is greater than or equal to a specified figure;
2. The ACSI score of the Corporation is greater than or equal to certain of the Corporation's competitors; or
3. The ACSI score of the Corporation is greater than or equal to all companies in the Corporation's industry

However, in no event shall more than a total of fifty thousand (50,000) RSUs vest under the ACSI criteria above. In 2012, Mr. Clayton achieved one out of the three criteria set forth above, resulting in the vesting of ten thousand (10,000) RSUs during 2012.

2013 Long-Term Incentive Plan

On November 30, 2012, the Board of Directors and the Compensation Committee approved a long-term, performance-based stock incentive plan, the 2013 Long Term Incentive Plan, or 2013 LTIP, within the terms of DISH Network's 2009 Stock Incentive Plan. The purpose of the 2013 LTIP is to promote DISH Network's interests and the interests of its shareholders by providing key employees with financial rewards through equity participation upon achievement of specified long-term cumulative free cash flow goals while maintaining a specified long-term subscriber threshold and total net subscriber goals. The employees eligible to participate in the 2013 LTIP generally include DISH Network's executive officers, senior vice presidents, vice presidents and director-level employees. Employees participating in the 2013 LTIP receive a one-time award of: (i) an option to acquire a specified number of shares priced at the market value as of the first day of the calendar quarter in which the option was granted or the last trading day prior to the date of grant (if the first day of the calendar quarter is not a trading day) and (ii) rights to acquire for no additional consideration a specified smaller number of Class A Shares. Initial awards granted under the 2013 LTIP were made as of January 1, 2013. Under the 2013 LTIP, the cumulative free cash flow goals and the total net subscriber threshold are measured on the last day of each calendar quarter commencing on the first day of the calendar quarter following the quarter in which the final cumulative free cash flow goal of the 2008 LTIP is achieved, and the total net subscriber goals are measured on the last day of each calendar quarter commencing on January 1, 2013. However, regardless of when achieved, no vesting will occur or payment will be made under the 2013 LTIP for any cumulative free cash flow goals or total net subscriber goals until the end of the first calendar quarter following the quarter in which the final cumulative free cash flow goal under the 2008 LTIP is achieved and in no event prior to March 31, 2014. For purposes of the total net subscriber goal and total net subscriber threshold under the 2013 LTIP, the calculation of "subscribers" is a formula that takes into account, among other things, DBS subscribers, broadband subscribers, and certain subscribers from other lines of business.

In the event that a cumulative free cash flow goal and/or total net subscriber goal is achieved, and the total net subscriber threshold is met, as of the last day of any such calendar quarter: (i) the applicable cumulative free cash flow goal and/or total net subscriber goal will be retired; and (ii) the corresponding increment of the option/restricted stock unit will vest and shall become exercisable contemporaneous with filing of the Form 10-Q or Form 10-K for that quarter or year, as applicable, in accordance with the following schedules:

Cumulative Free Cash Flow Goals	Total Net Subscriber Threshold	Vesting Schedule
$1 billion	14.5 million	10%
$2 billion	14.5 million	10%
$3 billion	14.5 million	10%
$4 billion	14.5 million	10%
$5 billion	14.5 million	10%

Total Net Subscriber Goals	Vesting Schedule
14.5 million	10%
14.75 million	10%
15 million	10%
15.25 million	10%
15.5 million	10%

Messrs. Ergen, Clayton, Cullen, Han and Olson were each granted an option to purchase 60,000 Class A Shares and 30,000 RSUs under the 2013 LTIP on January 1, 2013.

401(k) Plan

DISH Network has adopted the 401(k) Plan, a defined-contribution tax-qualified 401(k) plan, for its employees, including its executives, to encourage its employees to save some percentage of their cash compensation for their eventual retirement. DISH Network's executives have participated in the 401(k) Plan on the same terms as DISH Network's other employees. Under the 401(k) Plan, employees generally become eligible for participation in the 401(k) Plan upon completing ninety days of service with DISH Network and reaching age 19. 401(k) Plan participants are able to contribute up to 50% of their compensation in each contribution period, subject to the maximum deductible limit provided by the Code. DISH Network may also make a 50% matching employer contribution up to a maximum of $1,500 ($2,500 effective for 2013) per participant per calendar year. In addition, DISH Network may also make an annual discretionary profit sharing contribution to the 401(k) Plan with the approval of its Compensation Committee and Board of Directors. 401(k) Plan participants are immediately vested in their voluntary contributions and earnings on voluntary contributions. DISH Network's employer contributions to 401(k) Plan participants' accounts vest 20% per year commencing one year from the employee's date of employment.

Perquisites and Personal Benefits, Post-Termination Compensation and Other Compensation

DISH Network has traditionally offered numerous plans and other benefits to its executive officers on the same terms as other employees. These plans and benefits have generally included medical, vision, and dental insurance, life insurance, and the employee stock purchase plan as well as discounts on DISH Network's services. Relocation benefits may also be reimbursed, but are individually negotiated when they occur. DISH Network has also permitted certain NEOs and their family members and guests to use its corporate aircraft for personal use. DISH Network has also paid for annual tax preparation costs for certain NEOs.

DISH Network has not traditionally had any plans in place to provide severance benefits to employees. However, certain non-performance based stock options and restricted stock units have been granted to its executive officers subject to accelerated vesting upon a change in control.

Shareholder Advisory Vote on Executive Compensation

DISH Network provided its shareholders with the opportunity to cast an advisory vote on executive compensation at the annual meeting of shareholders held in May 2011. Over 99% of the voting power represented at the meeting and entitled to vote on that matter voted in favor of the executive compensation proposal. The Compensation Committee reviewed these voting results. Since the voting results affirmed shareholders' support of DISH Network's approach to executive compensation, DISH Network did not change its approach in 2012 as a direct result of the vote. As set forth at the annual meeting of shareholders held in May 2011, DISH Network intends to continue to seek a shareholder advisory vote on executive compensation once every three years.

2012 Executive Compensation

DISH Network has historically made decisions with respect to executive compensation for a particular compensation year in December of the preceding compensation year or the first quarter of the applicable compensation year. With respect to the executive compensation of each NEO for 2012, the Compensation Committee (along with Mr. Ergen, for each of the NEOs other than himself) reviewed total compensation of each NEO and the value of (a) historic and current components of each NEO's compensation, including the annual base salary and bonus paid to the NEO in the prior year, and (b) stock options and restricted stock units held by each NEO in DISH Network's stock incentive plans. The Compensation Committee (along with Mr. Ergen, for each of the NEOs other than himself) also reviewed the Proxy Data prepared for 2012 and other information described in "Compilation of Certain Proxy Data" above. As described in "General Compensation Levels" above, DISH Network aims to provide annual base salaries and long-term incentives that are competitive with market practice with an emphasis on providing a substantial portion of overall compensation in the form of equity incentives. In addition, the Compensation Committee has discretion to award performance based compensation that is based on performance goals different from those that were previously set or that is higher or lower than the anticipated compensation that would be awarded under DISH Network's incentive plans if particular performance goals were met. The Compensation Committee did not exercise this discretion in 2012.

Compensation of our Chairman and our President and Chief Executive Officer

2012 Base Salary of Chairman. Mr. Ergen's annual base salary for 2012 was determined based on a review by the Compensation Committee of the expected annual base salaries in 2012 of each of DISH Network's other NEOs. Mr. Ergen's annual base salary was increased to $900,000, effective July 1, 2011. The Compensation Committee determined that Mr. Ergen's existing base compensation was already within the range of market compensation indicated in the Proxy Data in light of DISH Network's practices with respect to annual base salaries and that therefore an increase over Mr. Ergen's 2011 annual base salary was not necessary.

2012 Base Salary of President and Chief Executive Officer. In determining Mr. Clayton's 2012 annual base salary, Mr. Ergen subjectively determined that Mr. Clayton's existing base compensation was already within the range of market compensation indicated in the Proxy Data in light of DISH Network's practices with respect to annual base salaries and that therefore an increase over Mr. Clayton's 2011 annual base salary was not necessary.

2012 Cash Bonus. No bonus was paid to Mr. Ergen or to Mr. Clayton in 2012.

2012 Equity Incentives. With respect to equity incentives, DISH Network attempts to ensure that the Chairman and the President and Chief Executive Officer have equity awards at any given time that are significant in relation to their annual cash compensation to ensure that they have appropriate incentives tied to the performance of DISH Network's Class A Shares. In light of their current equity incentives, Mr. Ergen and Mr. Clayton did not receive any equity incentives during 2012. As discussed above, Mr. Ergen and Mr. Clayton each received awards under the 2013 LTIP on January 1, 2013.

Compensation of Other Named Executive Officers

2012 Base Salary

Base salaries for each of the other NEOs are determined annually by the Board of Directors primarily based on Mr. Ergen's recommendations. The Board of Directors places substantial weight on Mr. Ergen's recommendations in light of his role as Chairman and as co-founder and controlling shareholder of DISH Network. Mr. Ergen made recommendations to the Board of Directors with respect to the 2012 annual base salary of each of the other NEOs after considering: (a) the NEO's annual base salary in 2011, (b) the range of the percentage increases in annual base salary for NEOs of the companies contained in the Proxy Data, (c) whether the NEO's annual base salary was appropriate in light of DISH Network's goals, including retention of the NEO, (d) the expected compensation to be paid to other NEOs in 2012 in relation to a particular NEO in 2012, (e) whether the NEO was promoted or newly hired in 2012, and (f) whether in Mr. Ergen's subjective determination, the NEO's performance in 2011 warranted an increase in the NEO's annual base salary in 2012. Placing primary weight on: (i) the NEO's annual base salary in 2011 and (ii) whether, in Mr. Ergen's subjective view, an increase in 2012 annual base salary was warranted based on performance and/or necessary to retain the NEO, Mr. Ergen recommended the annual base salary amounts indicated in "Executive Compensation and Other Information - Summary Compensation Table" below. The basis for Mr. Ergen's recommendation with respect to each of the other NEOs is discussed below. The Board of Directors accepted each of Mr. Ergen's recommendations on annual base salaries for each of the other NEOs.

Mr. Cullen. In determining Mr. Cullen's 2012 annual base salary, Mr. Ergen subjectively determined that Mr. Cullen's existing base compensation was already within the range of market compensation indicated in the Proxy Data in light of DISH Network's practices with respect to annual base salaries and that therefore an increase over Mr. Cullen's 2011 annual base salary was not necessary.

Mr. Han. In determining Mr. Han's 2012 annual base salary, Mr. Ergen subjectively determined that Mr. Han's existing base compensation was already within the range of market compensation indicated in the Proxy Data in light of DISH Network's practices with respect to annual base salaries and that therefore an increase over Mr. Han's 2011 annual base salary was not necessary.

Mr. Olson. In determining Mr. Olson's 2012 annual base salary, Mr. Ergen subjectively determined that Mr. Olson's existing base compensation was already within the range of market compensation indicated in the Proxy Data in light of DISH Network's practices with respect to annual base salaries and that therefore an increase over Mr. Olson's 2011 annual base salary was not necessary.

2012 Cash Bonus.

Consistent with prior years, Mr. Ergen generally recommended that other NEOs receive cash bonuses only to the extent that such amounts would be payable pursuant to the existing short-term incentive plan, if any. As discussed above, in light of prior grants of options, among other things, the Board of Directors and the Compensation Committee elected not to implement a short-term incentive program for 2012. No bonus was paid to Messrs. Cullen, Han and Olson during 2012.

2012 Equity Incentives

With respect to equity incentives, DISH Network primarily evaluates the position of each NEO to ensure that each individual has equity incentives at any given time that are significant in relation to the NEO's annual cash compensation to ensure that the NEO has appropriate incentives tied to the performance of DISH Network's Class A Shares. This determination is made by the Compensation Committee primarily on the basis of Mr. Ergen's recommendation. As discussed above, in granting awards to the other NEOs for 2012, Mr. Ergen based his recommendation on, and the Compensation Committee took into account, among other things, what was necessary to retain our executive officers. In particular, in granting awards for 2012, the Compensation Committee took into account, among other things, the amount necessary to retain our executive officers. In light of their current equity incentives, Messrs. Cullen, Han and Olson did not receive any equity incentives during 2012. As discussed above, Messrs. Cullen, Han and Olson each received awards under the 2013 LTIP on January 1, 2013.

During 2012, we generated cumulative free cash flow in excess of $4 billion while also maintaining 13 million DBS subscribers, which resulted in the cumulative vesting of approximately 70% of the 2008 LTIP stock awards during 2012, and accordingly: (i) 225,000 Class A Shares of the stock option granted to Mr. Ergen under the 2008 LTIP vested and became exercisable; (ii) 75,000 Class A Shares of the stock option granted to Mr. Cullen under the 2008 LTIP vested and became exercisable; (iii) 75,000 Class A Shares of the stock option granted to Mr. Han under the 2008 LTIP vested and became exercisable; and (iv) 60,000 Class A Shares of the stock option granted to Mr. Olson under the 2008 LTIP vested and became exercisable.

COMPENSATION COMMITTEE REPORT

The Compensation Committee is appointed by the Board of Directors of DISH Network Corporation to discharge certain of the Board's responsibilities relating to compensation of DISH Network's executive officers.

The Compensation Committee, to the extent the Board deems necessary or appropriate, will:

- Make and approve all option grants and other issuances of DISH Network's equity securities to DISH Network's executive officers and Board members other than nonemployee directors;
- Approve all other option grants and issuances of DISH Network's equity securities, and recommend that the full Board make and approve such grants and issuances;
- Establish in writing all performance goals for performance-based compensation that together with other compensation to senior executive officers could exceed $1 million annually, other than standard Stock Incentive Plan options that may be paid to DISH Network's executive officers, and certify achievement of such goals prior to payment; and
- Set the compensation of the Chairman.

Based on the review of the Compensation Discussion and Analysis and discussions with management, we recommended to DISH Network's management that the Compensation Discussion and Analysis be included in the Corporation's Proxy Statement.

Respectfully submitted,

The DISH Network Executive Compensation Committee

Steven R. Goodbarn (Chairman)
Gary S. Howard
Tom A. Ortolf

The report of the Compensation Committee and the information contained therein shall not be deemed to be "soliciting material" or "filed" or incorporated by reference in any filing we make under the Securities Act of 1933 (the "Securities Act") or under the Exchange Act, irrespective of any general statement incorporating by reference this Proxy Statement into any such filing, or subject to the liabilities of Section 18 of the Exchange Act, except to the extent that we specifically incorporate this information by reference into a document we file under the Securities Act or the Exchange Act.

EXECUTIVE COMPENSATION AND OTHER INFORMATION

Compensation Program Risk Assessment

Annually, management reviews the components of our compensation for each employee other than our executive officers. Base salaries for each of our executive officers (other than Mr. Ergen) are determined annually by our Board of Directors primarily based on Mr. Ergen's recommendations. The Board of Directors places substantial weight on Mr. Ergen's recommendations in light of his role as Chairman and as co-founder and controlling shareholder of DISH Network. The Board of Directors ultimately approved base cash salaries for 2012 for each of these executive officers other than Mr. Ergen.

Our Compensation Committee, without Mr. Ergen present, sets Mr. Ergen's base cash salary. Our Compensation Committee makes and approves grants of options and other equity-based compensation to all of our executive officers.

The primary components of our executive compensation have historically included:

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

DISH Network's executive compensation program may also include short-term incentive compensation, including conditional and/or performance-based cash incentive compensation and discretionary bonuses. We design corporate performance metrics that determine payouts for certain business segment leaders in part on the achievement of longer-term company-wide goals. This is based on our belief that applying company-wide metrics encourages decision-making that is in the best long-term interests of DISH Network and our shareholders as a whole. However, during 2012, we elected not to implement a short-term incentive program.

Base salary, 401(k) benefits and other benefits and perquisites provided generally to DISH Network employees provide a minimum level of compensation for our executive officers. DISH Network has included salary as a component of its executive compensation package because we believe it is appropriate that some portion of the compensation paid to executives be provided in a form that is fixed and liquid occurring over regular intervals. Generally, however, DISH Network has weighted overall compensation towards incentives, particularly equity components, as opposed to base salaries.

With respect to other compensation, including perquisites and personal benefits and post-termination compensation, DISH Network has traditionally offered benefits to its executive officers on substantially the same terms as offered to other employees. These benefits generally have included medical, vision, and dental insurance, life insurance, and the employee stock purchase plan as well as discounts on DISH Network's products and services. DISH Network has not traditionally provided severance benefits to employees. However, certain non-performance based stock options and restricted stock units have been granted to its executive officers subject to acceleration of vesting upon a change in control of DISH Network for those executive officers who are terminated by us or the surviving entity, as applicable, for any reason other than for cause during the twenty-four month period following such change in control.

Generally, DISH Network's overall executive compensation trails that of its competitors in the areas of base pay, severance packages, and short-term incentives and may be competitive over time in equity compensation. With respect to equity incentive compensation, DISH Network attempts to ensure that each executive officer retains equity awards that at any given time are significant in relation to such individual's annual cash compensation to ensure that each of its executive officers has appropriate incentives tied to the value realized by our shareholders.

DISH Network generally grants stock options and/or restricted stock units only to a limited number of employees at certain levels; the awards generally vest annually at the rate of 20% per year. We believe that the multi-year vesting of our equity awards properly account for the time horizon of risk. DISH Network has operated under the belief that executive officers will be better able to contribute to its long-term success and help build incremental shareholder value prudently if they have a stake in that future success and value over a long period. DISH Network believes this stake focuses the executive officers' attention on managing DISH Network as owners with equity positions in DISH Network and aligns their interests with the long-term interests of DISH Network's shareholders. Equity awards therefore have represented an important and significant component of DISH Network's compensation program for executive officers. These awards, coupled with the relatively longer time frame during which these awards vest, mitigate the effect of short-term variations in our operating and financial performance, and we believe focus management goals appropriately on longer-term value creation for shareholders rather than rewarding short-term gains. In light of our approach towards compensation as set forth above, we believe that our process assists us in our efforts to mitigate excessive risk-taking.

Summary Compensation Table

Our executive officers are compensated by certain of our subsidiaries. The following table sets forth the cash and noncash compensation for the fiscal year ended December 31, 2012 for the NEOs.

Name and Principal Position	Year	Salary ($)	Bonus ($)	Stock Awards ($)	Option Awards (1) ($)	Non-Equity Incentive Plan Compensation ($)	Change in Pension Value and Nonqualified Deferred Compensation Earnings ($)	All Other Compensation (2) ($)	Total ($)
Charles W. Ergen (3)	2012	$ 900,000	$ —	$ —	$ —	$ —	$ —	$ 400,186	$ 1,300,186
Chairman	2011	$ 750,000	$ —	$ —	$ —	$ —	$ —	$ 208,441	$ 958,441
	2010	$ 600,000	$ —	$ —	$ —	$ —	$ —	$ 197,909	$ 797,909
Joseph P. Clayton (4)	2012	$ 900,000	$ —	$ —	$ —	$ —	$ —	$ 7,000	$ 907,000
President and Chief Executive Officer	2011	$ 467,307	$ —	$ 306,700	$ 9,071,625	$ —	$ —	$ —	$ 9,845,632
Bernard L. Han	2012	$ 475,000	$ —	$ —	$ —	$ —	$ —	$ 5,500	$ 480,500
Executive Vice President	2011	$ 470,192	$ 50,000	$ —	$ 981,070	$ —	$ —	$ 5,500	$ 1,506,762
and Chief Operating Officer	2010	$ 450,000	$ —	$ —	$ —	$ —	$ —	$ 5,500	$ 455,500
Thomas A. Cullen	2012	$ 450,000	$ —	$ —	$ —	$ —	$ —	$ 6,617	$ 456,617
Executive Vice President,	2011	$ 450,000	$ 100,000	$ —	$ 981,070	$ —	$ —	$ 5,500	$ 1,536,570
Corporate Development	2010	$ 450,000	$ —	$ —	$ —	$ —	$ —	$ 5,500	$ 455,500
Robert E. Olson	2012	$ 350,001	$ —	$ —	$ —	$ —	$ —	$ 5,500	$ 355,501
Executive Vice President	2011	$ 346,154	$ —	$ —	$ —	$ —	$ —	$ 5,500	$ 351,654
and Chief Financial Officer	2010	$ 306,923	$ —	$ —	$ 171,790	$ —	$ —	$ 5,500	$ 484,213

(1) The amounts reported in the "Option Awards" column reflect grant date fair values. These amounts include both performance and non-performance based awards. The grant date fair values for performance awards are based on the probable outcome of the performance conditions under the awards and do not necessarily reflect the amount of compensation actually realized or that may be realized.

Assuming achievement of all performance conditions underlying the performance awards included in this column, the total grant date fair values would be as follows:

	Aggregate Grant Date Fair Value		
	2012 Performance Awards	2011 Performance Awards	2010 Performance Awards
Joseph P. Clayton	$ —	$ 9,201,000.00	$ —
Charles W. Ergen	$ 1,518,124.00	$ 17,724,240.00	$ 1,084,427.00
Thomas A. Cullen	$ 896,344.00	$ —	$ 8,513,556.00
Bernard L. Han	$ 896,344.00	$ —	$ 8,513,556.00
Robert E. Olson	$ 197,204.00	$ —	$ 217,257.00

Assumptions used in the calculation of grant date fair values are included in Note 15 to the Corporation's audited financial statements for the fiscal year ended December 31, 2012, included in the Corporation's Annual Report on Form 10-K filed with the SEC on February 23, 2012. Amounts for 2010 include the incremental fair value for performance awards as a result of the adjustment of the price of certain stock options related to the Corporation's

2009 cash dividend. Amounts for 2012 include the incremental fair value for performance awards as a result of the adjustment of the price of certain stock options related to the Corporation's 2011 cash dividend.

(2) "All Other Compensation" for all of the NEOs includes amounts contributed pursuant to our 401(k) matching program and our profit sharing program.

(3) Mr. Ergen's annual base salary was increased to $900,000, effective July 1, 2011. Mr. Ergen's "All Other Compensation" also includes a tax preparation payment. In addition, Mr. Ergen's, "All Other Compensation" includes $360,146 for Mr. Ergen's personal use (and on certain occasions for the personal use by members of his family and other guests) of corporate aircraft during the year ended December 31, 2012. Of the $360,146 attributed to personal use of corporate aircraft, $109,492 was attributed to tax gross-up payments that related to personal use of corporate aircraft by Mr. Ergen and his family members and guests. We calculated the value of Mr. Ergen's personal use of corporate aircraft based upon the incremental cost of such usage to DISH Network. Certain incremental costs related to personal use of corporate aircraft by Mr. Ergen and his family members and guests occurring near the end of the prior fiscal year were included in Mr. Ergen's "All Other Compensation" for the year ended December 31, 2012. Since both the Corporation and EchoStar use the corporate aircraft and Mr. Ergen is an employee of both the Corporation and EchoStar, certain incremental costs related to personal use of corporate aircraft by Mr. Ergen and his family members and guests are allocated between the Corporation and EchoStar.

(4) Mr. Clayton replaced Mr. Ergen as President and Chief Executive Officer of the Corporation on June 20, 2011.

Grant of Plan-Based Awards

The following table provides information on equity awards in 2012 for the Named Executive Officers.

Name	Grant Date	Date of Compensation Committee Approval	Estimated Future Payouts Under Non-Equity Incentive Plan Awards: Threshold ($)	Target ($)	Maximum ($)	Estimated Future Payouts Under Equity Incentive Plan Awards: Threshold (#)	Target (#)	Maximum (#)	All Other Stock Awards: Number of Shares of Stock or Units (1) (#)	All Other Option Awards: Number of Securities Underlying Options (#)	Exercise or Base Price of Option Awards ($/sh)	Grant Date Fair Value of Stock and Option Awards
Charles W. Ergen	4/2/2012	1/13/2012	$ —	$ —	$ —	—	—	—	140	—	$ —	$ —
Joseph P. Clayton	4/2/2012	1/13/2012	$ —	$ —	$ —	—	—	—	140	—	$ —	$ —
Bernard L. Han	4/2/2012	1/13/2012	$ —	$ —	$ —	—	—	—	140	—	$ —	$ —
Thomas A. Cullen	4/2/2012	1/13/2012	$ —	$ —	$ —	—	—	—	140	—	$ —	$ —
Robert E. Olson	4/2/2012	1/13/2012	$ —	$ —	$ —	—	—	—	140	—	$ —	$ —

(1) The amounts reported in the "All Other Stock Awards" column represent Class A Shares awarded to the eligible NEOs during 2012 pursuant to our profit sharing program.

Outstanding Equity Awards at Fiscal Year-End

	Option Awards					Stock Awards			
Name	Number of Securities Underlying Unexercised Options (#) Exercisable	Number of Securities Underlying Unexercised Options (#) Unexercisable	Equity Incentive Plan Awards: Number of Securities Underlying Unexercised Unearned Options (#)	Option Exercise Price ($)	Option Expiration Date	Number of Shares or Units of Stock That Have Not Vested (#)	Market Value of Shares or Units of Stock That Have Not Vested ($)	Equity Incentive Plan Awards: Number of Unearned Shares, Units or Other Rights That Have Not Vested (#)	Equity Incentive Plan Awards: Market or Payout Value of Unearned Shares, Units or Other Rights That Have Not Vested (1) ($)
Charles W. Ergen	100,000	—	—	$ 28.06	12/31/2014(2)	—	$ —	—	$ —
	—	—	900,000	$ 20.58	9/30/2015(3)	—	$ —	—	$ —
	—	—	180,000	$ 24.96	9/30/2015(2)	—	$ —	—	$ —
	225,000	—	270,000	$ 7.09	3/31/2017(3)	—	$ —	—	$ —
		100,000	—	$ 24.73	3/31/2018(3)	—	$ —	—	$ —
	—	—	1,200,000	$ 28.67	9/30/2021(3)	—	$ —	—	$ —
Joseph P. Clayton	350,000	250,000	—	$ 28.67	6/30/2021(3)	—	$ —	255,000(4)	$ 9,282,000
Bernard L. Han	175,000	—	90,000	$ 23.22	9/30/2016(3)	—	$ —	30,000(5)	$ 1,092,000
	70,000	—	18,000	$ 27.63	9/30/2016(2)	—	$ —	6,000(2)	$ 205,320
	210,000	—	90,000	$ 7.09	3/31/2017(3)	—	$ —	—	$ —
	180,000	120,000	—	$ 7.11	3/31/2019(3)	—	$ —	—	$ —
	—	—	600,000	$ 16.15	6/30/2020(3)	—	$ —	200,000(6)	$ 7,280,000
	20,000	80,000	—	$ 22.36	3/31/2021(3)	—	$ —	—	$ —
Thomas A. Cullen	200,000	—	—	$ 27.62	12/31/2016(3)	—	$ —	60,000(7)	$ 2,184,000
	32,001	—	—	$ 32.10	12/31/2016(2)	—	$ —	12,000(2)	$ 410,640
	100,000	—	90,000	$ 7.09	3/31/2017(3)	—	$ —	—	$ —
	165,000	60,000	—	$ 7.09	12/31/2018(3)	—	$ —	—	$ —
	—	—	600,000	$ 16.15	6/30/2020(3)	—	$ —	200,000(6)	$ 7,280,000
	20,000	80,000	—	$ 22.36	3/31/2021(3)	—	$ —	—	$ —
Robert E. Olson	—	—	96,000	$ 12.21	3/31/2017(3)	—	$ —	—	$ —
	—	40,000	—	$ 12.21	6/30/2019(3)	—	$ —	—	$ —
	10,000	15,000	—	$ 16.15	6/30/2020(3)	—	$ —	—	$ —

(1) Amount represents the number of unvested, performance-based restricted stock units multiplied by $36.40 or $34.22, the closing market prices of DISH Network's and EchoStar's Class A Shares, respectively, on December 31, 2012.

(2) Amounts represent outstanding awards received by our NEOs from EchoStar as a result of the Spin-off (as defined below).

(3) On November 1, 2011, we declared a dividend of $2.00 per share on our outstanding Class A Shares and Class B Shares. The dividend was paid in cash on December 1, 2011 to shareholders of record on November 17, 2011. In light of such dividend, our Compensation Committee, which administers our stock incentive plans, determined to adjust the exercise price of certain stock options issued under the plans by decreasing the exercise price by $2.00 per share; provided that the exercise price of eligible stock options will not be reduced below $1.00. As a result of this adjustment, the exercise price of these stock options were decreased by $2.00 per share during January 2012.

(4) Restricted stock awarded on June 30, 2011 under DISH Network's Stock Incentive Plans.

(5) Restricted stock awarded on September 30, 2006 under DISH Network's Stock Incentive Plans.

(6) Restricted stock awarded on June 30, 2010 under DISH Network's Stock Incentive Plans.

(7) Restricted stock awarded on December 31, 2006 under DISH Network's Stock Incentive Plans.

Option Exercises and Stock Vested

	Option Awards			Stock Awards		
Name	**Number of Shares Acquired on Exercise (#)**		**Value Realized on Exercise (1) ($)**	**Number of Shares Acquired on Vesting (#)**		**Value Realized on Vesting ($)**
Charles W. Ergen	1,380,000	$	10,801,800	—	$	—
Joseph P. Clayton	150,000	$	1,203,840	15,000	$	453,150
Bernard L. Han	175,000	$	2,411,500	—	$	—
Thomas A. Cullen	110,000	$	2,935,242	—	$	—
Robert E. Olson	134,000	$	2,414,337	—	$	—

(1) The value realized on exercise is computed by multiplying the difference between the exercise price of the stock option and the market price of the Class A Shares on the date of exercise by the number of shares with respect to which the option was exercised.

Potential Payments Upon Termination Following a Change in Control

As discussed in "Compensation Discussion and Analysis" above, our standard form of non-performance based option agreement given to executive officers includes acceleration of vesting upon a change in control of DISH Network for those executive officers that are terminated by us or the surviving entity, as applicable, for any reason other than for cause during the twenty-four month period following such change in control.

Generally a change in control is deemed to occur upon: (i) a transaction or a series of transactions the result of which is that any person (other than Mr. Ergen, our controlling shareholder, or a related party) individually owns more than fifty percent (50%) of the total equity interests of either (A) DISH Network or (B) the surviving entity in any such transaction(s) or a controlling affiliate of such surviving entity in such transaction(s); and (ii) the first day on which a majority of the members of the Board of Directors of DISH Network are not continuing directors.

Assuming a change in control were to have taken place as of December 31, 2012, and the executives are terminated by DISH Network or the surviving entity at such date, the estimated benefits that would have been provided are as follows:

Name	Maximum Value of Accelerated Vesting of Options
Charles W. Ergen	$ 1,167,000
Joseph P. Clayton	$ 1,932,500
Bernard L. Han	$ 4,638,000
Thomas A. Cullen	$ 2,881,800
Robert E. Olson	$ 1,271,350

DIRECTOR COMPENSATION

The following table sets forth the cash and noncash compensation for the fiscal year ended December 31, 2012 for each of our nonemployee directors. Our employee directors are not compensated for their service as directors and, consequently, are not included in the table.

Name	Fees Earned or Paid in Cash ($)	Stock Awards ($)	Option Awards (1) ($)	Non-Equity Incentive Plan Compensation ($)	Change in Pension Value and Nonqualified Deferred Compensation Earnings ($)	All Other Compensation ($)	Total ($)
Steven R. Goodbarn	$ 73,000	$ —	$ 47,936	$ —	$ —	$ —	$ 120,936
Gary S. Howard	$ 72,500	$ —	$ 47,936	$ —	$ —	$ —	$ 120,436
Tom A. Ortolf	$ 72,500	$ —	$ 47,936	$ —	$ —	$ 3,902	$ 124,338

(1) The amounts reported in the "Option Awards" column reflect the aggregate grant date fair values. Assumptions used in the calculation of these amounts are included in Note 15 to the Corporation's audited financial statements for the fiscal year ended December 31, 2012, included in the Corporation's Annual Report on Form 10-K filed with the SEC on February 20, 2013.

On June 30, 2012, each of the nonemployee directors was granted an option to acquire 5,000 Class A Shares at an exercise price of $28.55 per share. Options granted under our 2001 Director Plan are 100% vested upon issuance. Thus, the amount recognized for financial statement reporting purposes and the full grant date fair value are the same.

Standard Nonemployee Director Compensation Arrangements

We use a combination of cash and equity compensation to attract and retain qualified candidates to serve on our Board.

Cash Compensation. Each nonemployee director receives an annual retainer of $60,000 which is paid in equal quarterly installments on the last day of each calendar quarter; provided such person is a member of the Board on the last day of the applicable calendar quarter. Our nonemployee directors also receive $1,000 for each meeting attended in person and $500 for each meeting attended by telephone. Additionally, the chairperson of each committee of the Board receives a $5,000 annual retainer, which is paid in equal quarterly installments on the last day of each calendar quarter; provided such person is the chairperson of the committee on the last day of the applicable calendar quarter. Furthermore, our nonemployee directors receive: (i) reimbursement, in full, of reasonable travel expenses related to attendance at all meetings of the Board of Directors and its committees and (ii) reimbursement, in full, of reasonable expenses related to educational activities undertaken in connection with service on the Board of Directors and its committees.

Equity Compensation. We have adopted a nonemployee director stock option plan, which we refer to as the 2001 Director Plan. The purpose of the 2001 Director Plan is to advance our interests through the motivation, attraction and retention of highly-qualified nonemployee directors. Upon election to our Board, our nonemployee directors are granted an option to acquire a certain number of our Class A Shares under our 2001 Nonemployee Director Stock Option Plan (our "2001 Director Plan"). Options granted under our 2001 Director Plan are 100% vested upon issuance and have a term of five years. We also currently grant each continuing nonemployee director an option to acquire 5,000 Class A Shares every year.

Our nonemployee directors do not hold any stock awards except those granted to the nonemployee directors pursuant to our 2001 Director Plan. We have granted the following options to our nonemployee directors under such plans:

	Option Awards		
Name	Number of Securities Underlying Unexercised Options (#) Exercisable	Option Exercise Price ($)	Option Expiration Date
Steven R. Goodbarn	10,000	$ 28.67	6/30/2016**(1)**
	5,000	$ 28.55	6/30/2017
Total Options Outstanding at December 31, 2012	15,000		
Gary S. Howard	10,000	$ 28.67	6/30/2016**(1)**
	5,000	$ 28.55	6/30/2017
Total Options Outstanding at December 31, 2012	15,000		
Tom A. Ortolf	5,000	$ 12.21	6/30/2014**(1)**
	5,000	$ 16.15	6/30/2015**(1)**
	10,000	$ 28.67	6/30/2016**(1)**
	5,000	$ 28.55	6/30/2017
Total Options Outstanding at December 31, 2012	25,000		

(1) On November 1, 2011, we declared a dividend of $2.00 per share on our outstanding Class A Shares and Class B Shares. The dividend was paid in cash on December 1, 2011 to shareholders of record on November 17, 2011. In light of such dividend, our Board determined to adjust the exercise price of certain stock options issued to nonemployee directors under the plans by decreasing the exercise price by $2.00 per share; provided that the exercise price of eligible stock options will not be reduced below $1.00. As a result of this adjustment, the exercise price of these stock options was decreased by $2.00 per share during January 2012.

EQUITY COMPENSATION PLAN INFORMATION

Employee Stock Incentive Plans

We have three employee stock incentive plans: our 1995 Stock Incentive Plan, 1999 Stock Incentive Plan and 2009 Stock Incentive Plan (the "Stock Incentive Plans"). We adopted the Stock Incentive Plans to provide incentives to attract and retain executive officers and other key employees. While awards remain outstanding under our 1995 Stock Incentive Plan and our 1999 Stock Incentive Plan, we no longer grant equity awards pursuant to these plans. The Stock Incentive Plans are administered by our Compensation Committee.

Awards available under the Stock Incentive Plans include: (i) common stock purchase options; (ii) stock appreciation rights; (iii) restricted stock and restricted stock units; (iv) performance awards; (v) dividend equivalents; and (vi) other stock-based awards. As of December 31, 2012, 71,809,594 of our Class A Shares were available for issuance under the 2009 Stock Incentive Plan. Our authorization to grant new awards under the 1995 Stock Incentive Plan and 1999 Stock Incentive Plan has expired. The Compensation Committee retains discretion, subject to plan limits, to modify the terms of outstanding awards and to adjust the price of awards.

As of December 31, 2012, there were outstanding options to purchase 16,399,870 Class A Shares and 1,185,080 outstanding restricted stock units under the Stock Incentive Plans. These awards generally vest at the rate of 20% per year commencing one year from the date of grant. The exercise prices of these options, which have generally been equal to or greater than the fair market value of our Class A Shares at the date of grant, range from less than $1.00 to $40.00 per Class A Share.

On December 2, 2012, we declared a dividend of $1.00 per share on our outstanding Class A Shares and Class B Shares. The dividend was paid in cash on December 28, 2012 to shareholders of record on December 14, 2012. In light of such dividend, the Board of Directors and the Compensation Committee, which administers our Stock Incentive Plans, determined to adjust the exercise price of certain stock options issued under the plans by decreasing the exercise price by $0.77 per share; provided, that the exercise price of eligible stock options will not be reduced below $1.00. As a result of this adjustment, the exercise price of these stock options was decreased by $0.77 per share during January 2013.

As previously discussed in Compensation Discussion & Analysis, we have adopted the 2005 LTIP, the 2008 LTIP, and the 2013 LTIP under DISH Network's Stock Incentive Plans.

In addition to the 2001 Director Plan and the Stock Incentive Plans, during 2002 we adopted and our shareholders approved our 2002 Class B Chairman Stock Option Plan, under which we have reserved 20 million Class B Shares for issuance. The Class B Shares available for issuance under the 2002 Class B Chairman Stock Option Plan are not included in the table below. No options have been granted to date under the 2002 Class B Chairman Stock Option Plan.

The following table sets forth information regarding outstanding stock options and restricted stock unit awards and the Class A Shares reserved for future issuance under our equity compensation plans as of December 31, 2012:

Plan Category	Number of Securities to be Issued Upon Exercise of Outstanding Options, Warrants and Rights (a)	Weighted-Average Exercise Price of Outstanding Options, Warrants and Rights (b) (1)	Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans (excluding securities reflected in column (a)) (c)
Equity compensation plans approved by security holders	17,584,950	$ 19.04	72,729,594
Equity compensation plans not approved by security holders	—	—	—
Total	17,584,950	$ 19.04	72,729,594

(1) The calculation of the weighted-average exercise price of outstanding options, warrants and rights excludes restricted stock units that provide for the issuance of shares of common stock upon vesting because these awards do not require payment of an exercise price in order to obtain the underlying shares upon vesting.

CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

Our Board has adopted a written policy for the review and approval of transactions involving DISH Network and related parties, such as directors, executive officers (and their immediate family members) and EchoStar. In order to identify these transactions, we distribute questionnaires to our officers and directors on a quarterly basis. Our General Counsel then directs the appropriate review of all potential related-party transactions and schedules their presentation at the next regularly-scheduled meetings of the Audit Committee and the Board of Directors. The Audit Committee and the Board of Directors must approve these transactions, with all interested parties abstaining from the vote. Once each calendar year, the Audit Committee and the Board of Directors undertake a review of all recurring potential related-party transactions. Both the Audit Committee and the Board of Directors must approve the continuation of each such transaction, with all interested parties abstaining. Transactions involving EchoStar are subject to the approval of a committee of the non-interlocking directors or in certain circumstances non-interlocking management.

Related Party Transactions with EchoStar Corporation

On January 1, 2008, we completed the spin-off of EchoStar (the "Spin-off"), which was previously our subsidiary. Following the Spin-off, 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, or 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 the principal agreements with EchoStar that may have an impact on our financial position and results of operations.

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 will provide us with certain services relating to the development of web-based applications for set-top boxes for a period from February 1, 2012 to February 1, 2015. The Application Development Agreement renews automatically for successive one-year periods thereafter, unless terminated earlier by EchoStar at any time upon at least 90 days' notice. The fees for services provided under the Application Development Agreement are calculated at EchoStar's cost of providing the relevant service plus a fixed margin, which will depend on the nature of the services provided. We incurred expenses payable to EchoStar of approximately $2.4 million under the Application Development Agreement during 2012.

Blockbuster Agreement. On April 26, 2011, we completed the acquisition of substantially all of the assets of Blockbuster, Inc. (the "Blockbuster Acquisition"). During the third quarter 2011, we entered into a letter agreement with EchoStar pursuant to which certain assets used to support Blockbuster's website were transferred to EchoStar and EchoStar agreed to provide certain technical and infrastructure support for the Blockbuster website to us. The fees for the services provided under the letter agreement are calculated at cost plus a fixed margin, which varies depending upon the nature of the services provided. The letter agreement provides that it shall continue in effect until the completion of a definitive agreement between EchoStar and us setting forth the terms of the support of the Blockbuster website. These assets were contributed to DISH Digital (as defined below), and, therefore, as of July 1, 2012, services will no longer be provided pursuant to this letter agreement. We incurred expenses payable to EchoStar of approximately $8.4 million under this letter agreement during 2012.

Broadcast Agreement. In connection with the Spin-off, we and EchoStar entered into a broadcast agreement pursuant to which EchoStar provided certain broadcast services to us, including teleport services such as transmission and downlinking, channel origination services, and channel management services for a period ending on January 1, 2012 (the "Prior Broadcast Agreement"). We had 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 terminated teleport services for a reason other than EchoStar's breach, we were obligated to pay EchoStar the aggregate amount of the remainder of the expected cost of providing the teleport services. The fees for the services provided under the Prior Broadcast Agreement were calculated at cost plus a fixed margin, which varied depending on the nature of the products and services provided.

Effective January 1, 2012, we and EchoStar entered into a new broadcast agreement (the "2012 Broadcast Agreement") pursuant to which EchoStar provides broadcast services to us, for the period from January 1, 2012 to December 31, 2016. The material terms of the 2012 Broadcast Agreement are substantially the same as the material terms of the Prior Broadcast Agreement, except that: (i) 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; and (ii) if we terminate the teleport services provided under the 2012 Broadcast Agreement for a reason other than EchoStar's breach, we are generally obligated to reimburse EchoStar for any direct costs EchoStar incurs related to any such termination that it cannot reasonably mitigate. We incurred expenses payable to EchoStar of approximately $211.7 million under the 2012 Broadcast Agreement during 2012.

Broadcast Agreement for Certain Sports Related Programming. During May 2010, we and EchoStar entered into a broadcast agreement pursuant to which EchoStar provides certain broadcast services to us in connection with our carriage of certain sports related programming. The term of this agreement is for ten years. If we terminate this agreement for a reason other than EchoStar's breach, we are generally obligated to reimburse EchoStar for any direct costs EchoStar incurs related to any such termination that it cannot reasonably mitigate. The fees for the broadcast services provided under this agreement depend, among other things, upon the cost to develop and provide such services. We incurred expenses payable to EchoStar of approximately $1.4 million under this broadcast agreement during 2012.

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 DISH and one-third by EchoStar and is consolidated into our financial statements beginning July 1, 2012. DISH Digital was formed to develop and commercialize certain advanced technologies. We, EchoStar and DISH Digital entered into the following agreements with respect to DISH Digital: (i) a contribution agreement pursuant to which we and EchoStar contributed certain assets in exchange for our respective ownership interests in DISH Digital; (ii) a limited liability company operating agreement, which provides for the governance of DISH Digital; and (iii) a commercial agreement pursuant to which, among other things, DISH Digital has: (a) certain rights and corresponding obligations with respect to DISH Digital's business; and (b) the right, but not the obligation, to receive certain services from us and EchoStar, respectively (the "Commercial Agreement"). Since a substantial majority of the voting power of the shares of both us and EchoStar is owned beneficially by Charles W. Ergen, our Chairman and EchoStar's Chairman, or by certain trusts established by Mr. Ergen for the benefit of his family, this is a formation of an entity under common control and a step up in basis is not allowed; therefore each party's contributions were recorded at book value for accounting purposes. DISH Digital incurred expenses payable to EchoStar of approximately $10.1 million under the Commercial Agreement during 2012.

DISH Remote Access Services Agreement. Effective February 23, 2010, we entered into an agreement with EchoStar pursuant to which we receive, among other things, certain remote DVR management services. The fees for the services provided under this services agreement depend, among other things, upon the cost to develop and operate such services. This agreement has a term of five years with automatic renewal for successive one year terms and may be terminated for any reason upon at least 120 days notice to EchoStar. We incurred expenses payable to EchoStar of approximately $1.8 million under the remote access services agreement during 2012.

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. We incurred expenses payable to EchoStar of approximately $7.1 million under the DISHOnline.com services agreement during 2012.

Employee Matters Agreement. In connection with the Spin-off, we entered into an employee matters agreement with EchoStar delineating our respective obligations to our employees. Pursuant to the agreement, EchoStar established a defined contribution plan for the benefit of its eligible employees in the United States (including its employees that transferred prior to the Spin-off). Subject to any adjustments required by applicable law, the assets and liabilities of the DISH Network 401(k) Employee Savings Plan attributable to transferring employees, other than certain employees whose employment has terminated prior to January 1, 2008, have been transferred to and assumed by the defined contribution plan established by EchoStar. In addition, at the time of the Spin-off, EchoStar established welfare plans for the benefit of its eligible employees and their respective eligible dependents that were substantially similar to the welfare plans currently maintained by DISH Network. No payments were made under the employee matters agreement during 2012 and no payments are expected under the employee matters agreement in 2013 except for the reimbursement of certain expenses in connection with these employee benefit plans and potential indemnification payments in accordance with the separation agreement and certain employee transfers between us and EchoStar. The employee matters agreement is non-terminable and will survive for the applicable statute of limitations.

Hughes Agreements.

Blockbuster. During the second quarter 2011, EchoStar acquired Hughes Communications, Inc. ("Hughes"). Blockbuster purchased certain broadband products and services from Hughes pursuant to an agreement that was entered into prior to the Blockbuster Acquisition and EchoStar's acquisition of Hughes. Subsequent to these transactions, Blockbuster entered into a new agreement with Hughes which extends for a period through October 31, 2014, pursuant to which Blockbuster may continue to purchase certain broadband products and services from Hughes. Blockbuster has the option to renew the agreement for an additional one-year period. We incurred expenses payable to EchoStar of approximately $3.2 million under this agreement during 2012.

DBSD North America. On March 9, 2012, we completed the acquisition of 100% of the equity of reorganized DBSD North America, Inc. ("DBSD North America"). Prior to our acquisition of DBSD North America and EchoStar's completion of the Hughes acquisition, DBSD North America and Hughes Network Systems, LLC ("HNS"), a wholly-owned subsidiary of Hughes, 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 was 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. We incurred expenses payable to HNS of approximately $2 million under this agreement during 2012.

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 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. We incurred expenses payable to HNS of approximately $21.2 million under the Distribution Agreement during 2012.

TerreStar. On March 9, 2012, we completed the acquisition of substantially all the assets of TerreStar Networks, Inc. ("TerreStar"). Prior to our acquisition of substantially all the assets of TerreStar and EchoStar's completion of the Hughes acquisition, TerreStar and HNS entered into various agreements pursuant to which HNS provides, among other things, hosting, operations and maintenance services for TerreStar's satellite gateway and associated ground infrastructure. These agreements generally may be terminated by us at any time for convenience. We incurred expenses payable to HNS of approximately $5.0 million under these agreements during 2012.

Intellectual Property Matters Agreement. In connection with the Spin-off, we entered into an intellectual property matters agreement with EchoStar. The intellectual property matters agreement governs our relationship with EchoStar with respect to patents, trademarks and other intellectual property. The term of the intellectual property matters agreement will continue in perpetuity. Pursuant to the intellectual property matters agreement we irrevocably assigned to EchoStar all right, title and interest in certain patents, trademarks and other intellectual property necessary for the operation of EchoStar's set-top box business. In addition, the agreement permits EchoStar to use, in the operation of its set-top box business, certain other intellectual property currently owned or licensed by us and our subsidiaries. EchoStar granted to us and our subsidiaries a non-exclusive, non-transferable, worldwide license to use the name "EchoStar" and a portion of the assigned intellectual property as trade names and trademarks for a limited period of time in connection with the continued operation of our consumer business. The purpose of such license is to eliminate confusion on the part of customers and others during the period following the Spin-off. After the transitional period, we may not use the "EchoStar" name as a trademark, except in certain limited circumstances. Similarly, the intellectual property matters agreement provides that EchoStar will not make any use of the name or trademark "DISH Network" or any other trademark owned by us, except in certain circumstances. There were no payments under the intellectual property matters agreement during 2012. There are no payments expected under the intellectual property matters agreement in 2013.

International Programming Rights Agreement. During the year ended December 31, 2012, we made no purchases and for the years ended December 31, 2011 and 2010 we made no purchases and purchased $2 million, respectively, of certain international rights for sporting events from EchoStar, of which EchoStar retained only a certain portion.

Management Services Agreement. We have a management services agreement with EchoStar pursuant to which certain of our officers have been made available to provide services (which are primarily 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 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. We earned revenues of less than $0.1 million from EchoStar under the management services agreement during 2012.

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.

Move Networks Services Agreement. In the fourth quarter 2011, EchoStar granted us the right to use Move Network's software and video publishing systems, which facilitate the streaming, downloading and distribution of audio and video content to set-top boxes via the Internet. The fees for the services provided under this agreement are based upon a fixed fee which varies based upon the number of set-top boxes in a given month that access Move Network's software. 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 180 days notice to EchoStar. Move Network's software was contributed to DISH Digital, and, therefore, as of July 1, 2012, services will no longer be provided pursuant to this agreement. We incurred expenses payable to EchoStar of approximately $0.2 million under this agreement during 2012.

NDS. In March 2012, we, EchoStar and NagraStar (as defined below), on the one hand, entered into a settlement agreement with NDS Group PLC and NDS Americas, Inc. (collectively, "NDS"), on the other hand. The settlement resolved all pending litigation between us, EchoStar and NagraStar, on the one hand, and NDS, on the other hand, including litigation relating to certain conditional access systems provided by NagraStar. We and EchoStar each incurred expenses of approximately $5 million under the settlement agreement with NDS during 2012.

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 independent 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.

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. We incurred expenses payable to EchoStar of approximately $34.9 million under the product support agreement during 2012.

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. We earned revenues of approximately $4.1 million from EchoStar under the professional services agreement during 2012. We incurred expenses payable to EchoStar of approximately $6.4 million under the professional services agreement during 2012.

Radio Access Network Agreement. On November 29, 2012, we entered into an agreement with HNS pursuant to which HNS will construct for us a ground-based satellite radio access network ("RAN") for a fixed fee. The completion of the RAN under this agreement is expected to occur on or before November 29, 2014. This agreement generally may be terminated by us at any time for convenience. We incurred expenses payable to HNS of approximately $2.5 million under this agreement during 2012.

Real Estate Lease Agreements. We have entered into lease agreements pursuant to which we lease certain real estate from EchoStar. The rent on a per square foot basis for each of the leases is comparable to per square foot rental rates of similar commercial property in the same geographic area, and EchoStar is responsible for its portion of the taxes, insurance, utilities and maintenance of the premises. We incurred expenses payable to EchoStar of approximately $13 million under these real estate lease agreements during 2012. 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.

Additionally, since the Spin-off, we have entered into lease agreements pursuant to which we lease certain real estate to EchoStar. The rent on a per square foot basis for each of the leases is comparable to per square foot rental rates of similar commercial property in the same geographic areas, and EchoStar is responsible for its portion of the taxes, insurance, utilities and maintenance of the premises. We earned revenues of approximately $0.6 million from EchoStar under these real estate leases during 2012. The term of each of the leases 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.

Receiver Agreement. In connection with the Spin-off, we and EchoStar entered into a receiver agreement pursuant to which we had the right, but not the obligation, to purchase digital set-top boxes and related accessories, and other equipment from EchoStar for a period ending on January 1, 2012 (the "Prior Receiver Agreement"). The Prior Receiver Agreement allowed us to purchase digital set-top boxes, related accessories and other equipment from EchoStar at cost plus a fixed percentage margin, which varied depending on the nature of the equipment purchased. Additionally, EchoStar provided us with standard manufacturer warranties for the goods sold under the Prior Receiver Agreement. We were able to terminate the Prior Receiver Agreement for any reason upon at least 60 days notice to EchoStar. EchoStar was able to terminate the Prior Receiver Agreement if certain entities were to acquire us. The Prior Receiver Agreement also included an indemnification provision, whereby the parties indemnified each other for certain intellectual property matters.

Effective January 1, 2012, we and EchoStar entered into a new 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 material terms of the 2012 Receiver Agreement are substantially the same as the material terms of the Prior Receiver Agreement, except that the 2012 Receiver Agreement allows us to purchase digital set-top boxes, related accessories and other equipment from EchoStar either: (i) at a cost (decreasing as EchoStar reduces costs and increasing as costs increase) plus a dollar mark-up which will depend upon the cost of the product subject to a collar on EchoStar's mark-up; or (ii) at cost plus a fixed margin, which will depend on the nature of the equipment purchased. Under the 2012 Receiver Agreement EchoStar's margins will be increased if they are able to reduce the costs of their digital set-top boxes and their margins will be reduced if these costs increase. We incurred expenses payable to EchoStar of approximately $1.0 billion under the 2012 Receiver Agreement during 2012.

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 written notice to us. We may also terminate this agreement if certain entities acquire us. We earned revenues of approximately $3.5 million as a result of EchoStar's purchases of remanufactured receivers and accessories from us in 2012.

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 Hughes entered into a RUS Implementation Agreement (the "RUS Agreement") pursuant to which Hughes 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 Hughes. We incurred expenses payable to Hughes of approximately $2.1 million under the RUS Agreement during 2012.

Satellite Capacity Agreements

Satellite Capacity Leased from EchoStar. Since the Spin-off, we have entered into certain satellite capacity agreements pursuant to which we lease certain satellite capacity on certain satellites owned or leased by EchoStar. The fees for the services provided under these satellite capacity agreements depend, among other things, upon the orbital location of the applicable satellite and the length of the lease. We incurred expenses payable to EchoStar of approximately $116.3 million under satellite capacity agreements during 2012. The term of each lease is set forth below:

> *EchoStar VI, VIII and XII*. We lease certain satellite capacity from EchoStar on EchoStar VI, VIII and XII. The leases 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, we no longer lease capacity from EchoStar on the EchoStar VI and EchoStar VIII satellites.
>
> *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.

EchoStar XV. EchoStar XV is owned by us and is operated at the 61.5 degree orbital location. The FCC has granted EchoStar a temporary authorization to operate the satellite at the 61.5 degree orbital location. For so long as EchoStar XV remains in service at the 61.5 degree orbital location, we are obligated to pay EchoStar a fee, which varies depending on the number of frequencies being used by EchoStar XV.

Nimiq 5 Agreement. During 2009, EchoStar entered into a fifteen-year satellite service agreement with Telesat Canada ("Telesat") to receive service on all 32 DBS transponders on the Nimiq 5 satellite at the 72.7 degree orbital location (the "Telesat Transponder Agreement"). During 2009, EchoStar also entered into a satellite service agreement (the "DISH Nimiq 5 Agreement") with us, pursuant to which we currently receive service from EchoStar on all 32 of the DBS transponders covered by the Telesat Transponder Agreement. We have also guaranteed certain obligations of EchoStar under the Telesat Transponder Agreement.

Under the terms of the DISH Nimiq 5 Agreement, we make certain monthly payments to EchoStar that commenced in September 2009 when the Nimiq 5 satellite was placed into service and continue through the service term. Unless earlier terminated under the terms and conditions of the DISH Nimiq 5 Agreement, the service term will expire ten years following the date 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. We incurred expenses payable to EchoStar of approximately $78.9 million under the DISH Nimiq 5 Agreement during 2012.

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 at the 77 degree orbital location. 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. During January 2013, QuetzSat-1 was moved to the 77 degree orbital location and commenced commercial operations 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.

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. We earned revenue of approximately $8.5 million from EchoStar under these satellite capacity agreements during 2012. 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. The fee for the services provided under this satellite capacity agreement depends, among other things, upon the orbital location of the satellite and the length of the lease. 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 HNS leases certain satellite capacity from us on D1. 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.

SlingService Services Agreement. Effective February 23, 2010, we entered into an agreement with EchoStar pursuant to which we receive certain services related to place-shifting. 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. We incurred expenses payable to EchoStar of approximately $2.4 million under the SlingService services agreement during 2012.

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 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. No payments were made under the tax sharing agreement during 2012.

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.

We and EchoStar, on the one hand, and TiVo, on the other hand, have also agreed on mutual releases of certain related claims and agreed not to challenge each other's DVR technology-related patents that are licensed under the settlement agreement.

Because both we and EchoStar were defendants in the TiVo lawsuit, we and EchoStar were jointly and severally liable to TiVo for any final damages and sanctions that could have been awarded by the District Court. As previously disclosed, we determined that we were obligated under the agreements entered into in connection with the Spin-off to indemnify EchoStar for substantially all liability arising from this lawsuit. EchoStar contributed an amount equal to its $5 million intellectual property liability limit under the receiver agreement. We and EchoStar further agreed that EchoStar's $5 million contribution would not exhaust EchoStar's liability to us for other intellectual property claims that may arise under the receiver agreement. We and EchoStar also agreed that we would each be entitled to joint ownership of, and a cross-license to use, any intellectual property developed in connection with any potential new alternative technology. Any amounts that

EchoStar is responsible for under the settlement agreement with TiVo are in addition to the $5 million contribution previously made by EchoStar.

TT&C Agreement. In connection with the Spin-off, we entered into a telemetry, tracking and control ("TT&C") agreement pursuant to which we received TT&C services from EchoStar for a period ending on January 1, 2012 (the "Prior TT&C Agreement"). The fees for services provided under the Prior TT&C Agreement were calculated at cost plus a fixed margin. We were able to terminate the Prior TT&C Agreement for any reason upon 60 days notice. Effective January 1, 2012, we entered into a new 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 material terms of the 2012 TT&C Agreement are substantially the same as the material terms of the Prior TT&C Agreement, except that 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 vary depending on the nature of the services provided. We incurred expenses payable to EchoStar of approximately $3.9 million under the 2012 TT&C Agreement during 2012.

Voom Settlement Agreement. On October 21, 2012, we entered into a confidential settlement agreement and release (the "Voom Settlement Agreement") with Voom HD Holdings LLC ("Voom") and CSC Holdings, LLC ("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.

XIP Encryption Agreement. During the third quarter 2012, we entered into an encryption agreement with EchoStar for our XiP line of set-top boxes (the "XiP Encryption Agreement") pursuant to which EchoStar provides certain security measures on our XiP line of set-top boxes 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 Agreement are calculated on a monthly basis based on the number of receivers utilizing such security measures each month. No payments were made under the XiP Encryption Agreement during 2012.

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 us and EchoStar. Mr. Lynch's compensation consists of cash and equity compensation and is borne by both EchoStar and us.

Related Party Transactions with NagraStar L.L.C. ("NagraStar")

NagraStar is a joint venture between EchoStar and Nagra USA, Inc. that is our provider of encryption and related security systems intended to assure that only authorized customers have access to our programming. During the year ended December 31, 2012, we purchased from NagraStar security access and other fees at an aggregate cost to us of $72.5 million. As of December 31, 2012, amounts payable to NagraStar totaled $21.9 million.

Certain Related Party Transactions with Certain Members of Our Board of Directors

Mrs. Ergen. During 2012, we employed Mrs. Ergen as a Senior Advisor to the Corporation and paid her approximately $100,000. During 2013, we expect to continue to employ Mrs. Ergen and certain of the Ergen children. While the amount paid during 2013 will depend on the time and services that will be provided, we expect to pay Mrs. Ergen approximately $100,000 and certain Ergen children approximately $25,000 in the aggregate during 2013.

Mr. Moskowitz. During 2012, we employed Mr. Moskowitz as a Senior Advisor to the Corporation and paid him salary and bonus totaling $250,000. During 2013, we expect to continue to employ Mr. Moskowitz. While the amount paid during 2013 will depend on the time and services that will be provided, we expect to pay Mr. Moskowitz approximately $100,000 during 2013.

Mr. Christopher Ergen/Yottabytes Ventures LLC. During the second quarter 2012, we entered into an agreement pursuant to which we had the right to make certain investments in Yottabytes Ventures LLC ("YBV"), a company that develops mobile web-based video applications. As of December 31, 2012, we had invested $500,000 in YBV, which resulted in us owning approximately 71.4% of YBV. We have the right, but not the obligation, to invest an additional $300,000 in YBV, which if exercised would bring our aggregate ownership interest in YBV to 80%. As part of our investment, we also have the right to appoint two out of the three members of the YBV board of directors.

Mr. Christopher Ergen, Mr. and Mrs. Ergen's son, is an owner in YBV. As of December 31, 2012, Mr. Christopher Ergen had approximately a 7.14% ownership interest in YBV, which interest is subject to a repurchase option by YBV at a price of $0.001 per common share. Fifty percent (50%) of his interest is released from the repurchase option after each of the first and second anniversary of our initial investment in YBV. As of December 31, 2012, all of the common shares which Mr. Christopher Ergen owns in YBV remain subject to the repurchase option. Mr. Christopher Ergen also acts as an advisor for YBV for which he receives $2,500 per month for his services. During 2012, he was paid approximately $13,000 by YBV. In addition, Mr. Christopher Ergen has a warrant to purchase additional common shares from YBV, the exercise of which is subject to certain conditions and expires in July 2017 or sooner if he is no longer an advisor for YBV or otherwise employed or engaged as a consultant by YBV. If Mr. Christopher Ergen fully exercises his warrant, he would have approximately a 17.5% ownership interest in YBV on a fully diluted basis assuming we have exercised our right to invest an additional $300,000 in YBV. As of December 31, 2012, none of the common shares under the warrant were exercisable.

PRINCIPAL ACCOUNTANT FEES AND SERVICES

Appointment of Independent Registered Public Accounting Firm

Appointment of Independent Registered Public Accounting Firm for 2013. KPMG LLP served as our independent registered public accounting firm for the fiscal year ended December 31, 2012, and the Board has proposed that our shareholders ratify the appointment of KPMG LLP as our independent registered public accounting firm for the fiscal year ending December 31, 2013. Please see Proposal No. 2 below.

The Audit Committee, in its discretion, may direct the appointment of a different independent registered public accounting firm at any time during the year if the Audit Committee believes that a change would be in the best interests of DISH Network.

Fees Paid to KPMG LLP for 2012 and 2011

The following table presents fees for professional audit services rendered by KPMG LLP for the audit of our annual financial statements for the years ended December 31, 2012 and December 31, 2011, and fees billed for other services rendered by KPMG LLP during those periods.

	For the Years Ended December 31, 2012	2011
Audit Fees (1)	$ 2,225,000	$ 2,490,000
Audit-Related Fees (2)	329,117	555,269
Total Audit and Audit-Related Fees	2,554,117	3,045,269
Tax Fees (3)	1,752,765	867,299
All Other Fees	—	—
Total Fees	$ 4,306,882	$ 3,912,568

(1) Consists of fees paid by us for the audit of our consolidated financial statements included in our Annual Report on Form 10-K, review of our unaudited financial statements included in our Quarterly Reports on Form 10-Q and fees in connection with the audit of our internal control over financial reporting. The fees for 2011 have been adjusted to account for payments owed for 2011 that were not billed until 2012.
(2) Consists of fees for audit of financial statements of certain employee benefit plans and fees for other services that are normally provided by the accountant in connection with registration statement filings, issuance of consents and professional consultations with respect to accounting issues.
(3) Consists of fees for tax consultation and tax compliance services.

Policy on Audit Committee Pre-Approval of Audit and Permissible Non-Audit Services of Independent Registered Public Accounting Firm

The Audit Committee is responsible for appointing, setting compensation, retaining and overseeing the work of our independent registered public accounting firm. The Audit Committee has established a process regarding pre-approval of all audit and permissible non-audit services provided by the independent registered public accounting firm.

Requests are submitted to the Audit Committee in one of the following ways:

- Request for approval of services at a meeting of the Audit Committee; or
- Request for approval of services by members of the Audit Committee acting by written consent.

The request may be made with respect to either specific services or a type of service for predictable or recurring services. 100% of the fees paid by us to KPMG LLP for services rendered in 2012 and 2011 were pre-approved by the Audit Committee.

REPORT OF THE AUDIT COMMITTEE

The role of the Audit Committee is to assist DISH Network's Board of Directors in its oversight of DISH Network's financial reporting process, as is more fully described in its charter. DISH Network's management is responsible for its financial reporting process, including its system of internal controls, and for the preparation and presentation of its consolidated financial statements in accordance with generally accepted accounting principles. DISH Network's independent registered public accounting firm is responsible for auditing those financial statements and expressing an opinion as to their conformity with generally accepted accounting principles. Our responsibility is to monitor and review these processes. It is not our duty or our responsibility to conduct auditing or accounting reviews or procedures. We are not and may not be employees of DISH Network, and we may not represent ourselves to be, or to serve as, accountants or auditors by profession or experts in the fields of accounting or auditing. Therefore, we have relied, without independent verification, on representations by DISH Network's management that its financial statements have been prepared with integrity and objectivity and in conformity with accounting principles generally accepted in the United States of America. We have also relied on representations of DISH Network's independent registered public accounting firm included in their report on its financial statements. Our oversight does not provide us with an independent basis to determine that management has maintained appropriate accounting and financial reporting principles or policies or appropriate internal controls and procedures designed to assure compliance with accounting standards and applicable laws and regulations. Furthermore, our considerations and discussions with DISH Network's management and independent registered public accounting firm do not assure that DISH Network's financial statements are presented in accordance with generally accepted accounting principles, that the audit of DISH Network's financial statements has been carried out in accordance with the standards of the Public Company Accounting Oversight Board (United States) ("PCAOB"), or that DISH Network's independent registered public accounting firm is in fact "independent."

In the performance of our oversight function, we reviewed and discussed with DISH Network's management its audited financial statements for the fiscal year ended December 31, 2012. We also discussed these audited financial statements with DISH Network's independent registered public accounting firm. Our discussions with the independent registered public accounting firm included the matters required to be discussed by PCAOB Auditing Standard No. 16, "Communications with Audit Committees," as currently in effect. We also discussed with them their independence and any relationship that might affect their objectivity or independence. In connection with these discussions, we reviewed the written disclosures and the letter from KPMG LLP required by applicable requirements of the PCAOB. Finally, we have considered whether the non-audit services provided by the independent registered public accounting firm are compatible with maintaining their independence.

Based on the reviews and discussions referred to above, we are not aware of any relationship between the independent registered public accounting firm and DISH Network that affects the objectivity or independence of the independent registered public accounting firm. Based on these discussions and our review discussed above, we recommended to DISH Network's Board of Directors that its audited financial statements for fiscal 2012 be included in DISH Network's Annual Report on Form 10-K for the year ended December 31, 2012 for filing with the Securities and Exchange Commission.

Respectfully submitted,

The DISH Network Audit Committee

Tom A. Ortolf (Chairman)
Steven R. Goodbarn
Gary S. Howard

The report of the Audit Committee and the information contained therein shall not be deemed to be "soliciting material" or "filed" or incorporated by reference in any filing we make under the Securities Act or under the Exchange Act, irrespective of any general statement incorporating by reference this Proxy Statement into any such filing, or subject to the liabilities of Section 18 of the Exchange Act, except to the extent that we specifically incorporate this information by reference into a document we file under the Securities Act or the Exchange Act.

PROPOSAL NO. 2 — RATIFICATION OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We customarily ask our shareholders to ratify the appointment of our independent registered public accounting firm at each annual meeting. The Audit Committee and the Board have selected and appointed KPMG LLP as our independent registered public accounting firm for the fiscal year ending December 31, 2013 and we are asking our shareholders to ratify this appointment at the Annual Meeting. Even if the selection is ratified, the Audit Committee in its discretion may select a different independent public registered accounting firm at any time if it determines that such a change would be in the best interests of DISH Network. Representatives of KPMG LLP are expected to be present at the Annual Meeting and will have the opportunity to make any statements they may desire. They also will be available to respond to appropriate questions of shareholders.

Charles W. Ergen, our Chairman, currently possesses approximately 88.0% of the total voting power. Please see "Security Ownership of Certain Beneficial Owners and Management" above. Mr. Ergen has indicated his intention to vote in favor of Proposal No. 2. Accordingly, approval of Proposal No. 2 is assured notwithstanding a contrary vote by any or all shareholders other than Mr. Ergen.

The Board of Directors unanimously recommends a vote FOR approval of Proposal No. 2 (Item No. 2 on the enclosed proxy card).

PROPOSAL NO. 3 — AMENDMENT AND RESTATEMENT EMPLOYEE STOCK PURCHASE PLAN

We have had an Employee Stock Purchase Plan since 1997. On February 11, 2013, the Board adopted an amendment and restatement of the Employee Stock Purchase Plan which is subject to approval by our shareholders at our 2013 Annual Meeting of Shareholders.

The proposed amendment and restatement of the Employee Stock Purchase Plan would effect the following change:

- Increase the number of Class A Shares that may be purchased under the Employee Stock Purchase Plan from 1,800,000 to 2,800,000. As of December 31, 2012, 1,560,506 Class A Shares had been issued pursuant to the Employee Stock Purchase Plan. The Board of Directors believes that the Employee Stock Purchase Plan continues to be an important tool to attract and retain employees, and to align employee and shareholder interests

The Employee Stock Purchase Plan is attached as Appendix A to this Proxy Statement. The principal provisions of the Employee Stock Purchase Plan are summarized below. This summary and the features of the Employee Stock Purchase Plan set forth above, do not purport to be complete and are qualified in their entirety by reference to the provisions of the Employee Stock Purchase Plan.

Purchase of Shares

Subject to adjustment by the Board of Directors, the purchase price of each Class A Share purchased by employees under the Employee Stock Purchase Plan will be 85% of the closing price of the Class A Shares on the last business day of each calendar quarter in which such Class A Shares are deemed sold to an employee under the Employee Stock Purchase Plan. In the event that such day is not a date on which trading occurred on the NASDAQ Stock Market, then the day for calculation of the purchase price shall be the nearest prior business day on which trading occurred on the NASDAQ Stock Market. The Class A Shares will be issued from the shares authorized for issuance under the Employee Stock Purchase Plan or treasury stock, and the Corporation will pay all transaction costs.

Administration and Eligibility

Since 1997, the Employee Stock Purchase Plan is administered by a Committee appointed by our Board of Directors, by an individual appointed by our Board of Directors, or by the Board of Directors itself (the "ESPP Committee"). The ESPP Committee has the authority to interpret and construe all provisions of the Employee Stock Purchase Plan. All employees who have been employed by the Corporation for at least one calendar quarter are eligible to participate in the Employee Stock Purchase Plan, except for employees whose customary employment is twenty hours or fewer per week. As of March 1, 2013, approximately 18,000 of our employees were eligible to participate in the Employee Stock Purchase Plan.

Participation Terms

An eligible employee may elect to participate in the Employee Stock Purchase Plan by completing and submitting an authorization for payroll deduction form. No interest shall be paid on payroll deductions under the Employee Stock Purchase Plan and no withdrawal is permitted from the Employee Stock Purchase Plan prior to the end of a calendar quarter. An employee cannot have deducted an amount which would: (i) result in the employee owning, after the purchase of Class A Shares in any calendar quarter under the Employee Stock Purchase Plan, five percent or more of the total combined voting power of all outstanding capital stock of the Corporation; or (ii) permit such employee to purchase capital stock of the Corporation under all stock purchase plans of the Corporation at a rate which would exceed $25,000 in fair market value of capital stock in any one year.

At the end of each calendar quarter, each employee shall be deemed to have purchased the number of Class A Shares equal to the total amount of such employee's payroll deductions during such calendar quarter, divided by the per share purchase price. Employees may purchase Class A Shares only through payroll deductions under the Employee Stock Purchase Plan.

Amendment and Termination

The Board of Directors may amend the Employee Stock Purchase Plan at any time. However, no amendments shall be made without the prior approval of the shareholders of the Corporation if such amendment would: (i) increase the number of Class A Shares available under the Employee Stock Purchase Plan; or (ii) change the classification of employees eligible to participate in the Employee Stock Purchase Plan.

The Employee Stock Purchase Plan shall terminate upon the first to occur of: (i) all of the Class A Shares reserved for issuance under the Plan have been issued; or (ii) the date on which the Employee Stock Purchase Plan is terminated by the Board of Directors.

Federal Income Tax Consequences

The Employee Stock Purchase Plan is intended to be an "employee stock purchase plan" as defined in Section 423 of the Internal Revenue Code of 1986, as amended. An employee does not have to pay any federal income tax upon joining the Employee Stock Purchase Plan or upon receiving Class A Shares from the Employee Stock Purchase Plan. The employee is, however, required to pay federal income tax on the difference, if any, between the price at which he or she sells Class A Shares received under the Employee Stock Purchase Plan and the price he or she paid for them.

Plan Benefits

Because benefits under the Employee Stock Purchase Plan depend on employees' elections to participate in the Employee Stock Purchase Plan and the fair market value of the Class A Shares at various future dates, it is not possible to determine future benefits that will be received by executive officers and other employees under the Employee Stock Purchase Plan.

Other Information

Charles W. Ergen, our Chairman, currently possesses approximately 88.0% of the total voting power. Please see "Security Ownership of Certain Beneficial Owners and Management" above. Mr. Ergen has indicated his intention to vote in favor of Proposal No. 3. Accordingly, approval of Proposal No. 3 is assured notwithstanding a contrary vote by any and all shareholders other than Mr. Ergen.

The Board of Directors unanimously recommends a vote FOR approval of Proposal No. 3 (Item No. 3 on the enclosed proxy card)

WHERE TO GET ADDITIONAL INFORMATION

As a reporting company, we are subject to the informational requirements of the Exchange Act and accordingly file our annual report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, proxy statements and other information with the SEC. The public may read and copy any materials filed with the SEC at the SEC's Public Reference Room at 100 F Street, NE, Washington, DC 20549. Please call the SEC at (800) SEC-0330 for further information on the Public Reference Room. As an electronic filer, our public filings are maintained on the SEC's website that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC. The address of that website is http://www.sec.gov. In addition, our annual report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Exchange Act may be accessed free of charge through our website as soon as reasonably practicable after we have electronically filed such material with, or furnished it to, the SEC. The address of that website is http://www.dish.com.

COST OF PROXY STATEMENT

We will bear the cost of the solicitation of proxies on behalf of the Board. In addition to the use of the mail, proxies may be solicited by us personally, by telephone or by similar means. None of our directors, officers or employees will be specifically compensated for those activities. We do not expect to pay any compensation for the solicitation of proxies. However, we will reimburse brokerage firms, custodians, nominees, fiduciaries and other persons holding our shares in their names, or in the names of nominees, at approved rates for their reasonable expenses in forwarding proxy materials to beneficial owners of securities held of record by them and obtaining their proxies.

SHAREHOLDER COMMUNICATIONS

General. We provide an informal process for shareholders to send communications to our Board and its members. Shareholders who wish to contact the Board or any of its members may do so by writing to DISH Network Corporation, Attn: Board of Directors, 9601 S. Meridian Blvd., Englewood, Colorado 80112. At the direction of the Board of Directors, all mail received will be opened and screened for security purposes. Correspondence directed to an individual Board member is referred to that member. Correspondence not directed to a particular Board member is referred to R. Stanton Dodge, Executive Vice President, General Counsel and Secretary.

Submission of Shareholder Proposals and Director Nominations for 2014 Annual Meeting. Shareholders who intend to have a proposal or director nomination considered for inclusion in our proxy materials for presentation at our 2014 Annual Meeting of Shareholders must submit the proposal or director nomination to us no later than November 22, 2013. In accordance with our Bylaws, for a proposal or director nomination not included in our proxy materials to be brought before the 2014 Annual Meeting of Shareholders, a shareholder's notice of the proposal or director nomination that the shareholder wishes to present must be delivered to R. Stanton Dodge, Executive Vice President, General Counsel and Secretary, at DISH Network Corporation, 9601 S. Meridian Blvd., Englewood, Colorado 80112 not less than 90 nor more than 120 days prior to the first anniversary of the 2013 Annual Meeting of Shareholders. Accordingly, any notice given pursuant to our Bylaws and outside the process of Rule 14a-8 must be received no earlier than January 2, 2014 and no later than February 3, 2014. We reserve the right to reject, rule out of order or take other appropriate action with respect to any proposal or director nomination that does not comply with these and other applicable requirements.

OTHER BUSINESS

Management knows of no other business that will be presented at the Annual Meeting other than that which is set forth in this Proxy Statement. However, if any other matter is properly presented at the Annual Meeting, the persons named in the accompanying proxy card will have discretionary authority to vote on such matter.

By Order of the Board of Directors

R. STANTON DODGE
Executive Vice President, General Counsel and Secretary

<u>**Appendix A**</u>
AMENDED AND RESTATED
DISH NETWORK CORPORATION
EMPLOYEE STOCK PURCHASE PLAN

1. PURPOSE. The DISH Network Corporation Employee Stock Purchase Plan (the "Plan") is established to provide eligible employees of DISH Network Corporation, a Nevada corporation, and any successor corporation thereto (collectively, "DISH"), and any current or future parent corporation or subsidiary corporations of DISH which the Board of Directors of DISH (the "Board") determines should be included in the Plan (collectively referred to as the "Company"), with an opportunity to acquire a proprietary interest in the Company by the purchase of common stock of DISH (NASDAQ trading symbol "DISH"). DISH and any parent or subsidiary corporation designated by the Board as a corporation included in the Plan shall be individually referred to herein as a "Participating Company." The Board shall have the sole and absolute discretion to determine from time to time what parent corporations and/or subsidiary corporations shall be Participating Companies. For purposes of the Plan, a parent corporation and a subsidiary corporation shall be as defined in sections 424 (e) and 424(f), respectively, of the Internal Revenue Code of 1986, as amended (the "Code").

The Company intends that the Plan shall qualify as an "employee stock purchase plan" under section 423 of the Code (including any amendments or replacements of such section), and the Plan shall be so construed. Any term not expressly defined in the Plan but defined for purposes of section 423 of the Code shall have the same definition herein.

2. ADMINISTRATION. The Plan shall be administered by the Board and/or by a duly appointed committee or representative of the Board having such powers as shall be specified by the Board. Any subsequent references to the Board shall also mean the committee or representative if a committee or representative has been appointed. All questions of interpretation of the Plan shall be determined by the Board and shall be final and binding upon all persons having an interest in the Plan. Subject to the provisions of the Plan, the Board shall determine all of the relevant terms and conditions of the Plan; provided, however, that all Participants shall have the same rights and privileges within the meaning of section 423(b)(5) of the Code. All expenses incurred in connection with administration of the Plan shall be paid by the Company.

3. SHARE RESERVE. The maximum number of shares which may be issued under the Plan shall be 2,800,000 shares of DISH's authorized but unissued Class A Common Stock or Class A Common Stock which are treasury shares (the "Shares").

4. ELIGIBILITY. Any full-time employee of a Participating Company is eligible to participate in the Plan after completion of one entire calendar quarter of employment, except employees who own or hold options to purchase or who, as a result of participation in the Plan, would own or hold options to purchase, stock of the Company possessing five percent (5%) or more of the total combined voting power or value of all classes of stock of the Company within the meaning of section 423(b)(3) of the Code. A full time employee is defined as one who is regularly scheduled to work more than 20 hours per week. Notwithstanding anything herein to the contrary, any individual performing services for a Participating Company solely through a leasing agency or employment agency shall not be deemed an "employee" of such Participating Company. In certain circumstances, eligibility may be restricted pursuant to a withdrawal under Section 10(d) of the Plan.

Any employee who transfers from EchoStar Corporation, a Nevada corporation, any successor corporation thereto, or any current or future parent corporation or subsidiary corporations of EchoStar Corporation or its subsidiaries (collectively, "SATS") to the Company shall be given credit for purposes of Plan eligibility for all prior service at SATS; provided that employees of future SATS subsidiaries that are acquired shall be given credit for purposes of Plan eligibility for prior service at SATS only if at the time of such employee's transfer to the Company such employee is eligible to participate in SATS's Employee Stock Participation Plan.

5. OFFERING DATES.

(a) OFFERING PERIODS. Except as otherwise set forth below, the Plan shall initially be implemented by offerings (individually, an "Offering") of two (2) years duration (an "Offering Period"). The first Offering will commence on October 1, 1997 and subsequent Offerings would commence every two years thereafter until the Plan terminates, unless earlier modified in the Board's discretion. The first day of an Offering Period shall be the "Offering Date" for such Offering Period. In the event the Offering Date would fall on a holiday or weekend, the Offering Date shall instead be the first business day after such day. Notwithstanding the foregoing, the Board may establish a different term for one or more Offerings and/or different commencing and/or ending dates for such Offerings. Eligible employees may not participate in more than one Offering at a time.

(b) PURCHASE PERIODS. Each Offering Period shall initially consist of eight (8) purchase periods of three (3) months duration (individually, a "Purchase Period"). The last day of the Purchase Period shall be the "Purchase Date" for such Purchase Period. A Purchase Period commencing on January 1 shall end on March 31. A Purchase Period commencing on April 1 shall end on June 30. A Purchase Period commencing on July 1 shall end on September 30. A Purchase Period commencing on October 1 shall end on December 31. In the event the Purchase Date would fall on a holiday or weekend, the Purchase Date shall instead be the last business day prior to such day. Notwithstanding the foregoing, the Board may establish a different term for one or more Purchase Periods and/or different commencing dates and/or Purchase Dates for such Purchase Periods. An employee who becomes eligible to participate in an Offering after the initial Purchase Period has commenced shall not be eligible to participate in such Purchase Period but may participate in any subsequent Purchase Period during that Offering Period provided such employee is still eligible to participate in the Plan as of the commencement of any such subsequent Purchase Period.

(c) GOVERNMENTAL APPROVAL; STOCKHOLDER APPROVAL. Notwithstanding any other provision of the Plan to the contrary, all transactions pursuant to the Plan shall be subject to (i) obtaining all necessary governmental approvals and/or qualifications of the sale and/or issuance of the Shares (including compliance with the Securities Act of 1933 and any applicable state securities laws), and (ii) obtaining stockholder approval of the Plan. Notwithstanding the foregoing, stockholder approval shall not be necessary in order to commence the Plan's initial Offering Period; provided, however, that the purchase of Shares at the end of such Offering Period shall be subject to obtaining stockholder approval of the Plan.

6. PARTICIPATION IN THE PLAN.

(a) INITIAL PARTICIPATION. An eligible employee shall become a Participant on the first Offering Date after satisfying the eligibility requirements and delivering to the Company's payroll office (at Company headquarters) not later than the close of business for such payroll office on the last business day before such Offering Date (the "Subscription Date") a subscription agreement indicating the employee's election to participate in the Plan and authorizing payroll deductions. An eligible employee who does not deliver a subscription agreement to the Company's payroll office on or before the Subscription Date shall not participate in the Plan for the initial Purchase Period or for any subsequent Purchase Period unless such employee subsequently enrolls in the Plan by filing a subscription agreement with the Company by the last business day before the commencement of a subsequent Purchase Period or Offering Date. DISH may, from time to time, change the Subscription Date as deemed advisable by DISH in its sole discretion for proper administration of the Plan.

(b) CONTINUED PARTICIPATION. A Participant shall automatically participate in the Purchase Period commencing immediately after the first Purchase Date of the initial Offering Period in which the Participant participates, and all subsequent Purchase Periods within that Offering, until such time as such Participant (i) ceases to be eligible as provided in paragraph 4, (ii) withdraws from the Offering or Plan pursuant to paragraphs 10(a) or 10(b) or (iii) terminates employment as provided in paragraph 11. Similarly, except as provided in the preceding sentence, a Participant shall automatically participate in the Offering Period commencing immediately after the last Purchase Date of the prior Offering Period in which the Participant participates, and all subsequent Offering Periods pursuant to this Plan. However, a Participant may deliver a subscription agreement with respect to a subsequent Purchase or Offering Period if the Participant desires to change any of the Participant's elections contained in the Participant's then effective subscription agreement.

7. PURCHASE PRICE. The purchase price at which Shares may be acquired in a given Purchase Period pursuant to the Plan (the "Offering Exercise Price") shall be set by the Board; provided, however, that the per share Offering Exercise Price shall not be less than eighty-five percent (85%) of the lesser of (a) the per share fair market value of the Shares on the Offering Date of the Offering Period of which the Purchase Period is a part, or (b) the per share fair market value of the Shares on the Purchase Date for such Purchase Period. Unless otherwise provided by the Board prior to the commencement of an Offering Period, the Offering Exercise Price for each Purchase Period in that Offering Period shall be eighty-five percent (85%) of the fair market value of the Shares on the given Purchase Date. The fair market value of the

Shares on the applicable dates shall be the closing price quoted on the National Association of Securities Dealers Automated Quotation System for the Purchase Date (or the average of the closing bid and asked prices), or as reported on such other stock exchange or market system if the Shares are traded on such other exchange or system instead, or as determined by the Board if the Shares are not so reported.

8. PAYMENT OF PURCHASE PRICE. Shares which are acquired pursuant to the Plan may be paid for only by means of payroll deductions from the Participant's Compensation accumulated during the Offering Period. For purposes of the Plan, a Participant's "Compensation" with respect to an Offering (a) shall include all wages, salaries, commissions and bonuses after deduction for any contributions to any plan maintained by a Participating Company and described in Section 401(k) or Section 125 of the Code, and (b) shall not include occasional awards such as DISH Launch Bonus awards, stock option exercise compensation or other or any other payments not specifically referenced in (a). Except as set forth below, the deduction amount to be withheld from a Participant's Compensation during each pay period shall be determined by the Participant's subscription agreement, and the amount of such payroll deductions shall be given the lowest priority so that all other required and voluntary payroll deductions from a Participant's Compensation are withheld prior to subscription agreement amounts.

(a) LIMITATIONS ON PAYROLL WITHHOLDING. The amount of payroll withholding with respect to the Plan for any Participant during any Offering Period shall be elected by the Participant and shall be stated as a dollar amount. Amounts withheld shall be reduced by any amounts contributed by the Participant and applied to the purchase of Company stock pursuant to any other employee stock purchase plan qualifying under section 423 of the Code.

(b) PAYROLL WITHHOLDING. Payroll deductions shall commence on the first pay date beginning after the Offering Date, as designated by DISH, and shall continue to the last pay date before the end of the Offering Period, as designated by DISH, unless sooner altered or terminated as provided in the Plan.

(c) PARTICIPANT ACCOUNTS. Individual accounts shall be maintained for each Participant. All payroll deductions from a Participant's Compensation shall be credited to such account and shall be deposited with the general funds of the Company. All payroll deductions received or held by the Company may be used by the Company for any corporate purpose.

(d) NO INTEREST PAID. Interest shall not be paid on sums withheld from a Participant's Compensation.

(e) PURCHASE OF SHARES. On each Purchase Date of an Offering Period, each Participant whose participation in the Offering has not terminated on or before such Purchase Date shall automatically acquire the number of Shares arrived at by dividing the total amount of the Participant's accumulated payroll deductions for the Purchase Period by the Offering Exercise Price. No shares shall be purchased on a Purchase Date on behalf of a Participant whose participation in the Offering or the Plan has terminated on or before such Purchase Date. If the Broker is unable to administer purchases of fractional shares, only whole shares shall be purchased, and any remaining cash in the Participant's Account shall be carried over to the next Purchase Period, if the participant is continuing to participate in the next Purchase Period.

(f) REMAINING CASH BALANCE. Any cash balance remaining in the Participant's account after a Purchase Date shall be carried over to the next Purchase Period if the Participant is continuing to participate in the next Purchase Period. Any cash balance remaining upon a Participant's termination of participation in the Plan or termination of the Plan itself shall be refunded as soon as practicable after such event.

(g) TAX WITHHOLDING. At the time the Shares are purchased, in whole or in part, or at the time some or all of the Shares are disposed of, the Participant shall make adequate provision for the foreign, federal and state tax withholding obligations of the Company, if any, which arise upon the purchase of Shares and/or upon disposition of Shares, respectively. The Company may, but shall not be obligated to, withhold from the Participant's Compensation the amount necessary to meet such withholding obligations.

(h) COMPANY ESTABLISHED PROCEDURES. The Board may, from time to time, establish (i) a minimum required withholding amount for participation in an Offering, (ii) limitations on the frequency and/or number of changes in the amount withheld during an Offering, (iii) an exchange ratio applicable to amounts withheld in a currency other than U.S. dollars, (iv) payroll withholding in excess of or less than the amount designated by a Participant in order to adjust for delays or mistakes in the Company's processing of subscription agreements, and/or (v) such other limitations or procedures as deemed advisable by the Company in the Company's sole discretion which are consistent with the Plan and in accordance with the requirements of Section 423 of the Code. Notice of new or amended procedures pursuant to this section shall be communicated to all eligible participants in a manner reasonably determined by the Board to reach all participants in a cost efficient manner.

9. LIMITATIONS ON PURCHASE OF SHARES: RIGHTS AS A STOCKHOLDER.

(a) FAIR MARKET VALUE LIMITATION. Notwithstanding any other provision of the Plan, no Participant shall be entitled to purchase Shares under the Plan (or any other employee stock purchase plan which is intended to meet the requirements of section 423 of the Code sponsored by DISH or a parent or subsidiary corporation of DISH) in an amount which exceeds $25,000 in fair market value, which fair market value is determined for Shares purchased during a given Offering Period as of the Offering Date for such Offering Period (or such other limit as may be imposed by the Code), for any calendar year in which Participant participates in the Plan (or any other employee stock purchase plan described in this sentence).

(b) PRO RATA ALLOCATION. In the event the number of Shares which might be purchased by all Participants in the Plan exceeds the number of Shares available in the Plan, the Company shall make a pro rata allocation of the remaining Shares in as uniform a manner as shall be practicable and as the Company shall determine to be equitable. Any cash balance remaining after such allocation shall be refunded to Participants as soon as practicable.

(c) RIGHTS AS A STOCKHOLDER AND EMPLOYEE. A Participant shall have no rights as a stockholder by virtue of the Participant's participation in the Plan until the date of issuance of stock for the Shares being purchased pursuant to the Plan. Moreover, Shares shall not be issued and a Participant shall not be permitted to purchase shares unless and until such Shares have been registered under the Securities Act of 1933 on an effective S-8 registration and any applicable registration requirements under the National Association of Securities Dealers rules are satisfied. No adjustment shall be made for cash dividends or distributions or other rights for which the record date is prior to the date such stock is issued. Nothing herein shall confer upon a Participant any right to continue in the employ of the Company or interfere in any way with any right of the Company to terminate the Participant's employment at any time.

(d) USE OF A CAPTIVE STOCK BROKER. In order to reduce paperwork and properly track and report Participant's acquisition and disposition of Shares purchased pursuant to the Plan, the Company may, in its discretion, designate one or more stock brokers as a "captive" broker ("Broker") for receiving Participants' shares and maintaining individual accounts for each Participant. The initial Broker shall be Charles Schwab and Co., Inc. The Company and the Broker may establish such account procedures and restrictions as are necessary to carry out their respective functions and properly administer the Plan (see, for example, Section 19).

(e) RIGHT TO ISSUANCE OF SHARE CERTIFICATE. Initially, Participants will not receive share certificates from DISH representing the Shares purchased pursuant to the Plan. Instead, the Company shall issue one share certificate to the Broker for all Shares purchased on a Purchase Date, followed by electronic allocation by the Broker among all Participants according to their respective contributions. A Participant may obtain a share certificate for his or her actual share amount only from the Broker according to such Broker's procedures. This limitation may be modified by the Board in its discretion at any time.

10. WITHDRAWAL.

(a) WITHDRAWAL FROM AN OFFERING. A Participant may not withdraw from an Offering and stop payroll deductions during a Purchase Period. Any notice of withdrawal submitted by a Participant (on a form provided by the Company for such purpose) to DISH's payroll office after the commencement of a Purchase Period but prior to a Purchase Date shall only be effective for the next subsequent Purchase Period. No cash refunds of payroll deduction amounts from a Participant's account shall be made prior to the next scheduled Purchase Date.

After the next scheduled Purchase Date, refund of any excess dollar amount(s) in Participant's account will be made in accordance with Section 8(f) of this Plan.

Withdrawals made after a Purchase Date for a Purchase Period shall not affect Shares acquired by the Participant on such Purchase Date. A Participant who withdraws from an Offering for one or more Purchase Periods may not resume participation in the Plan during the same Purchase Period, but may participate in any subsequent Offering, or in any subsequent Purchase Period within the same Offering, by again satisfying the requirements of paragraphs 4 and 6(a) above.

(b) WITHDRAWAL FROM THE PLAN. A Participant may voluntarily withdraw from the Plan by signing a written notice of withdrawal on a form provided by the Company for such purpose and delivering such notice to the Company's payroll office. The effect of withdrawal from the Plan shall be in accordance with Section 10(a) above.

(c) RETURN OF PAYROLL DEDUCTIONS. Upon withdrawal from an Offering or the Plan pursuant to paragraphs 10(a) or 10(b), respectively, the withdrawn Participant's accumulated payroll deductions will first be applied toward the purchase of Shares at the Purchase Date and any balance remaining shall be returned as soon as practicable after the withdrawal, in accordance with Section 8(f) of this Plan. The Participant's interest in the Offering and/or the Plan, as applicable, shall terminate.

(d) PARTICIPATION FOLLOWING WITHDRAWAL. An employee who is also an officer or director of the Company subject to Section 16 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and who is deemed to "cease participation" in the Plan within the meaning of Rule 16b-3 promulgated under the Exchange Act and amended from time to time or any successor rule or regulation ("Rule 16b-3") as a consequence of his or her withdrawal from an Offering pursuant to paragraph 10(a) above or withdrawal from the Plan pursuant to paragraph 10(b) above shall not again participate in the Plan for at least six months after the date of such withdrawal.

(e) MODIFICATION OF WITHDRAWAL RIGHTS. The Company may, from time to time, establish a procedure pursuant to which a participant may elect (i) to withdraw from the Offering or the Plan during a Purchase or Offering Period pursuant to this paragraph 10, and (ii) to increase, decrease, or cease payroll deductions from his or her compensation for such Offering during the time such election is in effect. If established, any such election shall be made in writing on a form provided by the Company for such purpose and must be delivered to the Company within a reasonable period of time prior to the effective date thereof..

11. TERMINATION OF EMPLOYMENT. Termination of a Participant's employment with the Company for any reason, including retirement, disability or death or the failure of a Participant to remain an employee eligible to participate in the Plan, shall terminate the Participant's participation in the Plan immediately. In such event, the payroll deductions credited to the Participant's account since the last Purchase Date shall, as soon as practicable, be returned to the Participant or, in the case of the Participant's death, to the Participant's legal representative, and all of the Participant's rights under the Plan shall terminate. Interest shall not be paid on sums returned to a Participant pursuant to this paragraph 11. DISH may establish a date which is a reasonable number of days prior to the Purchase Date as a cutoff for return of a Participant's payroll deductions in the form of cash.

After the cutoff date, Shares will be purchased for the terminated employee in accordance with paragraph 10(c), above. A Participant whose participation has been so terminated may again become eligible to participate in the Plan by again satisfying the requirements of paragraphs 4 and 6(a) above.

12. TRANSFER OF CONTROL. A "Transfer of Control" shall be deemed to have occurred in the event any of the following occurs with respect to DISH:

(a) a merger or consolidation in which DISH is not the surviving corporation;

(b) a reverse triangular merger or consolidation in which DISH is the surviving corporation where the stockholders of DISH before such merger or consolidation do not retain, directly or indirectly, at least a majority of the beneficial interest in the voting stock of DISH; or

(c) the sale, exchange, or transfer of all or substantially all of DISH's assets (other than a sale, exchange, or transfer to one (1) or more corporations where the stockholders of DISH before such sale, exchange, or transfer retain, directly or indirectly, at least a majority of the beneficial interest in the voting stock of the corporation(s) to which the assets were transferred).

In the event of a Transfer of Control, the Board, in its sole discretion, may arrange with the surviving, continuing, successor, or purchasing corporation, as the case may be, that such corporation assume the Company's rights and obligations under the Plan. All Purchase Rights shall terminate effective as of the date of the Transfer of Control to the extent that the Purchase Right is neither exercised as of the date of the Transfer of Control nor assumed by the surviving, continuing, successor, or purchasing corporation, as the case may be.

13. CAPITAL CHANGES. In the event that the Board determines that any dividend or other distribution (whether in the form of cash, shares, other securities or other property), recapitalization, stock split, reverse stock split, reorganization, merger, consolidation, split-up, spin-off, combination, repurchase or exchange of shares or other securities of the Company, issuance of warrants or other rights to purchase shares or other securities of the Company or other similar corporate transaction or event affects the Shares such that an adjustment is determined by the Committee to be appropriate in order to prevent dilution or enlargement of the benefits or potential benefits intended to be made available under the Plan, then the Committee shall, in such manner as it may deem equitable, adjust any or all of (a) the Offering Exercise Price, (b) the number of shares subject to purchase by Participants, and (c) the Plan's share reserve amount.

14. NON-TRANSFERABILITY. Prior to a Purchase Date, a Participant's rights under the Plan may not be transferred in any manner otherwise than by will or the laws of descent and distribution and shall be exercisable during the lifetime of the Participant only by the Participant. Subsequent to a Purchase Date, a Participant shall be allowed to sell or otherwise dispose of the Shares in any manner that he or she deems fit. However, the Company, in its absolute discretion, may impose such restrictions on the transferability of Shares purchased by a Participant pursuant to the Plan as it deems appropriate and any such restriction may be placed on the certificates evidencing such Shares (see also Sections 9(d) and 19).

15. REPORTS. Each Participant shall receive, within a reasonable period after the Purchase Date, a report of such Participant's account setting forth the total payroll deductions accumulated, the number of Shares purchased, the fair market value of such Shares, the date of purchase and the remaining cash balance to be refunded or retained in the Participant's account pursuant to paragraph 8(f) above, if any. Each Participant who acquires shares pursuant to the Plan shall be provided information concerning the Company equivalent to that information generally made available to the Company's common stockholders.

16. PLAN TERM. This Plan shall continue until terminated by the Board or until all of the Shares reserved for issuance under the Plan have been issued, whichever shall first occur.

17. RESTRICTION ON ISSUANCE OF SHARES. The issuance of shares under the Plan shall be subject to compliance with all applicable requirements of federal or state law with respect to such securities. A Purchase Right may not be exercised if the issuance of shares upon such exercise would constitute a violation of any applicable federal or state securities laws or other law or regulations. In addition, no Purchase Right may be exercised unless (i) a registration statement under the Securities Act of 1933, as amended, shall at the time of exercise of the Purchase Right be in effect with respect to the shares issuable upon exercise of the Purchase Right, or (ii) in the opinion of legal counsel to the Company, the shares issuable upon exercise of the Purchase Right may be issued in accordance with the terms of an applicable exemption from the registration requirements of said Act. As a condition to the exercise of a Purchase Right, the Company may require the Participant to satisfy any qualifications that may be necessary or appropriate to evidence compliance with any applicable law or regulation, and to make any representation or warranty with respect thereto as may be requested by the Company.

18. LEGENDS. The Company may at any time place legends or other identifying symbols referencing any applicable federal and/or state securities restrictions or any provision(s) convenient in the administration of the Plan on some or all of the certificates representing shares of stock issued under the Plan. The Participant shall, at the request of the Company, promptly present to the Company any and all certificates representing shares acquired pursuant to a Purchase Right in the possession of the Participant in order to carry out the provisions of this paragraph. Unless otherwise specified by the Company, legends placed on such certificates may include but shall not be limited to any legend required to be placed thereon by the Colorado Secretary of State.

19. NOTIFICATION OF SALE OF SHARES. The Company may require the Participant to give the Company prompt notice of any disposition of Shares acquired under the Plan within two years from the date of commencement of an

Offering Period or one year from the Purchase Date. The Company may direct that the certificates evidencing Shares acquired by the Participant refer to such requirement to give prompt notice of disposition. Additionally, the Company and the Broker may impose such restrictions or procedures related to transfer of shares acquired under the Plan as are necessary for the Company to obtain sufficient notice of disposition, in order to comply with governmental requirements related to Form W-2 reporting, payroll tax withholding, employment tax liability and corporate income taxes.

20. AMENDMENT OR TERMINATION OF THE PLAN. The Board may at any time amend or terminate the Plan, except that such amendment or termination shall not affect Shares purchased under the Plan, (except as may be necessary to qualify the Plan as an employee stock purchase plan pursuant to section 423 of the Code or to obtain qualification or registration of the Shares under applicable federal or state securities laws). In addition, an amendment to the Plan must be approved by the stockholders of the Company within twelve (12) months of the adoption of such amendment if such amendment would authorize the sale of more shares than are authorized for issuance under the Plan or would change the definition of the corporations that may be designated by the Board as Participating Companies.

Furthermore, the approval of the Company's stockholders shall be sought for any amendment to the Plan for which the Board deems stockholder approval necessary in order to comply with Rule 16b-3 promulgated under Section 16 of the Exchange Act.

DISH NETWORK CORPORATION
9601 S. MERIDIAN BLVD.
ENGLEWOOD, CO 80112

VOTE BY INTERNET - www.proxyvote.com
Use the Internet to transmit your voting instructions and for electronic delivery of information up until 11:59 P.M. Eastern Time the day before the cut-off date or meeting date. Have your proxy card in hand when you access the web site and follow the instructions to obtain your records and to create an electronic voting instruction form.

Electronic Delivery of Future PROXY MATERIALS
If you would like to reduce the costs incurred by our company in mailing proxy materials, you can consent to receiving all future proxy statements, proxy cards and annual reports electronically via e-mail or the Internet. To sign up for electronic delivery, please follow the instructions above to vote using the Internet and, when prompted, indicate that you agree to receive or access proxy materials electronically in future years.

VOTE BY PHONE - 1-800-690-6903
Use any touch-tone telephone to transmit your voting instructions up until 11:59 P.M. Eastern Time the day before the cut-off date or meeting date. Have your proxy card in hand when you call and then follow the instructions.

VOTE BY MAIL
Mark, sign and date your proxy card and return it in the postage-paid envelope we have provided or return it to Vote Processing, c/o Broadridge, 51 Mercedes Way, Edgewood, NY 11717.

TO VOTE, MARK BLOCKS BELOW IN BLUE OR BLACK INK AS FOLLOWS:

KEEP THIS PORTION FOR YOUR RECORDS

DETACH AND RETURN THIS PORTION ONLY

THIS PROXY CARD IS VALID ONLY WHEN SIGNED AND DATED.

The Board of Directors recommends you vote FOR the following:

	For All	Withhold All	For All Except
1. Election of Directors	O	O	O

To withhold authority to vote for any individual nominee(s), mark "For All Except" and write the number(s) of the nominee(s) on the line below.

____

Nominees

01 Joseph P. Clayton
02 James DeFranco
03 Cantey M. Ergen
04 Charles W. Ergen
05 Steven R. Goodbarn
06 Gary S. Howard
07 David K. Moskowitz
08 Tom A. Ortolf
09 Carl E. Vogel

The Board of Directors recommends you vote FOR proposals 2 and 3.

	For	Against	Abstain
2. To ratify the appointment of KPMG LLP as our independent registered public accounting firm for the fiscal year ending December 31, 2013.	O	O	O
3. To amend and restate our Employee Stock Purchase Plan.	O	O	O

NOTE: In their discretion, the proxies are authorized to vote on such other business as may properly come before the meeting or any adjournment or postponement thereof.

For address change/comments, mark here. O
(see reverse for instructions)

Materials Election - Check this box if you want to receive a complete set of future proxy materials by mail, at no extra cost. If you do not take action you may receive only a Notice to inform you of the Internet availability of proxy materials. O

Please sign exactly as your name(s) appear(s) hereon. When signing as attorney, executor, administrator, or other fiduciary, please give full title as such. Joint owners should each sign personally. All holders must sign. If a corporation or partnership, please sign in full corporate or partnership name, by authorized officer.

Signature [PLEASE SIGN WITHIN BOX] Date

Signature (Joint Owners) Date

Important Notice Regarding the Availability of Proxy Materials for the Annual Meeting: The Annual Report, Notice & Proxy Statement is/are available at www.proxyvote.com.

DISH NETWORK CORPORATION
PROXY SOLICITED ON BEHALF OF THE BOARD OF DIRECTORS

The undersigned hereby appoints Charles W. Ergen and R. Stanton Dodge, each with the power to appoint his substitute, and hereby authorizes them to represent and to vote as designated below, all Class A Shares and Class B Shares of DISH Network Corporation held of record by the undersigned on March 7, 2013, at the Annual Meeting of Shareholders to be held on May 2, 2013, or any adjournment or postponement thereof.

THIS PROXY WHEN PROPERLY EXECUTED WILL BE VOTED IN THE MANNER DIRECTED HEREIN BY THE UNDERSIGNED SHAREHOLDER. IF NO DIRECTION IS MADE THIS PROXY WILL BE VOTED (1) FOR THE ELECTION OF EACH OF THE NINE DIRECTORS SET FORTH ABOVE, (2) FOR THE RATIFICATION OF THE APPOINTMENT OF KPMG LLP AS OUR INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM FOR FISCAL YEAR ENDING DECEMBER 31, 2013, AND (3) FOR THE AMENDMENT AND RESTATEMENT OF OUR EMPLOYEE STOCK PURCHASE PLAN. THIS PROXY CONFERS DISCRETIONARY AUTHORITY WITH RESPECT TO PROPOSALS NOT KNOWN OR DETERMINED AT THE TIME OF THE MAILING OF THE NOTICE OF ANNUAL MEETING OF SHAREHOLDERS TO THE UNDERSIGNED.

PLEASE SIGN AND RETURN THIS PROXY IN THE ENCLOSED PRE-ADDRESSED ENVELOPE. THE TENDER OF A PROXY WILL NOT AFFECT YOUR RIGHT TO VOTE IN PERSON IF YOU ATTEND THE MEETING OR TO SUBMIT A LATER DATED REVOCATION OR AMENDMENT TO THIS PROXY ON ANY OF THE ISSUES SET FORTH ON THE REVERSE SIDE.

Address change/comments:

(If you noted any Address Changes and/or Comments above, please mark corresponding box on the reverse side.)

Continued and to be signed on reverse side

REDACTED VERSION FILED

REDACTED VERSION FILED

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 18 of 44**

JEFF SILVESTRI (NSBN 5779)
AMANDA C. YEN (NSBN 9726)
DEBBIE LEONARD (NSBN 8620)
McDONALD CARANO WILSON LLP
2300 W. Sahara Avenue, Suite 1200
Las Vegas, NV 89102
Telephone: (702) 873-4100
Facsimile: (702) 873-9966
jsilvestri@mcdonaldcarano.com
ayen@mcdonaldcarano.com
dleonard@mcdonaldcarano.com

BRIAN W. BOSCHEE (NSBN 7612)
WILLIAM N. MILLER (NSBN 11658)
HOLLEY, DRIGGS, WALCH,
FINE, WRAY, PUZEY & THOMPSON
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
Telephone: (702)791-0308
bboschee@nevadafirm.com
wmiller@nevadafirm.com

MARK LEBOVITCH (*pro hac vice)*
JEROEN VAN KWAWEGEN (*pro hac vice)*
ADAM D. HOLLANDER (*pro hac vice)*
BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
1251 Avenue of the Americas, 44th Floor
New York, NY 10020
Telephone: (212) 554-1400
markL@blbglaw.com
jeroen@blbglaw.com
adam.hollander@blbglaw.com

Attorneys for Appellant Jacksonville Police and Fire Pension Fund

J. STEPHEN PEEK
ROBERT J. CASSITY
HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
Phone: (702) 669-4600
Fax: (702) 669-4650
SPeek@hollandhart.com
BCassity@hollandhart.com

HOLLY STEIN SOLLOD
(*pro hac vice*)
HOLLAND & HART LLP
555 17th Street, Suite 3200
Denver, CO 80202
Phone: (303) 975-5395
Fax: (303) 975-5395
hsteinsollod@hollandhart.com

DAVID C. MCBRIDE (*pro hac vice*)
ROBERT S. BRADY (*pro hac vice*)
C. BARR FLINN (*pro hac vice*)
EMILY V. BURTON (*pro hac vice*)
YOUNG, CONAWAY, STARGATT & TAYLOR, LLP
Rodney Square, LLP
1000 North King Street
Wilmington, DE 19801
Phone: (302) 571-6600
Fax: (302-571-1253
dmcbride@ycst.com
rbrady@ycst.com
bflinn@ycst.com
eburton@ycst.com

Attorneys for the Respondent Special Litigation Committee Dish Network Corporation

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 for Discovery on an 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

REDACTED VERSION FILED

REDACTED VERSION FILED

ACSR
Holley, Driggs Walch, Puzey & Thompson
Brian W. Boschee, Esq.
400 South 4th St., 3rd Floor
Las Vegas , NV 89101
State Bar No.: 7612
Attorney(s) for: Plaintiff(s)

Electronically Filed
08/29/2014 10:47:41 AM

CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY NEVADA

In Re Dish Network Corporation Derivative Litigation
vs

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

Acceptance of Service

Thomas B. Rotter acknowledges receipt of and hereby accepts service of 1 copy (ies) of the: Summons; Verification of John Keane in Support of Second Verified Amended Derivative complaint of Jacksonville Police and Fire Pension Fund Pursuantto the Nevada Rules of Civil Procedure Rule 23.1 in the above captioned matter on behalf of the Defendant(s) : Kyle Jason Kiser, Stanton Dodge, and Thomas A. Cullen.

Dated this 18th day of August, 2014

Bar # 30297

WorkOrderNo 1407063

Legal Process Service, 626 S. 8th Street, Las Vegas, NV 89101 (702) 471-7255

AFFT
Holley, Driggs Walch, Puzey & Thompson
Brian W. Boschee, Esq.
400 South 4th St., 3rd Floor
Las Vegas , NV 89101
State Bar No.: 7612
Attorney(s) for: Plaintiff(s)

DISTRICT COURT
CLARK COUNTY, NEVADA

In Re Dish Network Corporation Derivative Litigation

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

Date:
Time:

AFFIDAVIT OF SERVICE

Phillip Sterling, being duly sworn deposes and says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age and not a party to or interested in the proceeding in which this affidavit is made. The affiant received 1 copy(ies) of the Summons; Verified Second Amended Shareholder Derivative Complaint of Jacksonville police and Fire Pension Fund Pursuant to Rule 23.1 of the Nevada Rules of Civil Procedure on the 5th day of August, 2014 and served the same on the 18th day of August, 2014 at 3:25PM by serving the Defendant(s), Stanton Dodge by personally delivering and leaving a copy at Brownstein Hyatt, 410 17th Street, #2200, Denver, CO 80202 with Thomas B. Romer as Accepting Attorney an agent lawfully designated by statute to accept service of process.

State of Colorado, County of Douglas
SUBSCRIBED AND SWORN to before me on this
20th day of August, 2014

Affiant: Phillip Sterling

Notary Public

LORI J. SIMPSON
NOTARY PUBLIC
STATE OF COLORADO
MY COMMISSION EXPIRES
7/3/15

WorkOrderNo 1407061

345

AFFT
Holley, Driggs Walch, Puzey & Thompson
Brian W. Boschee, Esq.
400 South 4th St., 3rd Floor
Las Vegas , NV 89101
State Bar No.: 7612
Attorney(s) for: Plaintiff(s)

DISTRICT COURT
CLARK COUNTY, NEVADA

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

In Re Dish Network Corporation Derivative Litigation

Date:
Time:

AFFIDAVIT OF ATTEMPTED SERVICE

Phillip Sterling, being duly sworn deposes and says: That Affiant is and was on the day when he attempted to serve the within action, a citizen of the United States, over 18 years of age, licensed to serve civil process and not a party to or interested in, the within action: That the affiant received the within **Summons; Verified Second Amended Shareholder Derivative Complaint of Jacksonville police and Fire Pension Fund Pursuant to Rule 23.1 of the Nevada Rules of Civil Procedure**

on the 7th day of August, 2014 and attempted to effect service on **Stanton Dodge** at the following address(es):

459 Corraway Dr, Castle Rock, Co 80108

Below are listed that date(s) and time(s) of attempted service.

Date	Time	Address	Outcome
8/13/14	8:30am	as above	Guarded community. Guard said Mr. Dodge Doesn't live here. There are tenants living in the property.

State of Colorado, **County of** Douglas

SUBSCRIBED AND SWORN to before me on this 20th day of August 2014

Lori Simpson
Notary Public

LORI J. SIMPSON
NOTARY PUBLIC
STATE OF COLORADO
MY COMMISSION EXPIRES
7/3/15

Affiant:

WorkOrderNo 1407061

AFFT
Holley, Driggs Walch, Puzey & Thompson
Brian W. Boschee, Esq.
400 South 4th St., 3rd Floor
Las Vegas , NV 89101
State Bar No.: 7612
Attorney(s) for: Plaintiff(s)

DISTRICT COURT
CLARK COUNTY, NEVADA

In Re Dish Network Corporation Derivative Litigation	Case No.:**A-13-686775-B** Dept. No.: **XI** Date: Time: **AFFIDAVIT OF ATTEMPTED SERVICE**

, being duly sworn deposes and says: That Affiant is and was on the day when he attempted to serve the within action, a citizen of the United States, over 18 years of age, licensed to serve civil process and not a party to or interested in, the within action: That the affiant received the within **Summons; Verified Second Amended Shareholder Derivative Complaint of Jacksonville police and Fire Pension Fund Pursuant to Rule 23.1 of the Nevada Rules of Civil Procedure**

on the 4th day of August, 2014 and attempted to effect service on

Stanton Dodge at the following address(es):

126 S Ridge St., Breckenridge, CO

Below are listed that date(s) and time(s) of attempted service.

Date	Time	Address	Outcome
8-5-14	8:00 am		non-served, contacted Summit County Assessor's office. This address appears to be a second home for Mr. Dodge. He has a permanent address listed for Greenwood Village, CO

Linda M Blaylock
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20024009778
MY COMMISSION EXPIRES 03/22/2018

State of Colorado, **County of** Summit

SUBSCRIBED AND SWORN to before me on this

15th day of August 2014

[signature]
Notary Public

[signature]
Affiant:

WorkOrderNo **1407061**

143

Electronically Filed
08/29/2014 10:40:47 AM

Steven D. Grierson

CLERK OF THE COURT

AFFT
Holley, Driggs Walch, Puzey & Thompson
Brian W. Boschee, Esq.
400 South 4th St., 3rd Floor
Las Vegas , NV 89101
State Bar No.: 7612
Attorney(s) for: Plaintiff(s)

DISTRICT COURT
CLARK COUNTY NEVADA

In Re Dish Network Corporation Derivative Litigation

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

Date:
Time:

AFFIDAVIT OF SERVICE

Phillip Sterling, being duly sworn deposes and says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age and not a party to or interested in the proceeding in which this affidavit is made. The affiant received 1 copy(ies) of the Summons; Verification of John Keane in Support of Second Verified Amended Derivative complaint of Jacksonville Police and Fire Pension Fund Pursuantto the Nevada Rules of Civil Procedure Rule 23.1 on the 4th day of August, 2014 and served the same on the 18th day of August, 2014 at 3:25PM by serving the Defendant(s), Kyle Jason Kiser by personally delivering and leaving a copy at Brownstein Hyatt, 410 17th Street, #2200, Denver, CO 80202 with Thomas B. Romer as Accepting Attorney an agent lawfully designated by statute to accept service of process.

State of Colorado, County of Douglas
SUBSCRIBED AND SWORN to before me on this
20th day of August, 2014

Lori Simpson
Notary Public

LORI J. SIMPSON
NOTARY PUBLIC
STATE OF COLORADO
MY COMMISSION EXPIRES
7/3/15

Affiant: Phillip Sterling

WorkOrderNo 1407063

345

JA004272

AFFT
Holley, Driggs Walch, Puzey & Thompson
Brian W. Boschee, Esq.
400 South 4th St., 3rd Floor
Las Vegas , NV 89101
State Bar No.: 7612
Attorney(s) for: Plaintiff(s)

DISTRICT COURT
CLARK COUNTY NEVADA

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

In Re Dish Network Corporation Derivative Litigation

Date:
Time:

AFFIDAVIT OF ATTEMPTED SERVICE

Philip Sterling, being duly sworn deposes and says: That Affiant is and was on the day when he attempted to serve the within action, a citizen of the United States, over 18 years of age, licensed to serve civil process and not a party to or interested in, the within action: That the affiant received the within **Summons; Verification of John Keane in Support of Second Verified Amended Derivative complaint of Jacksonville Police and Fire Pension Fund Pursuantto the Nevada Rules of Civil Procedure Rule 23.1** on the 4th day of August, 2014 and attempted to effect service on **Kyle Jason Kiser** at the following address(es):
4504 W. 100th Ave, Westminster, Co 80031

Below are listed that date(s) and time(s) of attempted service.

Date	Time	Address	Outcome
8/6/14	3:45pm	as above	no answer. spoke to neighbor who verified he lives here but is out of town.
8/13/14	1:40pm	as above	no answer. still looks like they are gone.

State of Colorado, **County of** Douglas
SUBSCRIBED AND SWORN to before me on this
20th day of August 2014
Lori Simpson
Notary Public

LORI J. SIMPSON
NOTARY PUBLIC
STATE OF COLORADO
MY COMMISSION EXPIRES
7/3/15

Affiant:

WorkOrderNo 1407063

Electronically Filed
08/29/2014 10:45:40 AM

CLERK OF THE COURT

AFFT
Holley, Driggs Walch, Puzey & Thompson
Brian W. Boschee, Esq.
400 South 4th St., 3rd Floor
Las Vegas, NV 89101
State Bar No.: 7612
Attorney(s) for: Plaintiff(s)

DISTRICT COURT
CLARK COUNTY NEVADA

In Re Dish Network Corporation Derivative Litigation

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

AFFIDAVIT OF SERVICE

Phillip Sterling, being duly sworn deposes and says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age and not a party to or interested in the proceeding in which this affidavit is made. The affiant received 1 copy(ies) of the Summons; Verified Second Amended Shareholder Derivative Complaint of Jacksonville Police and Fire Pension fund Pursuant to Rule 23.1 of the Nevada Rules of Civil Procedure on the 4th day of August, 2014 and served the same on the 18th day of August, 2014 at 3:25PM by serving the Defendant(s), Thomas A. Cullen by personally delivering and leaving a copy at Brownstein Hyatt, 410 17th Street, #2200, Denver, CO 80202 with Thomas B. Romer as Accepting Attorney an agent lawfully designated by statute to accept service of process.

State of Colorado, County of Douglas
SUBSCRIBED AND SWORN to before me on this
20th day of August, 2014

Notary Public

LORI J. SIMPSON
NOTARY PUBLIC
STATE OF COLORADO
MY COMMISSION EXPIRES
7/3/15

Affiant Phillip Sterling

WorkOrderNo 1407062

345

AFFT
Holley, Driggs Walch, Puzey & Thompson
Brian W. Boschee, Esq.
400 South 4th St., 3rd Floor
Las Vegas , NV 89101
State Bar No.: 7612
Attorney(s) for: Plaintiff(s)

DISTRICT COURT
CLARK COUNTY NEVADA

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

In Re Dish Network Corporation Derivative Litigation

Date:
Time:

AFFIDAVIT OF ATTEMPTED SERVICE

Phillip Sterling, being duly sworn deposes and says: That Affiant is and was on the day when he attempted to serve the within action, a citizen of the United States, over 18 years of age, licensed to serve civil process and not a party to or interested in, the within action: That the affiant received the within **Summons; Verified Second Amended Shareholder Derivative Complaint of Jacksonville Police and Fire Pension fund Pursuant to Rule 23.1 of the Nevada Rules of Civil Procedure**

on the 4th day of August, 2014 and attempted to effect service on **Thomas A. Cullen** at the following address(es):

4994 S. Elizabeth Cir, Englewood, Co 80113

Below are listed that date(s) and time(s) of attempted service.

Date	Time	Address	Outcome
8/12/14	8:10pm	as above	couldn't find address
8/13/14	10:40am	as above	address does not exist

State of Colorado, **County of** Douglas

SUBSCRIBED AND SWORN to before me on this 20th day of August 2014

[signature]
Notary Public

LORI J. SIMPSON
NOTARY PUBLIC
STATE OF COLORADO
MY COMMISSION EXPIRES 7/3/15

[signature]
Affiant:

WorkOrderNo 1407062

143

Electronically Filed
08/29/2014 04:42:15 PM

CLERK OF THE COURT

MDSM
Jeffrey S. Rugg, Bar No. 10978
jrugg@bhfs.com
Maximilien D. Fetaz, Bar No. 12737
mfetaz@bhfs.com
BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
Telephone: 702.382.2101
Facsimile: 702.382.8135

Of Counsel:
Robert J. Giuffra, Jr.
Brian T. Frawley
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, NY 10004

Attorneys for Defendants
James DeFranco, David K. Moskowitz
and Carl E. Vogel

DISTRICT COURT

CLARK COUNTY, NEVADA

JACKSONVILLE POLICE AND FIRE PENSION FUND, derivatively on behalf of nominal defendant DISH NETWORK CORPORATION,

Plaintiff,

v.

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

Defendants.

DISH NETWORK CORPORATION, a Nevada corporation,

Nominal Defendant.

CASE NO.: A-13-686775-B
DEPT NO.: XI

DIRECTOR DEFENDANTS' MOTION TO DISMISS THE SECOND AMENDED COMPLAINT

DATE OF HEARING: October 28, 2014

TIME OF HEARING: 8:30 A.M.

Defendants James DeFranco, David K. Moskowitz, and Carl E. Vogel (collectively, the "Director Defendants"), through undersigned counsel and pursuant to NRCP 12(b)(5) and 23.1, hereby move to dismiss the Verified Second Amended Shareholder Derivative Complaint ("Second Amended Complaint" or "SAC") filed against them by Plaintiff Jacksonville Police and Fire Pension Fund ("Plaintiff") for failure to state a claim upon which relief can be granted.

This Motion is supported by the Memorandum of Points and Authorities below, the Declaration of Jeffrey S. Rugg, Esq., dated August 29, 2014 ("Rugg Decl.") and exhibits thereto, the papers and pleadings on file, and any oral argument by counsel.

DATED this 29th day of August, 2014

BROWNSTEIN HYATT FARBER SCHRECK, LLP

By: /s/ Jeffrey S. Rugg
Jeffrey S. Rugg
BROWNSTEIN HYATT FARBER SCHRECK, LLP
Jeffrey S. Rugg, Bar #10978
Maximilien Fetaz, Bar #12737
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614

Robert J. Giuffra, Jr.
Brian T. Frawley
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, New York 10004

Attorneys for Defendants James DeFranco, David K. Moskowitz and Carl E. Vogel

NOTICE OF MOTION

PLEASE TAKE NOTICE that the undersigned counsel will appear at the Clark County Courthouse, Eighth Judicial District Court, Las Vegas, Nevada, on the 28th day of October, 2014, at 8:30 a.m., in Department XI, or as soon thereafter as counsel may be heard, to bring **DEFENDANTS' MOTION TO DISMISS THE SECOND AMENDED COMPLAINT** on for hearing.

DATED this 29th day of August, 2014

BROWNSTEIN HYATT FARBER
SCHRECK, LLP

By: /s/ Jeffrey S. Rugg
BROWNSTEIN HYATT FARBER
SCHRECK, LLP
Jeffrey S. Rugg, Bar #10978
Maximilien D. Fetaz, Bar # 12737
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614

Robert J. Giuffra, Jr.
Brian T. Frawley
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, New York 10004

Attorneys for Defendants James DeFranco, David K. Moskowitz and Carl E. Vogel

BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
702.382.2101

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff purports to own stock in DISH Network Corporation ("DISH"). As Plaintiff knew when it purchased its stock, Charles Ergen, founder and Chairman of DISH, is also DISH's largest shareholder, controlling in excess of 50% of DISH stock and approximately 85% of the total voting power. In its Second Amended Complaint, Plaintiff relies upon nothing other than this obvious fact in an effort to characterize sundry decisions made by the Director Defendants in the exercise of their business judgment, primarily relating to DISH's evaluation of a potential acquisition of certain wireless spectrum assets of a bankrupt firm, LightSquared, Inc. ("LightSquared"), as acts of disloyalty designed to benefit Mr. Ergen. Plaintiff does so in recognition of the unavoidable fact that it cannot establish a breach of any duty of care by any one of the Director Defendants. Instead, Plaintiff offers only speculation and innuendo in an effort to meet its heavy pleading burden to overcome the powerful presumption that the actions of the directors of a Nevada corporation are in good faith and in compliance with their fiduciary duties. And, Plaintiff's allegations do not remotely plead the sort of intentional misconduct that might establish a cognizable cause of action for money damages under NRS 78.138(7). The Second Amended Complaint should be dismissed.

Plaintiff asserts no claim alleging any breach of a duty of care. Instead, the entirety of Plaintiff's allegations with respect to the Director Defendants contends that those individuals breached their fiduciary duty of loyalty by: (1) "withholding adequate indemnification" from the special committee charged with considering DISH's since withdrawn bid for LightSquared's spectrum assets (SAC ¶ 370); (2) "prematurely disbanding" the same special committee they themselves created (id.); (3) "allowing" Mr. Ergen to "condition" DISH's bid for LightSquared's assets on the repayment of his own LightSquared debt (id. ¶ 372); (4) "allowing" Mr. Ergen to terminate DISH's bid for LightSquared's assets (id. ¶ 373); and (5) creating a "deeply flawed" special litigation committee to investigate Plaintiff's allegations here. (Id. ¶ 371.) Plaintiff's attempt to predicate an intentional breach of some duty of loyalty on these factual allegations is deeply flawed.

Under well-settled Nevada law, there is a strong presumption that directors, "in deciding upon matters of business, are presumed to act in good faith, on an informed basis and with a view to the interests of the corporation." NRS 78.138(3). A putative derivative plaintiff that seeks to allege claims on behalf of the company against the directors of a Nevada corporation bears a heavy burden in overcoming this presumption. And, where, as here, the plaintiff alleges claims seeking only money damages, that claim fails as a matter of law unless plaintiff establishes that the challenged conduct **both** "constituted a breach of his or her fiduciary duties as a director or officer" **and** "[t]he breach of those duties involved intentional misconduct, fraud or a knowing violation of law." NRS 78.138(7). The Second Amended Complaint alleges nothing of the sort against the Director Defendants.

Rather than pleading some intentional misconduct or knowing violation of law, Plaintiff instead catalogs the Director Defendants' personal and professional experiences with DISH and Mr. Ergen and then asks the Court to infer that any decision made by the Director Defendants therefore amounts to intentional misconduct or knowing violation of law. Yet, these non-financial interests of the Director Defendants are irrelevant to a duty of loyalty claim as a matter of Nevada law, and establish no disabling conflict of interest. Moreover, the complaint here pleads no facts that remotely suggest that any Director Defendant breached his or her duty of loyalty to DISH and its shareholders, much less did so knowingly or intentionally. Accordingly, Plaintiff's claims against the Director Defendants should be dismissed.

Plaintiff, a single DISH shareholder, commenced this action on August 9, 2013, alleging various breaches of duty, but resting on entirely different theories. Those theories continue to evolve, but become no more meritorious. On the day this action was commenced, DISH's stock price stood at $45.64 per share. On January 7, 2014 — the date DISH abandoned the transaction that is now the centerpiece of the Second Amended Complaint — DISH's stock closed at $56.93 per share. As of this filing, DISH's stock trades in excess of $64 per share. Only this Plaintiff, and no one else, thinks that the Director Defendants are not doing their job.

BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
702.382.2101

II. ALLEGATIONS OF THE COMPLAINT

A. MR. ERGEN ACQUIRES LIGHTSQUARED DEBT

DISH provides satellite television services to approximately 14 million customers. (SAC ¶ 39.) The company was founded in 1980 by Charles Ergen, his wife, Cantey Ergen, and James DeFranco. (Id. ¶ 26.) Mr. Ergen is the controlling shareholder of DISH and currently serves as the company's Chairman. (Id.)

In 2011, Mr. Ergen began to consider an investment in the debt of LightSquared. (Id. ¶¶ 75-76.) LightSquared owns certain wireless broadband spectrum, which it has sought without success to use to develop a wireless communications network. (Id. ¶ 42.) Mr. Ergen asked DISH's Treasurer, Jason Kiser, to investigate whether DISH could invest in LightSquared debt. (Id. ¶ 78.) After learning that DISH could not directly purchase LightSquared debt, Mr. Ergen considered a personal investment in LightSquared debt. (Id. ¶¶ 79, 86.) Through a series of transactions between April 2012 and April 2013, SP Special Opportunities, LLC ("SPSO"), a Delaware limited liability company controlled by Mr. Ergen, purchased approximately $844 million par amount of LightSquared secured debt ("LP Debt") for approximately $694 million in cash — all Mr. Ergen's personal funds. (Id. ¶ 90.)

B. LIGHTSQUARED INITIATES BANKRUPTCY PROCEEDINGS

LightSquared has controlled a block of spectrum in the "L-Band" (the "L-Band Spectrum") since 2004. (SAC ¶ 59.) In 2011, the U.S. Federal Communications Commission (the "FCC") authorized LightSquared to use the L-Band Spectrum to build a nationwide wireless broadband network, but conditioned this authorization on LightSquared's resolution of concerns that the downlink portion of its L-Band Spectrum interfered with spectrum used by global positioning system ("GPS") services and other military and federal government technologies. (Id.) In February 2012, the FCC revoked its authorization after several federal government agencies informed it that there was no practical way to mitigate the interference caused by the downlink portion of the L-Band Spectrum. (Id. ¶ 61.) On May 14, 2012, shortly after the FCC suspended LightSquared's license, LightSquared and certain of its affiliates filed a petition under Chapter 11 of the U.S. Bankruptcy Code in the United States Bankruptcy Court for the Southern

BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
702.382.2101

District of New York (the "Bankruptcy Court"). (Id. ¶ 42.)[1]

C. DISH CONSIDERS AN INVESTMENT IN LIGHTSQUARED'S SPECTRUM ASSETS

During a May 2, 2013 annual meeting of the DISH Board of Directors (the "Board"), Mr. Ergen informed the Board that he was considering an offer to acquire LightSquared's spectrum assets, which would become available through the bankruptcy process, for $2 billion to $2.1 billion in cash. (Id. ¶ 106.) Also during this meeting, Mr. Ergen informed the Board that he had earlier purchased LightSquared debt. (Id. ¶ 107.) Mr. Ergen suggested that DISH might be interested in the assets and offered to allow DISH to bid with or in place of him personally.

1. The Board Forms a Special Transaction Committee.

During a May 8, 2013 meeting of the Board held without Mr. or Mrs. Ergen present, the Board resolved to form a special transaction committee (the "Special Committee") to evaluate whether it was in the best interests of DISH to pursue the acquisition of LightSquared's spectrum assets, and also to address any conflicts of interest posed by such an acquisition. (Id. ¶ 113.) The Director Defendants appointed two independent directors, Steven R. Goodbarn and Gary S. Howard, to the Special Committee. (Id.) The Special Committee hired outside legal and financial advisors and evaluated DISH's strategic options. (See id. ¶¶ 116, 139, 169, 171, 175.)

2. Mr. Ergen Places a Bid for LightSquared's Assets.

On May 15, 2013, Mr. Ergen caused L-Band Acquisition, LLC ("LBAC"), an entity he controlled, to offer to purchase substantially all of the assets of LightSquared from the bankruptcy estate for $2 billion in cash, in addition to the assumption of certain liabilities. (Id. ¶¶ 121-22.)

3. The Special Committee Considers a Bid for LightSquared's Assets.

The Special Committee met on May 21, 2013 to further consider DISH's potential acquisition of LightSquared's assets in light of Mr. Ergen's bid. (Id. ¶ 135.) On May 30, 2013, the Special Committee received a letter from Mr. Ergen's lawyers that offered DISH an option to buy all or part of LBAC for nominal consideration. (Id. ¶ 143.) Over the course of the next two

---

[1] The Bankruptcy Court noted as recently as July 11, 2014 that "the regulatory hurdles that exist [related to the LightSquared spectrum assets] remain unresolved." In re LightSquared, Inc., 513 B.R. 56, 98 (Bankr. S.D.N.Y. 2014).

months, the Special Committee continued to meet with its advisors and to communicate with other members of the Board concerning DISH's potential acquisition of LightSquared's assets. (See, e.g., id. ¶¶ 144-48.) Also during this time, the Special Committee and the Board discussed special indemnification and compensation for members of the Special Committee (in addition to the indemnification and compensation the Special Committee members already received as members of the Board). (Id. ¶¶ 155-56.) While the Board resolved to provide additional compensation to members of the Special Committee, the additional indemnification issue remained unresolved for the duration of the Special Committee's work (id. ¶ 158), although the Special Committee members remained entitled to the same indemnity available to DISH directors under its Charter or Nevada law.

On July 21, 2013, following the receipt of a fairness opinion prepared at the request of the Special Committee by Perella Weinberg Partners, an independent financial advisory firm, the Special Committee recommended to the Board that DISH pursue the acquisition of LightSquared's assets. (See id. ¶¶ 169-71.) The same day, the Board, acting on the recommendation of the Special Committee, approved an offer by LBAC of approximately $2.2 billion for substantially all of the assets of LightSquared L.P. subject to various conditions and the negotiation of a definitive acquisition agreement. (Id. ¶ 179.)

4. The Special Committee Is Dissolved.

Following the Board's determination that DISH should make a bid to acquire LightSquared's assets, the Special Committee was dissolved. (Id. ¶ 176.) The resolution creating the Special Committee provided, in part, that the Special Committee's authority would expire at "such time as the full Board of Directors shall determine that the continuation of the [Special] Committee is no longer necessary, desirable or otherwise appropriate in light of the withdrawal or other abandonment of any proposal for the [acquisition of LightSquared's assets]." (Id. ¶ 115.) After the Special Committee's recommendation that DISH pursue the acquisition of LightSquared's assets and the Board's adoption of that recommendation, the Board concluded that the Special Committee was no longer necessary and, rather than await its expiration, the full Board withdrew the authority of the Special Committee, with the express reservation of the right

BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
702.382.2101

to reinstate a special committee if future issues in respect of LightSquared merited consideration by a special committee. (Id. ¶¶ 175-76.)

5. DISH Participates in the "Stalking Horse" Bid for LightSquared's Assets.

On July 23, 2013, DISH, through LBAC, which had been acquired by DISH, and certain LightSquared secured lenders, entered into a Plan Support Agreement in support of the proposed bankruptcy reorganization plan in the LightSquared bankruptcy. (Id. ¶ 181.) Pursuant to that agreement, LBAC agreed, subject to various conditions and the negotiation of an acceptable purchase agreement with LightSquared, to purchase substantially all of the assets of LightSquared L.P. for $2.2 billion (plus the assumption of certain liabilities) as the opening, or "stalking horse" bid in the bankruptcy proceedings. (Id.) This offer was subject to higher bids, as well as approval by the Bankruptcy Court as one of many proposed plans in a highly contested proceeding.

Among many other conditions, one condition to LBAC's bid was that the sale had to be completed and the accompanying bankruptcy plan had to be confirmed by December 6, 2013, which was subsequently extended to January 7, 2014. This condition was a material part of the LBAC bid and DISH's interest in LightSquared spectrum assets. DISH had made clear throughout the bankruptcy process that, without a timely sale process and the completion of the asset acquisition on the timetable specified in the LBAC bid, DISH may pursue alternative spectrum investments, including in a scheduled government-sponsored auction of newly available, clean and immediately usable wireless spectrum, which auction was scheduled for February 2014. See In re LightSquared, Inc., 511 B.R. 253, 312 (Bankr. S.D.N.Y. 2014). DISH made clear that the LightSquared spectrum assets were one among many options available to it, and it would invoke its right to terminate if the sale process did not proceed on an acceptable timeframe and acceptable terms. See In re LightSquared, Inc., 513 B.R. 56, 103 (Bankr. S.D.N.Y. 2014).

D. THE BANKRUPTCY PROCEEDINGS

1. The LightSquared Bankruptcy Proceedings

On September 30, 2013, the Bankruptcy Court approved DISH's $2.2 billion "stalking

BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
702.382.2101

horse" bid for an auction of LightSquared's spectrum assets to take place during LightSquared's bankruptcy proceedings. (Id. ¶ 226.) The auction was scheduled for December 2013. (Id.)

On November 25, 2013, lawyers for Mr. Ergen informed the Bankruptcy Court that the draft proposed acquisition agreement accompanying the $2.2 billion stalking horse bid included a release of LightSquared's claims against all DISH affiliates and their employees, including Mr. Ergen. (Id. ¶ 232.) Plaintiff severely contorts this observation. Its contention (id. ¶¶ 229-37) that DISH or anyone else conditioned any LBAC or DISH bid on the release of all claims against Mr. Ergen or the payment in full of Mr. Ergen's debt in full is simply false.

The LBAC bid included a draft proposed asset purchase agreement that included a release of, among others, all LBAC "Affiliates," which would include DISH and Mr. Ergen if it ever had been negotiated and agreed to. But it was not negotiated or agreed to, because LightSquared vociferously opposed the LBAC bid in its entirety, and the bankruptcy plan that accompanied it. Likewise, the release, even if agreed to, in no way ensured payment on the debt owned by Mr. Ergen – the provision in question was only a release by certain, specifically enumerated entities (in particular, the seller, LightSquared L.P. and the proponents of the plan), which would not prevent any other interested party from challenging Mr. Ergen's claims in the bankruptcy, including, as they ultimately did, (at this point) partially successful challenges to Mr. Ergen's claims by LightSquared's controlling stockholder, Harbinger, or LightSquared, Inc. and its creditors, which were not and never would have been covered by any such release. See generally In re LightSquared Inc., 511 B.R. 253 (Bankr. S.D.N.Y. 2014).

The December 10 Bankruptcy Court transcript, which Plaintiff egregiously misrepresents to support its claim that the draft release required payment in full of Mr. Ergen's debt (id. ¶ 232), says exactly the opposite. Of course, by its terms, a release cannot require anything, but merely release claims that fall within its scope. Counsel for SPSO made that clear to the Bankruptcy Court in the very transcript that is mis-described by Plaintiff: "What I heard Your Honor to say today was you infer something from the fact that LBAC was drafting to get the affirmative allowance of SPSO's claims. That is not what the release says." (Rugg Decl. Ex. A, at 135:24-136:1.) Instead, "the LP debtors are the only parties giving a release. If the LP debtors want the bag of money that LBAC is offering, they have to agree to the agreement, or they have to negotiate a different agreement." (Id. at 140:6-9.)

By the time of the proposed auction of LightSquared's assets on December 11, 2013, DISH remained the only bidder. (Id. ¶ 238.) However, after being unable to reach agreement on the material terms of the DISH bid unrelated to the release provision, LightSquared's own special committee canceled the auction in order to pursue a supposed expression of interest from a third party. (Id. ¶ 241.) That interest was never formalized in a bid.

The bankruptcy plan premised on the LBAC bid was vigorously opposed. LightSquared itself vehemently opposed the plan and refused to cooperate in its execution or to negotiate any part of the draft LBAC purchase agreement. Instead, LightSquared proposed its own reorganization plan. Harbinger Capital Partners LLC and certain of its affiliates (collectively, "Harbinger"), the hedge fund that controls LightSquared's equity, embarked upon a scorched earth opposition to the plan, including by filing litigation against LBAC, DISH and others. Creditors of LightSquared also opposed the plan. Harbinger filed its own reorganization plan that sought to reorganize LightSquared without selling its spectrum. (Id. ¶ 194.)

In mid-December, DISH engineers discovered that there were previously undisclosed, potentially significant technical issues with the usability of the uplink portion of the L-Band spectrum in addition to the GPS interference issues that had long plagued LightSquared's spectrum. See In re LightSquared, 513 B.R. at 67, n.19. DISH sought to negotiate a risk-sharing arrangement with LightSquared's creditors such that the creditors and DISH would share the financial risks associated with the new technical issues in the event that they were not resolved satisfactorily. See id.[2] The creditors refused. Id. As a result, mindful of the upcoming government-sponsored spectrum auction, on January 7, 2014, LBAC gave notice that it was terminating the $2.2 billion bid for LightSquared's spectrum assets. (Id. ¶ 253.) Although LBAC had an unconditional right to terminate its bid for any or for no reason, the withdrawal related to

[2] The Bankruptcy Court's complete findings with respect to the technical issue have been filed under seal, as the pleadings and proceedings relating to the technical issue are confidential. See 513 B.R. 56, 68 n.19.

concerns over the usability of LightSquared's spectrum, which rendered an investment in LightSquared less attractive. (See id. ¶ 257.)

The LightSquared secured lenders that sponsored the LBAC stalking horse bid bankruptcy plan sought specific performance of the agreement to which LBAC had made its bid for LightSquared's spectrum assets. LBAC filed a declaratory judgment request seeking a finding that LBAC could not be compelled to complete the purchase of LightSquared's spectrum assets. (Id. ¶ 253.) The Bankruptcy Court heard argument on this issue during the trial. (Id. ¶ 256.) On January 22, 2014, the Bankruptcy Court ruled that LBAC had lawfully terminated its $2.2 billion bid. See In re LightSquared Inc., 513 B.R. at 102, n.87.

2. The Harbinger and LightSquared Adversary Proceeding

On August 6, 2013, Harbinger commenced an adversary proceeding in the Bankruptcy Court against, among others, Mr. Ergen and DISH. (SAC ¶ 192.) Harbinger alleged that DISH, acting through Mr. Ergen and other affiliates, improperly acquired significant amounts of LightSquared's debt that they were allegedly ineligible to purchase under the Credit Agreement. (Id.) LightSquared later intervened as a plaintiff in the Harbinger action. (Id. ¶ 193.)

On October 29, 2013, the Bankruptcy Court dismissed Harbinger's lawsuit. (Id. ¶ 227.) The Bankruptcy Court also gave LightSquared until November 15, 2013 to seek relief based on the claims in Harbinger's lawsuit. (Id.)

On November 15, LightSquared commenced its own claims against, among others, Mr. Ergen and DISH based on Mr. Ergen's debt purchases. (SAC ¶ 230.) The LightSquared complaint alleged various claims for money damages, and also sought to subordinate Mr. Ergen's claim in the bankruptcy. See In re LightSquared Inc., 511 B.R. at 263. Harbinger re-asserted the claims that were previously dismissed, and also alleged claims seeking to invalidate Mr. Ergen's creditor claim in the bankruptcy or, alternatively, to subordinate Mr. Ergen's payment priority in the bankruptcy. Id. at 263-64.

Separately, LightSquared filed an amended reorganization plan, the centerpiece of which was its claim that Mr. Ergen's approximately $1 billion claim as a creditor of LightSquared should be rejected entirely, or severely curtailed. See In re LightSquared Inc., 513 B.R. at 61-62.

LightSquared proposed, among other things, to pay all other secured debt holders in full in cash, but to pay Mr. Ergen $0 and instead convert his first lien secured debt into third lien debt in a reorganized post-bankruptcy entity. Id.

The Bankruptcy Court scheduled a trial on LightSquared's and Harbinger's claims against Mr. Ergen and DISH relating to Mr. Ergen's debt purchases to begin on January 9, 2014. (SAC ¶ 237.) The trial was conducted in two phases. (Id. ¶ 248.) The first phase consisted of "adversary proceedings" to address the claims relating to Mr. Ergen's debt purchases. (Id.) During the second, "plan confirmation" stage, the Bankruptcy Court would determine whether LightSquared's proposed reorganization plan could be confirmed. (Id.)

(a) The Bankruptcy Court's Decisions

The Bankruptcy Court issued a decision in the adversary proceedings on June 10, 2014. See In re LightSquared Inc., 511 B.R. 253. In that decision, the Bankruptcy Court rejected, in their entirety, all claims against DISH. The Bankruptcy Court concluded that Mr. Ergen's debt claims against LightSquared were enforceable, id. at 339-41, but that Mr. Ergen's debt claims should be subordinated in an amount to be determined at a future trial. Id. at 345-46, 361. The entire premise of the subordination finding was the Bankruptcy Court's conclusion that Mr. Ergen was acting for the benefit of DISH when purchasing LP Debt and, because DISH was not an eligible purchaser of the LP Debt, those actions breached the implied covenant of good faith and fair dealing in the LP Debt agreement. See id. at 346. In the plan confirmation decision, the Bankruptcy Court declined to confirm LightSquared's bankruptcy plan, but reiterated its determination in the adversary decision that Mr. Ergen's LightSquared debt claims should be subordinated. In re LightSquared Inc., 513 B.R. at 101-103.

A trial has been scheduled in the Bankruptcy Court in October 2014 to determine, among other things, whether to approve one of several newly proposed competing reorganization plans. Thus, contrary to Plaintiff's assertion that DISH has failed to acquire the spectrum assets (see, e.g., SAC ¶ 1), the outcome of the bankruptcy process has yet to be finalized. Also, later this year, yet another trial will be held to determine the extent to which Mr. Ergen's claim in bankruptcy will be subordinated.

E. PLAINTIFF INITIATES A PREMATURE DERIVATIVE ACTION DURING THE COURSE OF THE BANKRUPTCY PROCEEDINGS

Plaintiff first initiated this derivative action shortly after DISH announced its proposal to acquire LightSquared spectrum, early in LightSquared's bankruptcy proceedings. (SAC ¶ 195.) Plaintiff also filed a motion for expedited discovery and a motion for a preliminary injunction that would "enjoin Ergen and his loyalists on [the Board] from interfering with or impairing DISH's efforts to acquire LightSquared." (Id. ¶ 196 (alteration in original).)

Following initiation of Plaintiff's derivative suit, the DISH Board formed a Special Litigation Committee (the "Litigation Committee") to investigate Plaintiff's claims. (Id. ¶ 198.) George Brokaw, Tom Ortolf and Charles Lillis[3] were named to the Litigation Committee. (Id. ¶¶ 27, 31, 32.) On September 23, 2013, Plaintiff made a demand on the Litigation Committee that included demands that the Board reinstate the Special Committee and pursue monetary claims against Mr. Ergen and other members of the Board in connection with Mr. Ergen's purchase of LightSquared debt. (Id. ¶ 200.) At that time, Plaintiff's theory was that the debt was a highly valuable corporate opportunity that was usurped by Mr. Ergen, and that Mr. Ergen improperly caused DISH to pursue the acquisition of LightSquared assets at too high a price to benefit his debt holdings. (See, e.g., Verified Amended Derivative Complaint, dated Sept. 12, 2013, at ¶¶ 5, 22, 65.)

F. PLAINTIFF'S SECOND AMENDED COMPLAINT

It its Second Amended Complaint, Plaintiff changed entirely its theory of this case, alleging instead, among other things, that the DISH Board breached its fiduciary duties by exercising its business judgment to conclude that the LightSquared acquisition was not in the best interests of DISH. Plaintiff asserts a single derivative claim against the Director Defendants, alleging a purported breach of the fiduciary duty of loyalty. (SAC ¶¶ 368-78.) Plaintiff asserts that the Director Defendants breached the duty of loyalty by: (1) "withholding adequate indemnification from the [Special] Committee" (id. ¶ 370); (2) "prematurely disbanding the

[3] Mr. Lillis joined the Litigation Committee in November 2013. (See SAC ¶ 31.)

[Special] Committee in derogation of the enabling resolutions to protect the interests of Ergen" (id.); (3) "allowing Ergen to condition DISH's bid for LightSquared spectrum on Ergen receiving payment in full on his personal purchases of LightSquared debt" (id. ¶ 372); (4) "allowing Ergen to terminate DISH's bid for LightSquared Spectrum" (id. ¶ 373); and (5) "creating a deeply flawed special litigation committee that is beholden to the interests of Ergen rather than the interests of DISH." (Id. ¶ 371.)

Beyond the allegations that the Director Defendants should have yielded their obligations with regard to the potential purchase of LightSquared's assets to others, these assertions stand in stark contrast to Plaintiff's initial two complaints in this matter. Plaintiff previously alleged that Mr. Ergen usurped a valuable opportunity to buy LightSquared debt, and then caused DISH to bid too much for LightSquared assets to ensure that he would reap substantial profits on that debt. That hastily filed pleading proved entirely inaccurate in reality. As it stands now, the Bankruptcy Court has ruled that the purchase of the LightSquared debt by an affiliate of DISH (in this case, a company controlled by Mr. Ergen) breached the implied covenant of good faith and fair dealing in the LightSquared Credit Agreement. Put differently, neither DISH nor any DISH affiliate could purchase that LP Debt without subjecting itself to legal liability. Worse still, the LP Debt is a risky investment of entirely uncertain value, despite Mr. Ergen having paid some $690 million in cash for the debt. And, despite the fact that the Director Defendants supposedly beholden to Mr. Ergen could have proceeded with the plan to purchase LightSquared assets for $2.2 billion that would have paid Mr. Ergen in full, the Director Defendants exercised their business judgment to withdraw that bid, leaving Mr. Ergen at substantial personal financial risk and avoiding any risk to DISH from the LightSquared transaction.

On these facts, the Second Amended Complaint fails entirely to state any viable cause of action. Plaintiff alleges that "the only plausible inference" that can be drawn from the Board's business decisions is that the Director Defendants were "not [acting] in the best interests of DISH and DISH's public shareholders." (SAC ¶ 371.) Nonsense. The facts reveal that the Director Defendants exercised their independent business judgment, and in the process put Mr. Ergen's $690 million personal investment at risk. At the same time, after withdrawing its bid for the

BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
702.382.2101

LightSquared spectrum assets, DISH did not give up on acquiring spectrum. As Plaintiff has been forced to acknowledge, on February 27, 2014, DISH purchased clean spectrum from the FCC for over $1.5 billion. (SAC ¶ 74.)

III. ARGUMENT

A. STANDARD OF REVIEW

"A complaint must set forth sufficient facts to establish all necessary elements of a claim for relief[.]" Hay v. Hay, 100 Nev. 196, 198, 678 P.2d 672, 674 (1984) (citing Johnson v. Travelers Ins. Co., 89 Nev. 467, 472, 515 P.2d 68, 71 (1973)). Additionally, a motion pursuant to NRCP 12(b)(5) should be granted if it appears beyond a doubt that plaintiff can prove no set of facts that, if accepted by the trier of fact, would entitle plaintiff to relief. Blackjack Bonding v. City of Las Vegas Muni. Ct., 116 Nev. 1213, 1217, 14 P.3d 1275, 1278 (2000); Buzz Stew, LLC v. City of North Las Vegas, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008).

For purposes of a Rule 12(b)(5) motion, moreover, only the "factual allegations of [Plaintiff's] complaint must be accepted as true." Bratcher v. City of Las Vegas, 113 Nev. 502, 507, 937 P.2d 485, 489 (1997) (emphasis added) (internal quotation marks omitted). This Court does not assume the truth of conclusions of law. See Western Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981); In re Verifone Sec. Litig., 11 F.3d 865, 868 (9th Cir. 1993) ("Conclusory allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss for failure to state a claim.").[4]

In addition to factual allegations, this Court may also "take into account matters of public record, orders, items present in the record of the case, and any exhibits attached to the complaint when ruling on a motion to dismiss for failure to state a claim upon which relief can be granted." Breliant v. Preferred Equities Corp., 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993) (citation omitted) (considering matters contained in pretrial memorandum).[5] A court may also consider

[4] "Federal cases interpreting the Federal Rules of Civil Procedure 'are strong persuasive authority, because the Nevada Rules of Civil Procedure are based in large part upon their federal counterparts.'" Executive Management, Ltd. v. Ticor Title Ins. Co., 118 Nev. 46, 53, 38 P.3d 872, 876 (2002) (citation omitted).

[5] A company's articles of incorporation are properly the subject of judicial notice. See In re Computer Sciences Corp. Derivative Litig., 244 F.R.D. 580, 587 (C.D. Cal. 2007) (taking judicial

BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
702.382.2101

documents incorporated by reference into the complaint. Id. Moreover, where the exhibits properly before the court contradict the plaintiff's allegations or reveal a more complete rendition of the facts, a defendant may rely on the exhibits. See, e.g., Sprewell v. Golden State Warriors, 266 F.3d 979, 988 (9th Cir. 2001) ("The court need not, however, accept as true allegations that contradict matters properly subject to judicial notice or by exhibit.").

B. PLAINTIFF PLEADS NO VIABLE DUTY OF LOYALTY CLAIM

Plaintiff, fueled mainly by conclusory speculation rather than by actual factual allegations, asserts claims for the breach of the fiduciary duty of loyalty based on business decisions made by the Director Defendants during the course of negotiations concerning DISH's potential acquisition of LightSquared's spectrum assets. "[T]he duty of loyalty requires the board and its directors to maintain, in good faith, the corporation's and its shareholders' best interests over anyone else's interests." Shoen v. SAC Holding Corp., 122 Nev. 621, 632, 137 P.3d 1171, 1178 (2006). Under Nevada law, "[d]irectors and officers, in deciding upon matters of business, are presumed to act in good faith, on an informed basis and with a view toward the interests of the corporation." NRS 78.138(3). In alleging a breach of the duty of loyalty, the plaintiff bears the burden to rebut this presumption. See Shoen v. AMERCO, 885 F. Supp. 1332, 1340 (D. Nev. 1994) modified, CV-N-94-0475-ECR, 1994 WL 904199 (D. Nev. Oct. 24, 1994) (citing Horwitz v. Southwest Forest Indus., Inc., 604 F. Supp. 1130, 1135 (D. Nev. 1985)).

"[D]irectors and officers may only be found personally liable for breaching their fiduciary duty of loyalty if that breach involves intentional misconduct, fraud, or a knowing violation of the law." Shoen, 122 Nev. at 640, 137 P.3d. at 1184; see also NRS 78.138(7) (a director is not individually liable unless it is proven that "(a) [his] act or failure to act constituted a breach of his fiduciary duties as a director or officer; and (b) [t]he breach of those duties involved intentional misconduct, fraud or a knowing violation of law"). Moreover, "even a bad decision is generally

---

notice of articles of incorporation under FRE 201, which is identical in relevant respects to NRS 47.130), *aff'd sub nom. Laborers Int'l Union of N. Am.* v. Bailey, 310 F. App'x 128 (9th Cir. 2009). Similarly, SEC filings may also be judicially noticed. See, e.g., Dreiling v. American Express. Co., 458 F.3d 942, 946, n.2 (9th Cir. 2006) (noting SEC filings are judicially noticeable on a 12(b)(6) motion).

BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
702.382.2101

protected by the business judgment rule's presumption that the directors acted in good faith[.]" Shoen, 122 Nev. at 636, 137 P.3d at 1181.

Despite these clear pleading standards, the Second Amended Complaint contains no factual, non-conclusory allegations that the Director Defendants engaged in intentional misconduct, fraud, or otherwise knowingly violated the law. Instead, Plaintiff asserts that the Director Defendants are "beholden" to Charles Ergen, and that therefore, any business decision made by the Board is tainted by a desire to protect Mr. Ergen's personal interests. This tactic fails. Not only does Plaintiff fail to show how the Director Defendants are "beholden" to Mr. Ergen, Plaintiff also fails to allege facts to support an allegation that the Director Defendants did anything but exercise their business judgment during the course of negotiations concerning DISH's potential bid for LightSquared's spectrum assets.

BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
702.382.2101

1. Plaintiff Alleges No Financial Self-Interest of the Sort Required to Allege a Duty of Loyalty Claim Under Nevada Law.

Plaintiff bases its entire duty of loyalty claim on the notion that the Director Defendants harbored some personal allegiance toward Mr. Ergen that compromised their independence and thereby supposedly exposes them to claims for money damages. Not so. First, Plaintiff's theory is illogical. Plaintiff alleges affirmatively that the Director Defendants withdrew the DISH bid for LightSquared assets which, if successful, would have paid Mr. Ergen a several hundred million dollar profit. Moreover, Plaintiff's theory is contrary to Nevada law. Under Nevada law, transactions between a corporation and an interested director are not per se void or voidable. Rather, the only conflicts that may undermine the independence of a director with respect to such transactions are those that arise because a director is "financially interested" in the matter, either because he or she is the counterparty, a fiduciary of the counterparty, or has a conflicting financial interest in the transaction. NRS 78.140. Plaintiff has not alleged that any of the Director Defendants had a conflicting interest that would, under Nevada law, compromise the Director Defendants' ability to act in accordance with the business judgment rule.

Nevada has enacted a statutory safe-harbor for transactions between a Nevada corporation and one or more interested directors. Under NRS 78.140(1), "[a] contract or other transaction is not void or voidable solely because . . . [t]he contract or transaction is between a corporation and: (1) One or more of its directors or officers; or (2) [a]nother corporation, firm or association in which one or more of its directors or officers are directors or officers or are financially interested." This provision makes clear that the conflicts that may undermine the independence of a director of a Nevada corporation are limited to situations where the director is (a) a counter-party to the transaction, (b) an officer or director of the counter-party, or (c) where the director is "financially interested" in the counter-party. Id. (emphasis added). Thus, NRS 78.140(2) provides that any such transaction "is not void or voidable" where, as here, "the fact of the common directorship, office or financial interest is known to the board of directors or committee, and the board or committee authorizes, approves or ratifies the contract or transaction in good faith by a vote sufficient for the purpose without counting the vote or votes of the common or interested director or directors."

The plain language of NRS 78.140 makes clear that the only interests that compromise a director's ability to act are overlapping fiduciary or financial interests in the transaction at issue. Cf. In re Reliance Sec. Litig., 135 F. Supp. 2d 480, 520 n.7 (D. Del. 2001) (a "breach of loyalty claim requires some form of self-dealing or misuse of corporate office for personal gain"). Plaintiff alleges nothing of the sort. Accordingly, where, as here, the Director Defendants are free of any conflicting fiduciary or financial interests with respect to LightSquared, NRS 78.140 shields their conduct from challenge as a breach of fiduciary duty.

2. *The Director Defendants Could Not Have Breached Any Duty of Loyalty Because They Are Independent.*

Plaintiff nevertheless attempts to manufacture a duty of loyalty claim by alleging that the Director Defendants are "beholden to Ergen" and thus were "[i]ntenional[lly] disloyal" in their own conduct simply to further Ergen's (but not their own) "personal gain." (SAC ¶¶ 286, 289.) This allegation is irrelevant under Nevada law. But Plaintiff also fails to allege any facts to support this allegation.[6]

[6] As the Court is aware, Plaintiff has been permitted expedited discovery in this case, including the depositions of Mr. Ergen and Mr. Goodbarn and testimony from Mr. Howard. As

"The business judgment rule postulates that if directors' actions can arguably be taken to have been done for the benefit of the corporation, then the directors are presumed to have been exercising their sound business judgment rather than to have been responding to self-interest motivation." Horwitz v. Sw. Forest Indus., Inc., 604 F. Supp. 1130, 1134 (D. Nev. 1985) (internal citations omitted); see also In re Amerco Derivative Litig., 252 P.3d at 698 (in demand futility context, "director interestedness can be demonstrated through alleged facts indicating that a majority of the board members would be materially affected, either to their benefit or detriment, by a decision of the board, in a manner not shared by the corporation and the stockholders") (internal citations omitted); Beam ex. rel. Martha Stewart Living Omnimedia, Inc. v. Stewart, 845 A.2d 1040, 1052 (Del. 2004) (in demand futility context, "[t]o create a reasonable doubt about an outside director's independence, a plaintiff must plead facts that would support the inference that because of the nature of a relationship or additional circumstances other than the interested director's stock ownership or voting power, the non-interested director would be more willing to risk his or her reputation than risk the relationship with the interested director"). Plaintiff pleads no such facts here, and fails to overcome the presumption of director independence under Nevada law. The mere fact that Mr. Ergen has a controlling voting interest in DISH does not remotely establish that the DISH directors lack independence. Aronson v. Lewis, 473 A.2d 805, 815–16 (Del. 1984), overruled on other grounds by Brehm v. Eisner, 746 A.2d 244 (Del. 2000) (ownership of 47% of a corporation's outstanding stock, which gave the stockholder the effective ability to elect all of the directors, did not give the stockholder the power to control the board so as to undermine the directors' independence).

Plaintiff leaps to the conclusion that the Director Defendants dispensed with their independence for the benefit of Mr. Ergen because of (i) the number of years they have known Mr. Ergen; (ii) their salaries as DISH directors and employees; and (iii) the amount of DISH stock each Director Defendant owns. (See, e.g., SAC ¶¶ 28, 30, 33, 293-94, 296.) Even in the demand

---

proven by Plaintiff's lack of any specific allegations, this discovery has not revealed any evidence that Mr. Ergen compromised the independence of any director, including Mr. Goodbarn, who testified that he and his committee reached the decision to recommend a LightSquared bid independently.

futility context, courts consistently conclude, however, that such allegations do **not** create an inference of lack of independence. Fosbre v. Matthews, No. 3:09-cv-0467, 2010 WL 2696615, at *5 (D. Nev. July 2, 2010) (applying Nevada law and observing that "allegations that directors are paid for their services as directors without more, do not establish a disabling interest or lack of independence on the part of the director") (internal citations omitted); Crescent/Mach I Partners, L.P. v. Turner, 846 A.2d 963, 980-81 (Del. Ch. 2000) (allegation that director is controlled "because of . . . long-standing 15-year professional and personal relationship . . . fails to raise a reasonable doubt that [the director] could not exercise his independent business judgment in approving the transaction."). Indeed, rather than support its claim of disloyalty, the massive personal ownership of DISH stock by the Director Defendants entirely defeats Plaintiff's theories here. "[S]tock ownership is not a source of conflict, but rather an indication that the . . . directors' interests are aligned with the interests of the stockholders generally. Koehler v. NetSpend Holdings Inc., No. 8373-VCG, 2013 WL 2181518, at *11 (Del. Ch. May 21, 2013); see Orman v. Cullman, 794 A.2d 5, 27, n.56 (Del. Ch. 2002) ("A director who is also a shareholder of his corporation is more likely to have interests that are aligned with the other shareholders of that corporation as it is in his best interest, as a shareholder, to negotiate a transaction that will result in the largest return for all shareholders.").

Plaintiff's allegations do nothing to impugn the independence of any one of the Director Defendants:

- **DeFranco**: Plaintiff asks this court to infer that Mr. DeFranco is not independent because "his personal stake in DISH, and compensation he has received as DISH executive and director" constitute the "bulk of DeFranco's personal wealth," and because Mr. DeFranco's and Mr. Ergen's "personal relationship dates back more than 35 years," when the two co-founded DISH. (SAC ¶¶ 28, 293.) "But where a director is beholden to the company there is no reason to doubt her loyalty to that company. Her interests are aligned with the company and presumably she is able to make decisions in the best interests of the company." In re Dow Chem. Co. Derivative Litig., No. 4349-CC, 2010 WL 66769, at *8 (Del. Ch. Jan. 11, 2010).

BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
702.382.2101

Mr. DeFranco owns over 4.5 million shares of DISH (SAC ¶ 293, see also DISH Network, Proxy Statement (Form DEF 14A), at 9 (Mar. 22, 2013)). Plaintiff alleges that, at the approximate time of the filing of the Second Amended Complaint, Mr. DeFranco's DISH stock was worth roughly $290 million. (Id.) There is therefore no dispute that Mr. DeFranco has every incentive to do what is best for DISH. If anything, the allegations relating to Mr. DeFranco's personal wealth indicate that Mr. DeFranco's "interests are aligned with the company" and support the statutory presumption that, as a director, Mr. DeFranco has exercised his business judgment to act in the best interests of DISH.

- **Moskowitz**: Plaintiff concludes that Mr. Moskowitz lacks independence because, like Mr. DeFranco, Mr. Moskowitz is compensated through his employment at DISH. See SAC ¶ 294 (alleging that Mr. Moskowitz received "more than $6 million" in compensation as DISH's General Counsel over a 17-year period, and that since 2012, Mr. Moskowitz has received $250,000 per year in compensation for his work as a senior advisor to DISH). This allegation is not enough to establish that Mr. Moskowitz is not independent. See In re Dow Chem., 2010 WL 66769, at *8. Plaintiff also alleges that Mr. Moskowitz owns over 944,000 shares of DISH stock (SAC ¶ 294; see also DISH Network, Proxy Statement (Form DEF 14A), at 9 (Mar. 22, 2013)), which Plaintiff alleges was worth roughly $59 million at the time of the filing of the Second Amended Complaint. (Id.) Just as is the case with respect to Mr. DeFranco, the allegations relating to Mr. Moskowitz's personal wealth indicate that he is incentivized to act in the best interests of DISH, and support the statutory presumption that he exercised his business judgment to do so.

Plaintiff also alleges that Mr. Moskowitz served as a director "of another company controlled by Ergen[] from October 2007 until May 2012." (SAC ¶ 30.) "The law . . . is well-settled on this point," Orman, 794 A.2d at 27; the fact "[t]hat directors of one company are also colleagues at another institution does not mean that they will not or cannot exercise their own business judgment" In re Dow, 2010

WL 66769, at *8. That Mr. Moskowitz "serve[s] as trustee for certain trusts established for the benefit of Ergen's children" (SAC ¶ 294) is likewise irrelevant because "such affinities" like "collegial relationships among the board of directors" are insufficient. Beam, 845 A. 2d at 1051.[7]

- **Vogel**: Unable to muster any unique allegation, Plaintiff alleges Vogel lacks independence because of (i) his salary as a DISH executive; (ii) his DISH stock ownership (over 350,000 shares worth approximately $22 million at the time of the filing of the Second Amended Complaint) (SAC ¶ 296; see also DISH Network, Proxy Statement (Form DEF 14A), at 9 (March 22, 2013)); and (iii) his alleged nomination by Mr. Ergen to the EchoStar board. (Id.) For the reasons discussed above, none of these allegations is sufficient to overcome the statutory presumption that Mr. Vogel acted independently and in the best interests of DISH.[8]

3. Plaintiff Pleads No Cognizable Injury or Damages as a Result of Any Supposed Breach of Duty by the Director Defendants.

The claims against the Director Defendants seek no equitable relief, but only unavailable money damages. Injury and damages are an essential element of a breach of fiduciary duty claim. See In re Amerco, 252 P.3d at 702 (noting elements of fiduciary duty claim include proof that "the breach of the fiduciary relationship resulted in damages" (citing Malpiede v. Townson, 780 A.2d 1075, 1096 (Del. 2011)); Stalk v. Mushkin, 125 Nev. 21, 28, 199 P.3d 838, 843 (2009) ("a breach of fiduciary duty claim seeks damages for injuries that result from the tortious conduct of one who owes a duty to another by virtue of the fiduciary relationship"). Plaintiff pleads nothing

---

[7] Moreover, Plaintiff does not allege that Mr. Moskowitz receives any benefit for serving as trustee, much less one of "material importance that its threatened loss might create a reason to question" his loyalty to DISH. Telxon Corp v. Meyerson, 802 A.2d 257, 264 (Del. 2002).

[8] Plaintiff also alleges that Mr. Vogel has "longstanding ties to" other Defendants from prior business relationships, which in no way bear on his relationship with Ergen. (SAC ¶ 33.) In any event, "[m]ere allegations that [directors] move in the same business and social circles, or a characterization that they are close friends, is not enough to negate independence[.]" Beam, 845 A.2d at 1051-52.

BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
702.382.2101

of the sort here.

Plaintiff contends that the Director Defendants must "compensate DISH for losing the opportunity to buy LightSquared spectrum assets between December 10, 2013 and January 22, 2014" and for "not receiving payment from Ergen for his pursuit of an opportunity to buy LightSquared debt at a discount." (SAC ¶ 377.) Plaintiff also asserts that the Director Defendants must compensate DISH for "any legal fees paid by DISH to defend against claims based on Ergen's debt purchases." (Id.) These allegations plead no legally cognizable injury, or recoverable damages.

The opportunity to invest in LightSquared's spectrum assets is not one that DISH lost. Rather, after careful and months-long consideration, the DISH Board ultimately decided that an investment in LightSquared's spectrum assets was not in DISH's best interests at the time the bid was withdrawn. (See Section III. C. 4., infra.) Plaintiff's theory that it was damaged because the DISH Board decided not to pursue a bid for LightSquared's spectrum assets rests on Plaintiff's substitution of its judgment for that of the Board. It also rests on the unpled and unprovable surmise that, if the DISH Board had not pulled DISH's bid due to technical issues with LightSquared's spectrum assets, DISH would have been guaranteed to acquire the assets. Neither can support Plaintiff's theory that it was damaged when DISH pulled its bid. See LaPoint v. AmerisourceBergen Corp., No. 327-CC, 2007 WL 2565709, at *9 (Del. Ch. Sept. 4, 2007) ("to be entitled to compensatory damages, plaintiffs must show that the injuries suffered are not speculative or uncertain"). Indeed, the LightSquared assets remain available to interested purchasers. None have surfaced.

While Plaintiff shies away from branding it as such, its second damages theory apparently rests on a claim that Plaintiff advanced in prior iterations of its complaint: that Mr. Ergen usurped a "corporate opportunity" belonging to DISH when he purchased LightSquared debt. Both this claim and the resulting theory of damages fail. First, Plaintiff never alleges that DISH expressed an interest in acquiring LightSquared's debt (or any distressed debt). Moreover, Mr. Ergen's purchases were authorized under DISH's Charter (the "Corporate Opportunities Amendment"), which is expressly authorized by NRS 78.070(8). Plaintiff is charged with knowledge and acceptance of the terms of the Amendment. See Corporate Opportunities Amendment (Rugg Decl. Ex. B, at A-5, ¶ 1) ("Any person purchasing or otherwise acquiring any shares of capital stock of the Corporation, or any interest therein, shall be deemed to have notice of and to have consented to the provisions of this Article VIII."). The Amendment is unequivocal: a "director or officer shall, to the fullest extent permitted by law, have no duty or obligation to refer" business opportunities to the Company and shall not be held liable to the Company "as a director, officer, stockholder or otherwise" unless **all** of the following conditions are satisfied:

> (A) the Corporation has expressed an interest in such business opportunity as determined from time to time by the Corporation's Board of Directors as evidenced by resolutions appearing in the Corporation's minutes; (B) such Potential Business Opportunity was expressly offered to such director or officer **solely** in his or her capacity as a director or officer of the Corporation or as a director or officer of any Subsidiary of the Corporation; and (C) such opportunity relates to a line of business in which the Corporation or any Subsidiary of the Corporation is then directly engaged.

(Rugg Decl. Ex. B at A-6, ¶ 3 (emphasis added).)

Plaintiff does not allege any claim in compliance with the Corporate Opportunities Amendment. Mr. Ergen's purchases do not satisfy the first condition set forth in the Corporate Opportunities Amendment, since Plaintiff does not allege that DISH ever expressed an interest in purchasing LightSquared's secured debt, as reflected in the minutes of the Board. Instead, Plaintiff alleges that Mr. Ergen purchased LightSquared's secured debt after receiving assurances that DISH itself was ineligible to purchase LightSquared debt. (SAC ¶¶ 79, 86.) And, on the second condition, no LP Debt was ever "offered to" DISH — instead, LightSquared argued vociferously (and, to this point, successfully) that neither DISH nor its Affiliates could buy LP Debt under the governing Credit Agreement. Thus, Plaintiff's theory that Mr. Ergen usurped DISH's opportunity to buy LightSquared debt is flawed as a matter of law under DISH's Charter.

Plaintiff also misunderstands what is a "Corporate Opportunity," as defined in DISH's Corporate Opportunities Amendment. Along with its other limitations, the Corporate Opportunities Amendment specifically limits a Corporate Opportunity as belonging to the Corporation or its "Subsidiaries." "Subsidiaries" are specifically defined to be entities controlled by the Corporation. (Rugg Decl. Ex. B, at A-5, ¶ 1.) Thus, to the extent that Plaintiff complains

BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
702.382.2101

that an affiliate of DISH that is not a "Subsidiary" may have had an opportunity to purchase LightSquared's debt (SAC ¶ 269), such an opportunity was expressly not a "Corporate Opportunity" as defined in DISH's Articles.

Finally, Plaintiff's claim that DISH is paying legal fees to defend claims based on Mr. Ergen's LightSquared's debt purchases (Id. at ¶ 377) is baseless. The allegation that DISH is paying Mr. Ergen's legal fees is based on nothing more than Plaintiff's speculation, and Plaintiff has pled no recoverable damages. See LaPoint, 2007 WL 2565709, at *9.

C. THE CHALLENGED ACTIONS ARE PROTECTED BY THE BUSINESS JUDGMENT RULE AND PLAINTIFF HAS NOT MET ITS BURDEN OF PLEADING AN EXCEPTION TO THE RULE

Nevada law imposes a strong presumption that directors, "in deciding upon matters of business, are presumed to act in good faith, on an informed basis and with a view to the interests of the corporation." NRS 78.138(3). This statutory presumption requires dismissal of Plaintiff's claims unless Plaintiff pleads sufficient facts to establish an exception to the business judgment rule. Plaintiff here may do so only by allegations sufficient to establish, for each Director Defendant, that "(a) [his] act or failure to act constituted a breach of [his] fiduciary duties as a director" and "(b) [the] breach of those duties involved intentional misconduct, fraud or a knowing violation of law." NRS 78.138(7). Plaintiff has not remotely alleged facts to rebut the Nevada business judgment rule.

1. The Director Defendants Exercised Their Business Judgment to Determine Appropriate Compensation and Indemnification for Special Committee Members.

Plaintiff alleges that the Director Defendants "acted disloyally . . . by withholding adequate indemnification from the [Special] Committee." (SAC ¶ 370.) However, the Second Amended Complaint is devoid of any particularized facts regarding any of the Director Defendants that support Plaintiff's assertion that the Director Defendants deliberately withheld indemnification from the Special Committee. At best, all that can be ascertained from Plaintiff's allegation is that the Board, acting collectively and in its exercise of business judgment, (1) deliberated over whether the Special Committee's work warranted additional indemnification and compensation for its members, (2) determined that additional compensation was appropriate, and (3) had yet to reach a determination with respect to additional indemnification before it concluded that the Special Committee was no longer necessary.

Plaintiff speculates that "Ergen could use his control over the DISH Board to withhold indemnification" (id. ¶ 154) and cites to Steven Goodbarn's deposition testimony that Mr. Ergen was "unhappy" with compensation and indemnification demanded by the Special Committee and that the Board "differ[ed]" on these issues. (Id. ¶ 157.) From this, Plaintiff somehow concludes that "the Board's refusal to provide adequate indemnification to the [Special Committee was] a clear signal that the Board was beholden to Ergen." (Id. ¶ 158.) To the contrary, even when viewed in the most favorable light, all that these allegations establish is that the Board deliberated over whether to provide additional indemnification and compensation to the Special Committee members and reached no consensus on one of the two additional benefits demanded by the Special Committee. As Plaintiff alleges, at the time the Special Committee was dissolved, the Board had not agreed to provide the Special Committee with additional indemnification. (Id.) However, the fact that this disagreement had not been resolved prior to the Board's determination that the Special Committee was no longer necessary is hardly factual support for an allegation that the Board deliberately withheld additional indemnification from the Special Committee in knowing violation of law.

Moreover, Plaintiff's claim that the Director Defendants withheld additional indemnification from the Special Committee because the Director Defendants were "beholden" to Mr. Ergen is belied by Plaintiff's own allegations. According to Plaintiff, Mr. Ergen was opposed to both additional indemnification and compensation for Special Committee members. (Id. ¶ 157.) Yet, Plaintiff readily admits that the Board approved additional compensation for Special Committee members – this in spite of what Plaintiff contends was Mr. Ergen's view that the Special Committee should receive neither additional compensation nor additional indemnification. (Id. ¶¶ 156-57.) Unsurprisingly, Plaintiff offers no explanation as to how a Board blindly "beholden" to Ergen could decide to provide additional compensation to Special Committee members despite Mr. Ergen's wishes.

Rather than stating a valid basis for a claim of a breach of the duty of loyalty, Plaintiff's

BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
702.382.2101

allegation that the Board withheld additional indemnification from the Special Committee merely illustrates that, despite whatever views Mr. Ergen may have had toward additional indemnification and compensation, the Board, including the Director Defendants, conducted its own analysis of these issues.

2. When Deemed No Longer Necessary, the Special Committee Was Properly Discontinued.

Plaintiff also alleges that the Director Defendants "acted disloyally to DISH and DISH's public shareholders by prematurely disbanding the [Special] Committee in derogation of the enabling resolutions to protect the interests of Ergen." (SAC ¶ 370.) After receiving the Special Committee's recommendation that DISH should submit a bid for LightSquared's spectrum assets, the Board voted to dissolve the Special Committee. It is peculiar, to say the least, for Plaintiff to seek to find fault in the notion that Director Defendants created the Special Committee and later determined to discontinue the Committee.

By any measure, it was within the Board's business discretion to terminate the Committee that it created. As Plaintiff itself alleges, the Board believed that DISH's bid for LightSquared's assets extinguished any conflict posed by Mr. Ergen's ownership of LightSquared debt, since the bid would result in payment in full of all of LightSquared's secured loans. (Id. ¶ 175.) Moreover, the Board's view was that the resolution creating the Special Committee authorized the Board to terminate the Special Committee when the Board deemed such termination appropriate.

Plaintiff has it exactly backwards when it argues that the DISH board immutably bound itself to some future course of action by adopting a resolution referring consideration of the LightSquared opportunity to a Special Committee. Under NRS 78.120(1), the Board's authority to manage the corporation necessarily includes the power to revisit decisions in the future. Delaware cases likewise recognize that a Board may not through a resolution, bylaw or contract divest itself of its duty to exercise its business judgment in respect of a future state of affairs by "restrict[ing] the board's power in an area of fundamental importance to the shareholders—negotiating a possible sale of the corporation." Quickturn Design Sys., Inc. v. Shapiro, 721 A.2d 1281, 1291-92 (Del. 1998) (invalidating contractual provision that purported to circumscribe a future board's discretion by prohibiting future changes to the corporation bylaws). For this reason, Delaware courts routinely "invalidate[] contracts that would require a board to act or not act in such a fashion that would limit the exercise of their fiduciary duties." CA, Inc. v. AFSCME Empl. Pension Plan, 953 A.2d 227, 238 (Del. 2008).

Here, the Board properly exercised its authority to dissolve the Special Committee and reassume responsibility for an important strategic transaction after it determined in a valid exercise of its business judgment that the circumstances prompting the formation of the Special Committee had changed. In particular, the Board noted that: (1) "communications with the Ad-Hoc Committee of LightSquared lenders specif[ied] that an opening bid that did not provide a material return to preferred holders would not be considered by the Ad-Hoc Committee";[9] (2) the Special Committee had recommended that the Company pursue a bid at a purchase price that would secure approval of the Ad-Hoc Committee;[10] (3) as a result, "the potential conflict underlying the Ergen LightSquared Transaction that led the Board of Directors to create the [Special] Committee no longer exist[ed] . . .";[11] (4) the Special Committee had effectively "completed its work within the scope of its delegated authority . . .";[12] and (5) "governance and oversight is more appropriately discharged by the Board of Directors, rather than through a delegation of its responsibilities to a committee comprised of only a subset of its members."[13] Moreover, the Special Committee itself noted to the Board that "a review of Mr. Ergen's purchases of LightSquared debt and/or other securities could be undertaken in the future, and the absence of such a review to date should not jeopardize the opportunity by delaying the Corporation from immediately pursuing a bid . . . ."[14]

Plaintiff misstates the language of the resolution forming the Special Committee regarding

---

9 (See Defendants' Supplemental Brief in Opposition to Plaintiff's Motion for Preliminary Injunction, dated November 20, 2013, Ex. 101 (July 21 Minutes), at 6.)

10 (Id. at 3 & 6.)

11 (Id. at 6–7.)

12 (Id. at 8.)

13 (Id. at 7.)

14 (Id. at 8; accord id. at 4.)

its expiration. Specifically, Plaintiff asserts that, in that resolution, "the Board had bound itself not to terminate the [Special] Committee unless either the LightSquared transaction was abandoned or the [Special] Committee itself proposed its abandonment." (SAC ¶ 176.) The resolution does not discuss termination at all. Instead, the resolution references only events that would cause the authorization provided to the Special Committee to "expire," not the conditions for termination.[15] Thus, the Board set an outside limit on the term of the Special Committee, but did not abdicate its statutory power to terminate the role of the Special Committee should the Board determine termination is appropriate within the exercise of its business judgment. Whether, in hindsight, Plaintiff alleges that was a good or bad decision is not relevant. See Shoen, 122 Nev. at 636, 137 P.3d at 1181 ("even a bad decision is generally protected by the business judgment rule's presumption that the directors acted in good faith").

Moreover, a claim for a breach of the fiduciary duty of loyalty "cannot rest on facts that simply support the notion that the directors made an unreasonable or even grossly unreasonable judgment. Rather, it must rest on facts that support a fair inference that the directors consciously acted in a manner contrary to the interests of [the company] and its stockholders." See In re Lear Corp. Shareholder Litig., 967 A.2d 640, 652 (Del. Ch. 2008). Plaintiff has alleged no such facts.

3. Plaintiff Pleads No Facts to Support Its Assertion That the Director Defendants "Allowed" DISH's Bid to Be Conditioned on the Repayment of Mr. Ergen's LightSquared Debt.

Plaintiff alleges that the Director Defendants "acted disloyally to DISH and DISH's public shareholders by allowing Ergen to condition DISH's bid for LightSquared spectrum on Ergen receiving payment in full on his personal purchases of LightSquared debt" (SAC ¶ 372) and by "allowing Ergen to ignore this Court's clear instructions that were aimed at protecting DISH's bid for LightSquared spectrum from interference by Ergen's personal interests in a release of LightSquared's claims." (Id. ¶¶ 28, 30, 33.) These assertions are supported by no facts, and are contradicted by the very documents Plaintiff cites to support them.

---

15 Expiration plainly means something different than termination. Expiration means "a coming to an end" while termination means "the act of ending something." BLACK'S LAW DICTIONARY 660, 1609 (9th ed. 2009).

Plaintiff is entirely silent on how the Director Defendants took any action, or what action they took, to "allow" Mr. Ergen to condition DISH's bid for LightSquared's assets. There is not one allegation tying any Director Defendant to any "decision" to "allow" anything of the sort. Instead, Plaintiff alleges that the Board's counsel was present, and did not interject, during an argument by Mr. Ergen's attorneys during which Plaintiff asserts that Mr. Ergen's counsel stated that LBAC's bid for LightSquared's assets would result in full repayment of Mr. Ergen's LightSquared debt. (Id. ¶¶ 232, 234-36.) Counsel actually said the opposite: "That is not what the release says." (Rugg Decl. Ex. A, at 135-36.) Further, Plaintiff ignores that LightSquared opposed the LBAC bid in its entirety and did not ask to negotiate the release as a path to accepting LBAC's bid for the spectrum assets. In any event, Plaintiff's false observation, even if correct, pleads no knowing and intentional violation of law. Nowhere does Plaintiff allege that any of the Director Defendants took action, let alone that the Director Defendants intentionally engaged in misconduct or fraud, with respect to the theoretical repayment of Mr. Ergen's LightSquared debt. To the contrary, Plaintiff alleges that the Director Defendants pulled the DISH bid, jeopardizing Mr. Ergen's investment.

4. The Director Defendants Exercised Their Business Judgment When Deciding Whether to Pursue DISH's Bid for LightSquared's Spectrum Assets.

Plaintiff also alleges that the Director Defendants "acted disloyally to DISH and DISH's public shareholders by allowing Ergen [to] terminate the [agreement among LightSquared secured lenders to purchase LightSquared spectrum's assets] and to terminate DISH's bid for LightSquared spectrum." (SAC ¶ 373.) Plaintiff's apparent theory is the utterly illogical assertion that DISH pulled its bid for LightSquared's spectrum assets "to serve [Mr. Ergen's] personal interests." (Id. ¶¶ 28, 30, 33.) Plaintiff does not allege a single fact to support its conclusion. Nor could it. By terminating the pursuit of the LBAC bid for LightSquared's assets along with the absence of any other bids for the assets, the Director Defendants eliminated a several hundred million dollar profit that Mr. Ergen would otherwise have received on his LP Debt investment, and instead left that $660 million investment in serious risk of substantial losses. Put simply, termination of the LBAC bid was potentially disastrous for Mr. Ergen's investment in

LightSquared debt; it could not have been undertaken to benefit Mr. Ergen (except as a stockholder of DISH) and did not breach some duty.

In any event, this claim amounts to nothing more than improper second-guessing of the Board's business decisions. By any measure, the purchase of LightSquared's spectrum assets was fraught with uncertainty. As Plaintiff itself concedes, LightSquared's L-Band downlink spectrum assets were plagued by GPS interference issues that had prevented LightSquared from fully utilizing its spectrum assets to build a wireless broadband network and ultimately caused LightSquared to file for bankruptcy. (Id. ¶ 61.) Any potential purchaser of LightSquared's spectrum assets would have to contend with the question of whether the investment in LightSquared's assets was viable in spite of these issues, as did the DISH Board.

On top of these undisputed GPS interference issues that rendered LightSquared's downlink spectrum unusable, new data provided by LightSquared to DISH at the end of 2013 revealed additional technical issues that might severely hamper the usability of LightSquared's uplink spectrum, which caused DISH to reconsider the merits of the investment. Plaintiff apparently recognizes this, but attempts to minimize the technical issues by alleging that they were only "pretext" for the decision to pull DISH's bid. (Id. ¶ 258.) That is beside the point. DISH elected to forego the LightSquared opportunity, and instead successfully pursued the acquisition of wireless spectrum in a government auction the following month, in February 2014. (SAC ¶ 74.) This was a decision for the Board, in its exercise of its business judgment, to make, and the Board is permitted to rely upon management and other advisers to do so. See NRS 78.138(2) (in the exercise of their business judgment, directors are "entitled to rely on information" prepared by advisers, including "officers or employees of the corporation," "financial advisers," "valuation advisers" or other persons with specialized expertise). Plaintiff may disagree with that decision, but disagreement with a Board decision is not a valid basis for a breach of fiduciary duty claim. See Shoen, 122 Nev. at 636, 137 P.3d at 1181 ("even a bad decision is generally protected by the business judgment rule's presumption that the directors acted in good faith"). At most, Plaintiff alleges that it or others view the decision not to pursue

DISH's bid for LightSquared's assets in light of the technical issue as unwise.[16] This presents no grounds to overcome the business judgment rule's presumption that the Director Defendants acted in good faith, on an informed basis, and with a view toward DISH's best interests.

Finally, the decision of the DISH Board to terminate its bid for LightSquared assets may not, in all events, form the basis of any claim here because the termination was approved in compliance with NRS 78.140(2). There is no dispute that Mr. Goodbarn was independent — indeed that assertion is trumpeted throughout the Second Amended Complaint. Even if the remainder of the Board was conflicted (and it was not), the approval of the bid termination by Mr. Goodbarn renders that act beyond challenge under NRS 78.140(2).

5. The Director Defendants Properly Appointed a Special Litigation Committee to Investigate Fully Plaintiff's Claims.

Plaintiff also alleges that the Director Defendants "acted disloyally to DISH and DISH's public shareholders by creating a deeply flawed special litigation committee that is beholden to the interests of Ergen rather than the interests of DISH." (SAC ¶ 371.) This is mere legal argument, and alleges no facts nor any cause of action. The Director Defendants were under no duty to appoint a special litigation committee or to investigate Plaintiff's dubious claims. The standard for evaluating supposedly interested transactions, if any, is set forth in NRS 78.140, which provides expressly that interested directors may participate in the process and the decision-making. The fact that the Director Defendants took the additional step of appointing the Litigation Committee is good governance, not some breach of duty.

///

///

///

---

[16] As noted above, the market as a whole disagrees, as DISH's stock value has continued to grow since the withdrawal of the LBAC bid was announced.

IV. CONCLUSION

For the foregoing reasons, Plaintiff has failed to state a claim upon which relief could be granted. The Second Amended Complaint should therefore be dismissed with prejudice.

DATED this 29th day of August, 2014

BROWNSTEIN HYATT FARBER
SCHRECK, LLP

By: /s/ Jeffrey S. Rugg
BROWNSTEIN HYATT FARBER
SCHRECK, LLP
Jeffrey S. Rugg, Bar #10978
Maximilien Fetaz, Bar #12737
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614

Robert J. Giuffra, Jr.
Brian T. Frawley
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, New York 10004

Attorneys for Defendants James DeFranco,
David K. Moskowitz and Carl E. Vogel

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on the 29th day of August, 2014, the foregoing **DEFENDANTS' MOTION TO DISMISS THE SECOND AMENDED COMPLAINT** was served via electronic mail and U.S. Mail, postage prepaid, to the following:

BRIAN W. BOSCHEE, ESQ. MICHAEL D. NAVRATH, ESQ. WILLIAM N. MILLER, ESQ. COTTON, DRIGGS, WALCH, HOLLEY, WOLOSON & THOMPSON 400 South Fourth Street, Third Floor Las Vegas, Nevada 89101 MARK LEBOVITCH, ESQ. JEREMY FRIEDMAN, ESQ. BERNSTEIN LITOWITZ BERGER & GROSSMAN LLP 1285 Avenue of the Americas New York, New York 10019 Attorneys for Plaintiff	Joshua H. Reisman, Esq. Robert R. Warns, III, Esq. REISMAN SOROKAC 8965 South Eastern Avenue, Suite 382 Las Vegas, NV 89123 James C. Dugan, Esq. Tariq Mundiya, Esq. Mary Warren, Esq. Sameer Advani, Esq. WILLKIE FARR & GALLAGHER LLP 787 Seventh Avenue New York, NY 10019 Attorneys for Defendant Charles W. Ergen and Cantey Ergen
J. Stephen Peek, Esq. Robert J. Cassity, Esq. HOLLAND & HART LLP 9555 Hillwood Drive, 2nd Floor Las Vegas, NV 89134 David C. McBride, Esq. Robert S. Brady, Esq. C. Barr Flinn, Esq. YOUNG, CONWAY, STARGATT & TAYLOR, LLP Rodney Square 1000 North King Street Wilmington, DE 1980 Attorneys for the Special Litigation Committee of Nominal Defendant DISH Network Corporation	

/s/ Karen Mandall
an Employee of Brownstein Hyatt Farber Schreck, LLP

JEFFREY S. RUGG, ESQ.
Nevada Bar No. 10978
MAXIMILIEN D. FETAZ, ESQ.
Nevada Bar No. 12737
BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, Nevada 89106-4614
Telephone: (702) 382-2101
Fax: (702) 382-8135
Email: jrugg@bhfs.com
Email: mfetaz@bhfs.com

Of Counsel:
Robert J. Giuffra, Jr.
Brian T. Frawley
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, NY 10004

Attorneys for Defendants James DeFranco, David K. Moskowitz and Carl E. Vogel

DISTRICT COURT

CLARK COUNTY, NEVADA

JACKSONVILLE POLICE AND FIRE PENSION FUND, derivatively on behalf of nominal defendant DISH NETWORK CORPORATION, Plaintiff, v. CHARLES W. ERGEN; GEORGE R. BROKAW; JAMES DEFRANCO; CANTEY M. ERGEN; DAVID K. MOSKOWITZ; CHARLES M. LILLIS; TOM A. ORTOLF; CARL E. VOGEL; THOMAS A. CULLEN; KYLE J. KISER; R. STANTON DODGE; Defendants. DISH NETWORK CORPORATION, a Nevada corporation, Nominal Defendant.	CASE NO.: A-13-686775-B DEPT NO.: XI **DECLARATION OF JEFFREY S. RUGG, ESQ. IN SUPPORT OF DIRECTOR DEFENDANTS' MOTION TO DISMISS THE SECOND AMENDED COMPLAINT**

I, Jeffrey S. Rugg, declare as follows:

1. I am an attorney with the law firm of Brownstein Hyatt Farber Schreck LLP, one of the counsel for Defendants James DeFranco, David K. Moskowitz and Carl E. Vogel (the "Director Defendants") in the above-captioned action. I have personal knowledge of the facts stated in this declaration and am competent to attest to them if called upon to do so. I make this Declaration in support of the Director Defendants' Motion to Dismiss the Second Amended Complaint.

2. Attached as **Exhibit A** is a true and correct copy of excerpted portions of the transcript of the December 10, 2013 bankruptcy proceedings in *In re LightSquared, Inc.*, Case No. 12-12080-scc (Bank. S.D.N.Y.).

3. Attached as **Exhibit B** is a true and correct copy of a December 31, 2007 Schedule 14C Information Statement filed by EchoStar Communications Corporation (now DISH Network Corporation) with the U.S. Securities and Exchange Commission.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 29th day of August, 2014.

JEFFREY S. RUGG, ESQ.

BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
702.382.2101

Exhibit A

In Re:

LIGHTSQUARED INC., et al.

Case No. 12-12080-scc

December 10, 2013

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
Case No. 12-12080-scc; Adv. Proc. No. 13-01390-scc
- -x
In the Matter of:

LIGHTSQUARED, INC., et al.,
Debtors.

- -x
HARBINGER CAPITAL PARTNERS LLC, et al.,
Plaintiffs,
- against -
ERGEN, et al.,
Defendants.
- -x
United States Bankruptcy Court
One Bowling Green
New York, New York
December 10, 2013
1:19 PM
B E F O R E:
HON. SHELLEY C. CHAPMAN
U.S. BANKRUPTCY JUDGE

Doc# 69 Motion to Dismiss the Complaint-In-Intervention (related document(s)66) filed by James C. Dugan on behalf of Charles W. Ergen, SP Special Opportunities, LLC.

Doc# 72 Motion to Dismiss Adversary Proceeding Notice of Motion to Dismiss the Complaint-In-Intervention.

Doc# 83 Notice of Motion to Dismiss Second Amended Complaint (related document(s)74) filed by James C. Dugan on behalf of SP Special Opportunities, LLC.

Transcribed by: David Rutt
eScribers, LLC
700 West 192nd Street, Suite #607
New York, NY 10040
(973)406-2250
operations@escribers.net

A P P E A R A N C E S :

MILBANK, TWEED, HADLEY & MCCLOY LLP

Attorneys for Debtors

One Chase Manhattan Plaza

New York, NY 10005

BY: ALAN J. STONE, ESQ.

MATTHEW S. BARR, ESQ.

KAREN GARTENBERG, ESQ.

AKIN GUMP STRAUSS HAUER & FELD LLP

Attorneys for U.S. Bank and MAST Capital Management

One Bryant Park

New York, NY 10036

BY: PHILIP C. DUBLIN, ESQ.

DEBORAH NEWMAN, ESQ.

KASOWITZ, BENSON, TORRES & FRIEDMAN LLP
Attorneys for Harbinger Capital Partners
1633 Broadway
New York, NY 10019

BY: DAVID M. FRIEDMAN, ESQ.
CHRISTINE A. MONTENEGRO, ESQ.

KIRKLAND & ELLIS LLP
Attorneys for the Special Committee
601 Lexington Avenue
New York, NY 10022

BY: JOSHUA A. SUSSBERG, ESQ.

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
Attorneys for LightSquared Ad Hoc Preferred LP Group
Four Times Square
New York, NY 10036

BY: SHANA A. ELBERG, ESQ.

SULLIVAN & CROMWELL LLP
Attorneys for EchoStar, DISH and L-Band Acquisition
125 Broad Street
New York, NY 10004

BY: ROBERT J. GIUFFRA, JR., ESQ.
BRIAN D. GLUECKSTEIN, ESQ.

WILLKIE FARR & GALLAGHER LLP
Attorneys for Special Opportunities, LLC
787 Seventh Avenue
New York, NY 10019

BY: JAMES C. DUGAN, ESQ.
RACHEL C. STRICKLAND, ESQ.

conclusory allegations of injury and damage. It's about things that might happen in the future or things that happened in the past. To the extent it's with respect to things that happened in the past, that's things that are within their knowledge and they should be able to put it in a complaint. They haven't done so. So Your Honor, I don't think they've pled injury, damage, and that's an element of a tortious interference claim.

THE COURT: Okay. Thank you.

MR. GIUFFRA: Thank you.

THE COURT: Anything else?

MR. DUGAN: Your Honor, I don't have any argument, but I just wanted to amend something --

THE COURT: Sure.

MR. DUGAN: -- to point something out. I know you had questions about the release, and what -- the release clearly was troubling, in some respect, to Your Honor. We just wanted to invite Your Honor -- I'll give you the docket number of the release, if you -- I don't know if you've looked at it any time recently, but it's docket number 970. It's exhibit to the disclosure statement -- Exhibit F to the disclosure statement of the ad hoc, I think, secured lenders group. And I think, Your Honor, if you look at the release and the language of the release, our view is it doesn't show an identity of interest between LBAC and SPSO, but I don't want to argue it; I just wanted to point out that that's where it is.

THE COURT: I don't know what that statement means, Mr. Dugan. So if you want to unpack it, that's fine, but I don't understand what the point is of what you just said.

MR. DUGAN: Well, it's just -- the point is, Your Honor, the release is a very standard release. It doesn't spell out any disallowance claim. It doesn't highlight any disallowance claim.

THE COURT: Well, I don't know what to do about this, because this issue comes up about every four hours like clockwork. And I've asked before if that means that it means an affirmative -- a release of affirmative claims, damage claims, or if it means that as a condition to the LBAC bid, SPSO's claims must be allowed in full. And I was told before that it means the latter; it means both. So I don't know now if you're trying to tell me something different from that.

MS. STRICKLAND: Your Honor, may I address this?

THE COURT: Sure.

MS. STRICKLAND: Because I addressed this the first time.

THE COURT: Yes.

MS. STRICKLAND: So when Your Honor asked me the question of what does the release mean, I wanted to answer you to let you know all of the possible effects of the drafting. What I heard Your Honor to say today was you infer something from the fact that LBAC was drafting to get the affirmative allowance of SPSO's claims. That is not what the release says.

However, in the same way that "claim", as broadly defined under 101(5) of the Code, can encompass a whole lot of things, I didn't want Your Honor to feel that we had misled you when you say does it include this, does it include this, does it include this, if we later came back and said, yes, it's a super-broad general release; it includes all of those things, that you would not think, well, that's not what you told me before. But when LBAC, as far as Your Honor drawing an inference about drafting implies a relationship between those parties because LBAC was drafting to protect parties it had an identity of interest with, I think that goes too far.

THE COURT: But --

MS. STRICKLAND: It is a very broad --

THE COURT: But here's the part --

MS. STRICKLAND: -- general release --

THE COURT: Here's the part that I don't understand, that -- and I mean, you're inviting me to go there, so I'm going to go there with you. Mr. Ergen forms LBAC, right?

MS. STRICKLAND: Correct.

THE COURT: Okay. LBAC makes the bid on behalf of -- it's going to be some --

MS. STRICKLAND: LBAC submitted an offer letter on May 15th --

THE COURT: Right.

MS. STRICKLAND: -- Your Honor.

THE COURT: And it's going to be some combination of, right?

MS. STRICKLAND: It leaves the possibility open.

THE COURT: Cor --

MS. STRICKLAND: At the time he bids --

THE COURT: Right.

MS. STRICKLAND: -- he's letting the target know that --

THE COURT: That --

MS. STRICKLAND: -- at some point --

THE COURT: Right.

MS. STRICKLAND: -- the situation may change, but as of right now --

THE COURT: It --

MS. STRICKLAND: -- LBAC is entirely owned by Mr. Ergen.

THE COURT: Entirely owned by him.

MS. STRICKLAND: Correct.

THE COURT: Right. And before that bid gets put in, right, the release means that his debt claim gets paid in full.

MS. STRICKLAND: Your Honor, at the time that the May 15th letter went in, it was merely a letter. There was no asset purchase agreement.

THE COURT: Okay.

MS. STRICKLAND: There was no --

THE COURT: Then skip forward to when there is an asset purchase agreement.

MS. STRICKLAND: -- document whatsoever. So at the point in time that there is an asset purchase agreement, there is a -- prior to the submission of the bid, DISH decides that it wants to acquire LightSquared. It transfers the ownership interest in the acquisition vehicle, which is LBAC, for a dollar.

THE COURT: Right.

MS. STRICKLAND: And a purchase agreement comes into being that has a broad general release --

THE COURT: Right.

MS. STRICKLAND: -- and a broad general release says against the debtors' claims against the LP debtors' sellers, is the way its drafted -- the LP debtors' claims, as broadly as that could be defined, and it has that long litany of chose as an action and all of these other --

THE COURT: Right.

MS. STRICKLAND: -- words that lawyers include in these broad general releases, against the purchaser or purchaser's affiliates. And it's just binding on sellers.

THE COURT: Right.

MS. STRICKLAND: It's not -- on the LP debtors. It's not binding --

THE COURT: Right.

MS. STRICKLAND: -- on anyone else.

THE COURT: Right.

MS. STRICKLAND: But it's this broad general release. So when Your Honor said, well, could the release do this, could the release do this, could it bar all of these things, the answer is yes, it could, because it's a very broad --

THE COURT: But the ques --

MS. STRICKLAND: -- broadly worded agreement.

THE COURT: But the --

MS. STRICKLAND: But that's different from is it a condition that the claim be allowed. There's nothing in the release, whatsoever, that says SPSO, that talks about debt, that talks about allowance at all.

THE COURT: But if I were to say right now --

MS. STRICKLAND: Um-hum.

THE COURT: -- I am separating out the claims allowance process, I'm separating out the 502(b)(1) proceeding from the bidding, you're not going to know until next June whether or not that claim is allowed. The bids not going to go forward. The facts on the ground are that the bid, as I understand it, requires that the claim be allowed in full. That's what -- I mean, if that's not the case, somebody ought to tell me. I keep asking the same question over and over again.

MS. STRICKLAND: Your Honor, that's why I think Mr. Dugan was pointing you to the language of the release itself, and the docket number, which is on your docket --

THE COURT: I know --

MS. STRICKLAND: -- before Your Honor, because there are -- as an example, the LP debtors are the only parties giving a release. If the LP debtors want the bag of money that LBAC is offering, they have to agree to the agreement, or they have to negotiate a different agreement. But there's not any other way around that.

THE COURT: Right, and the question is --

MS. STRICKLAND: You are correct.

THE COURT: -- as it relates to what we're talking about now and not the auction, the question is, is why is a bid of DISH, which is a separate entity from SPSO -- say, the defendants -- why does the bid of DISH care about whether or not SPSO gets its claim in full? DISH has determined that it wants to pay 2.2 billion dollars for the spectrum. It shouldn't care what happens to that 2.2 billion dollars after it gets into the debtors' hands, whether or not -- whoever's claims are allowed. DISH wants the spectrum; it's going to pay 2.2 billion dollars, and there's going to be that switch. And what happens after that should be of no concern to DISH. That's the theory. That's what I'm focused on --

MS. STRICKLAND: I understand, Your Honor.

THE COURT: -- only insofar as it relates to the allegations of identity of interest.

MS. STRICKLAND: And Your Honor is well aware that when parties draft general releases, they say, me, my affiliates --

THE COURT: Sure.

MS. STRICKLAND: -- successors, assigns. That's what the document says.

THE COURT: But now that all of this has shaken out, it's still in there, and query whether taking it out now would matter, because it was in there. In other words, when LBAC went from being owned by Mr. Ergen to being owned by DISH, nothing happened. So it's in there, it was in there, it still is in there, and I'm not so sure taking it out now makes any difference. But I'm just not --

MS. STRICKLAND: Right, Your Honor, obviously you're not negotiating a credit agreement with me, and were you asking me to negotiate that provision --

THE COURT: Right.

MS. STRICKLAND: -- I would refer you to someone else, because as a result of the injunction in Nevada, I would not be the lawyer having that --

THE COURT: Right.

MS. STRICKLAND: -- negotiation. However, this isn't a negotiation. This is a question about whether or not facts as pled infer something --

THE COURT: Right.

MS. STRICKLAND: -- or don't infer something. And my only reason for rising at all is I don't think that you can infer that because as of a moment in time in July a company wrote a general release that said affiliates, successors, assigns, claims, broad, broad, broad, broad, broad, broad, that that means that there was an identity of interest with everybody in that broad release.

THE COURT: Sure. I --

MS. STRICKLAND: That was --

THE COURT: I agree with you.

MS. STRICKLAND: -- my only point, and not --

THE COURT: I --

MS. STRICKLAND: And to distinguish from your prior question of me of what is the effect of this broad general language, I didn't want Your Honor to think that there was a gotcha somewhere in there. A broad release is a broad release, as opposed to it demonstrates an identity of interest or an intent, frankly, for LBAC to get something for SPSO, as opposed to the contract says what it says, it's been public, it's been there all along, and it's very, very broad, because of routine language, not because of a sneaky conspiracy identity of interest. So it's merely about the inference. And if there becomes an appropriate point in time for anyone to negotiate with LBAC regarding any aspect of the agreement, I'm sure they'll ask all of the things they want to ask, and the appropriate lawyers, who are permitted under various legal orders, will respond. But that's not --

THE COURT: Okay.

MS. STRICKLAND: -- where we are today. Today we're merely concerned about the inferences, and I didn't want Your Honor to think that the release said I require SPSO's --

THE COURT: Look, I mean everybody --

MS. STRICKLAND: -- claims to be allowed; it doesn't.

THE COURT: We keep -- we're all talking about Nevada, and then we're not talking about Nevada. And what I've tried to do here, which I think is my job, is to look at the complaint, and to look at reasonable inferences that can be drawn from the complaint, and apply Iqbal versus Twombly and all the very standard issue Second Circuit law on whether and when you let a complaint survive a motion to dismiss.

So I'm not sure how -- if you went back and look over this transcript, probably a law professor would say that ninety percent of what we talked about has nothing to do with the motion to dismiss. And I just want to say back to you, I appreciate what you're saying, and I'm trying very hard to not get distracted by things that really aren't in the complaint. To your point -- right? You're making this point because you don't want me to be distracted by something that's not in the complaint, right?

MS. STRICKLAND: That's correct. But Your Honor, the only reason why Nevada came in here -- because I was also the lawyer that stood before you, not that long ago, and said Nevada is totally irrelevant. The reason why Nevada was so prominent today is because when plaintiffs pled their complaints, they attached things like reports that got filed in Nevada, e-mails about Nevada, and facts from Nevada in their complaint. And our only point, on this side of the table, is you can't plead something and say please only look at one one-hundredth of it. If they're going to use it, they have to be comfortable with the entire record they're introducing. If they're not going to use it -- I mean, Mr. Stone was perhaps exaggerating a bit when he said there were a couple of bullet points. If you look at the exhibits, which are also attached to the complaint, there's reams of Nevada. And they were not new facts introduced by any defendant. They were all facts introduced by plaintiff. And all the defendants have said, in our pleadings and today, is if you're going to allow this snippet and that snippet, you can't take it out of context. That's part of their complaint; they have to live with the whole complaint.

THE COURT: Okay. All right. Anyone else?

All right. What I'd like to do is take another break and have you come back at 5 o'clock, and I need to give you a

Exhibit B

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE 14C

INFORMATION STATEMENT PURSUANT TO SECTION 14(c)
OF THE SECURITIES EXCHANGE ACT OF 1934

Check the appropriate box:
☐ Preliminary Information Statement
☐ Confidential, for Use of the Commission Only (as permitted by Rule 14c-5(d)(2))
☑ Definitive Information Statement

ECHOSTAR COMMUNICATIONS CORPORATION
(Name of Registrant As Specified In Its Charter)

Payment of Filing Fee (Check the appropriate box):

☑ No fee required:

Fee computed on table below per Exchange Act Rules 14c-5(g) and 0-11.

(1) Title of each class of securities to which transaction applies

(2) Aggregate number of securities to which transaction applies:

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (Set forth the amount on which the filing fee is calculated and state how it was determined):

(4) Proposed maximum aggregate value of transaction:

$ ____________________

(5) Total fee paid:

$ ____________________

☐ Fee paid previously with preliminary materials:

Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

(1) Amount Previously Paid:

(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4) Date Filed:

ECHOSTAR COMMUNICATIONS CORPORATION

9601 South Meridian Boulevard

Englewood, Colorado 80112

December 31, 2007

NOTICE OF STOCKHOLDER ACTION TO BE TAKEN PURSUANT TO THE WRITTEN CONSENT OF THE MAJORITY STOCKHOLDER

WE ARE NOT ASKING YOU FOR A PROXY AND YOU ARE REQUESTED NOT TO SEND US A PROXY.

This Information Statement is furnished to the stockholders of EchoStar Communications Corporation (**"EchoStar," "we," "us," "our"** or the **"Company"**), a Nevada corporation, in connection with the approval by the Company's Board of Directors and a stockholder holding a majority of the Company's voting power to amend the Company's Articles of Incorporation to:

(i) change the name of the Company to "DISH Network Corporation" to reflect the Company's decision to focus on its direct broadcast satellite subscription television service following an anticipated spin-off of certain portions of the Company's business and assets;

(ii) adopt provisions relating to "corporate opportunities" to clarify the rights of the Company and the duties of the Company's directors and officers in anticipation of agreements between, and overlap among the directors and officers of, the Company and an independent corporation created in connection with the spin-off; and

(iii) adopt provisions clarifying the procedures for the conversion of Class B Common Stock and Class C Common Stock that are held in uncertificated form into Class A Common Stock.

Stockholders of record at the close of business on December 19, 2007 are entitled to notice of this stockholder action by written consent. A stockholder representing a majority of the voting power of the Company's issued and outstanding shares of common stock has consented in writing to the action to be taken. Accordingly, your approval is not required and is not being sought and you will not have dissenter's rights. The accompanying information statement is provided solely for your benefit.

Please read this notice carefully. It describes the change in the Company's name, the adoption of provisions relating to corporate opportunities and certain changes to conversion rights in the Company's Articles of Incorporation and contains certain related information.

Pursuant to Rule 14c-2 under the Securities Exchange Act of 1934, as amended, the amendments cannot become effective until twenty (20) days after the date this Information Statement is mailed to the Company's stockholders. We anticipate that the amendments will become effective on or after January 20, 2008.

By Order of the Board of Directors,

/s/ R. Stanton Dodge

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

This information statement is first being mailed to our stockholders on or about December 31, 2007.

INFORMATION STATEMENT

pursuant to Section 14 of the
Securities and Exchange Act of 1934 and

Regulation 14C and Schedule 14C thereunder

This Information Statement is circulated to advise our stockholders of action taken without a meeting upon the written consent of a stockholder representing a majority of the voting power of the outstanding shares of the common stock of the Company.

WE ARE NOT ASKING YOU FOR A PROXY AND
YOU ARE REQUESTED NOT TO SEND US A PROXY.

GENERAL

This Information Statement has been filed with the Securities and Exchange Commission (**"SEC"**) and is being furnished to the holders of the outstanding shares of Class A Common Stock, par value $0.01 and Class B Common Stock, par value $0.01 (collectively, the **"Common Stock"**), of the Company as of December 27, 2007 (the **"Record Date"**). The purpose of this Information Statement is to provide notice that a stockholder holding a majority of the voting power of the Company's common stock, has, by written consent, approved amendments to our Articles of Incorporation to change the Company's name from "EchoStar Communications Corporation" to "DISH Network Corporation" (the **"Name Change"**), to adopt certain corporate opportunities provisions into our Articles of Incorporation (the **"Corporate Opportunities Amendment"**), to adopt certain changes to the conversion rights provisions of our Articles of Incorporation (the **"Conversion Rights Amendment"** and, together with the Name Change and the Corporate Opportunities Amendment, the **"Amendment"**).

This Information Statement will be mailed on or about December 31, 2007 to those persons who were stockholders of the Company as of the close of business on the Record Date. The Amendment is expected to become effective on or after January 20, 2008. The Company will pay all costs associated with the distribution of this Information Statement, including the costs of printing and mailing.

As a stockholder holding a majority of the voting power of the Company's common stock has already approved the Amendment by written consent, the Company is not seeking approval for the Amendment from any of the Company's other stockholders, and the Company's other stockholders will not be given an opportunity to vote on the Amendment. All necessary corporate approvals have been obtained, and this Information Statement is being furnished solely for the purpose of providing advance notice to the Company's stockholders of the Amendment as required by the Securities Exchange Act of 1934 (the **"Exchange Act"**).

REASONS FOR THE NAME CHANGE

The Company is changing its name to "DISH Network Corporation" to reflect the Company's decision to focus on its direct broadcast satellite subscription television service in connection with an anticipated spin-off of certain portions of its business. The Company's new name, DISH Network Corporation, will reflect the publicly recognized name of its subscription television service. In the spin-off, the Company plans to transfer certain lines of business and assets to a new wholly-owned subsidiary of the Company, which will be initially named "EchoStar Holding Corporation" (**"EHC"**) and upon effectiveness of the spin-off will become an independent company. The spun-off portions of the Company will include the Company's broadcast satellite receiver, antennae and commercial satellite lines of business and assets, which currently operate under the "EchoStar" name. In addition, it is anticipated that as part of the transfer of assets in the spin-off, EHC will receive all rights to the trade name and trademark "EchoStar" and will subsequently change its name to "EchoStar Corporation."

TABLE OF CONTENTS

GENERAL
REASONS FOR THE NAME CHANGE
REASONS FOR THE CORPORATE OPPORTUNITIES AMENDMENT
REASONS FOR CONVERSION RIGHTS AMENDMENT
ACTION TAKEN BY MEETING
EXPECTED DATE FOR EFFECTING THE AMENDMENT
OUTSTANDING VOTING STOCK OF THE COMPANY
SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT
AMENDMENT OF THE COMPANY'S ARTICLES OF INCORPORATION
DISSENTER'S RIGHTS OF APPRAISAL
INTEREST OF CERTAIN PERSONS IN MATTERS TO BE ACTED UPON
HOUSEHOLDING AND WHERE YOU CAN FIND MORE INFORMATION
Annex 1

REASONS FOR THE CORPORATE OPPORTUNITIES AMENDMENT

The Company is amending its Articles of Incorporation to adopt certain corporate opportunities provisions to delineate both the rights of the Company and the duties of our directors and officers with respect to transactions between the Company and EHC and as to any potential transactions that our directors and officers become aware of, which could be considered business opportunities of the Company. The Company is adopting these provisions in anticipation of the overlap among the directors and officers of the Company and EHC, and in consideration of this overlap, recognizing that, as the Company and EHC may engage in related areas of business and as a result compete for business opportunities, clear and defined guidelines on the conduct and affairs of the Company and our directors and officers as they relate to such matters are essential.

In addition to certain other related matters, the new corporate opportunities provisions set forth the following guidelines on transactions with EHC and the scope of the doctrine of corporate opportunities:

- no transaction that the Company has entered into with EHC while EHC was a wholly-owned subsidiary of the Company shall be void or voidable because of the relationship between the two companies, the presence of any EHC director or officer at a board meeting which authorized any such transaction or that such director or officer's vote was counted in such authorization;
- the Company may enter into future transactions with EHC, including agreements not to compete and agreements causing each company's directors and officers to allocate business opportunities between the Company and EHC; and
- the Company's director's and officers are subject to the doctrine of corporate opportunities only with respect to business opportunities in which the Company has expressed an interest as determined by our board of directors and appearing in our Company minutes.

The new provisions regarding corporate opportunities will define and regulate the conduct and affairs of the Company and our directors and officers in connection with the matters described above to the fullest extent allowed by Nevada law and will be adopted in accordance with Section 78 of the Nevada Revised Statutes (the **"NRS"**). Notwithstanding these new provisions regarding corporate opportunities, the Company's Board of Directors has adopted a written policy for the review and approval of transactions involving related parties, such as EHC, our and EHC's mutual directors and executive officers and their immediate family members. In order to survey these transactions, the Company distributes questionnaires to its officers and directors on a quarterly basis. The Company's General Counsel directs the appropriate review of all potential related-party transactions and schedules their presentation at the next regularly-scheduled meetings of the Audit Committee and the Board of Directors. Both the Audit Committee and the Board of Directors must approve these transactions, with all interested parties abstaining from the vote. Once each calendar year, the Audit Committee and the Board of Directors undertake a review of all recurring potential related-party transactions. Both the Audit Committee and the Board of Directors must approve the continuation of each such transaction, with all interested parties abstaining. For the entire text of the new corporate opportunities provisions, see the Certificate of Amendment of Articles of Incorporation attached below as Annex 1.

REASONS FOR CONVERSION RIGHTS AMENDMENT

The Company is amending its Articles of Incorporation to conform to the Direct Registration System (recently- adopted Nasdaq Marketplace Rule 4350(l)) and to adopt certain provisions to clarify the procedures for the conversion of Class B Common Stock and Class C Common Stock held in the form of uncertificated shares into Class A Common Stock.

The new conversion rights provision will provide that holders of uncertificated shares of Class B Common Stock and Class C Common Stock shall effect conversion of their shares by instructing the Company's transfer agent to surrender such shares to the Company and that upon conversion of the Company's uncertificated shares, the Company shall instruct the Company's transfer agent to effect a book entry transfer to reflect such Class A Common Stock issuable upon conversion.

ACTION TAKEN BY MEETING

The Company's Board of Directors approved the Amendment at a meeting on October 16, 2007. The Amendment has been approved by the written consent of a stockholder holding a majority of the voting power of the Company's Common Stock.

Pursuant to Section 78.390 of the NRS, the approval of a majority of the Company's voting power is required in order to effect the Amendment. Section 78.320(2) of the NRS eliminates the need to hold a special meeting of the Company's stockholders to approve the Amendment by providing that, unless the Company's Articles of Incorporation or Bylaws state otherwise, any action required or permitted to be taken at a meeting of the stockholders may be taken without a meeting if, before or after the action, a written consent is signed by stockholders holding at least a majority of the Company's voting power. In order to eliminate the costs and management time involved in holding a special meeting and in order to effect the Amendment as early as possible, the Company's Board of Directors resolved to proceed with the Amendment by written consent of a majority of the Company's stockholders entitled to vote thereon.

EXPECTED DATE FOR EFFECTING THE AMENDMENT

Under Section 14(c) of the Exchange Act and Rule 14c-2 promulgated thereunder, the Amendment cannot be effected until 20 days after the date this Information Statement is sent to the Company's stockholders. This Information Statement will be sent on or about December 31, 2007 (the **"Mailing Date"**) to the stockholders of the Company as of the Record Date. The Company expects to effect the Amendment by filing a Certificate of Amendment to the Company's Articles of Incorporation with the Nevada Secretary of State no earlier than 20 days after the Mailing Date. The effective date of the Amendment is expected to be on or about January 20, 2008 (the **"Effective Date"**).

Pursuant to Subsection 78.390(5) of the NRS and the consent resolution adopted by the stockholder, notwithstanding the fact that the Amendment has been approved by the Company's majority stockholder, the Company's Board of Directors may, by resolution, abandon the Name Change, the Corporate Opportunities Amendment and/or the Conversion Rights Amendment at any time prior to the Effective Date without any further action by the Company's stockholders.

OUTSTANDING VOTING STOCK OF THE COMPANY

The Company fixed the close of business on December 19, 2007 as the Record Date for determining the stockholders entitled to receive copies of this Information Statement. As of the Record Date, there were 210,098,835 shares of Class A Common Stock and 238,435,208 shares of Class B Common Stock outstanding. The Company's Class A Common Stock (**"Class A Shares"**) and Class B Common Stock (**"Class B Shares"**) constitute the only outstanding classes of voting securities of the Company. Each of the Class A Shares is entitled to one vote per share on each proposal to be considered by our stockholders. Each of the Class B Shares is entitled to ten votes per share on each proposal to be considered by our stockholders. The holders of Class A Shares and Class B Shares vote together without regard to class.

SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The following table sets forth, to the best of our knowledge, the beneficial ownership of our voting securities as of November 30, 2007 for (i) each person known to us to be the beneficial owner of more than 5% of any class of our voting securities, (ii) each of our directors, (iii) each of our chief executive officer, chief financial officer and three other most highly compensated persons acting as one of our executive officers (collectively, the **"Named Executive Officers"**) and (iv) all of our executive officers and directors as a group. Unless otherwise indicated, each person listed in the following table (alone or with family members) has sole voting and dispositive power over the shares listed opposite such person's name.

Name(1)	Amount and Nature of Beneficial Ownership	Percentage of Class
Class A Common Stock(2):		
Charles W. Ergen(3),(4)	209,354,741	50.0%
Cantey Ergen(5)	208,554,741	49.9%
David K. Moskowitz(6)	27,015,268	11.4%
Barclays Global Investors, NA.(7)	21,901,450	10.4%
Dodge & Cox(8)	14,654,084	7.0%
Fairholme Capital Management, L.L.C.(9)	13,713,642	6.5%
Harris Associates L.P.(10)	10,403,450	5.0%
James DeFranco(11)	6,253,456	3.0%
Michael T. Dugan(12)	524,480	*
David J. Rayner(13)	322,250	*
Carl E. Vogel(14)	320,417	*
Tom A. Ortolf(15)	121,200	*
C. Michael Schroeder(16)	85,100	*
O. Nolan Daines(17)	72,535	*
Steven R. Goodbarn(18)	70,000	*
Bernard L. Han(19)	70,000	*
Gary S. Howard(20)	60,100	*
All Directors and Executive Officers as a Group (19 persons)(21)	245,947,106	58.2%
Class B Common Stock (22):		
Charles W. Ergen	208,059,154	87.3%
Cantey Ergen(23)	208,059,154	87.3%
Trusts(24)	26,130,903	11.0%
All Directors and Executive Officers as a Group (19 persons)(21)	234,190,057	98.2%

* Less than 1%.

(1) Except as otherwise noted below, the address of each such person is 9601 S. Meridian Blvd., Englewood, CO 80112.

(2) As of the close of business on November 30, 2007, there were 210,061,810 outstanding shares of Class A Common Stock. The following table sets forth, to the best knowledge of the Company, the actual ownership of the Company's Class A Common Stock (including options exercisable within 60 days) without taking into account the shares into which the Company's Class B Common Stock is convertible as of the close of business on November 30, 2007 by: (i) each person known by the Company to be the beneficial owner of more than five percent of any class of the Company's voting shares; (ii) each director of the Company; (iii) each Named Executive Officer; and (iv) all directors and executive officers as a group:

Name	Amount and Nature of Beneficial Ownership	Percentage of Class
Class A Common Stock:		
Barclays Global Investors, NA	21,901,450	10.4%
Dodge & Cox	14,654,084	7.0%
Fairholme Capital Management, L.L.C.	13,713,642	6.5%
Harris Associates L.P.	10,403,450	5.0%
James DeFranco	6,253,456	3.0%
Charles W. Ergen	1,295,587	*
David K. Moskowitz	884,365	*
Michael T. Dugan	524,480	*
Cantey Ergen	495,587	*
David J. Rayner	322,250	*
Carl E. Vogel	320,417	*
Tom A. Ortolf	121,200	*
C. Michael Schroeder	85,100	*
O. Nolan Daines	72,535	*
Steven R. Goodbarn	70,000	*
Bernard L. Han	70,000	*
Gary S. Howard	60,100	*
All Directors and Executive Officers as a Group (19 persons)	11,757,049	5.5%

* Less than 1%.

(3) Mr. Ergen is deemed to own beneficially all of the Class A Shares owned by his spouse, Mrs. Ergen. Mr. Ergen's beneficial ownership includes: (i) 448,652 Class A Shares; (ii) 18,521 Class A Shares held in the Company's 401(k) Employee Savings Plan, (which we refer to as the 401(k) Plan); (iii) the right to acquire 800,000 Class A Shares within 60 days upon the exercise of employee stock options; (iv) 235 Class A Shares held by Mrs. Ergen; (v) 1,004 Class A Shares held in the 401(k) Plan held by Mrs. Ergen; (vi) 27,175 Class A Shares held as custodian for his children; and (vii) 208,059,154 Class A Shares issuable upon conversion of Mr. Ergen's Class B Shares. Mr. Ergen's beneficial ownership of Class A Shares excludes 30,376,054 Class A Shares issuable upon conversion of Class B Shares held by certain trusts established by Mr. Ergen for the benefit of his family.

(4) The percentage of total voting power held by Mr. Ergen is approximately 80% after giving effect to the exercise of Mr. Ergen's options exercisable within 60 days.

(5) Mrs. Ergen beneficially owns all of the Class A Shares owned by her spouse, Mr. Ergen, except for Mr. Ergen's right to acquire 800,000 Class A Shares within 60 days upon the exercise of employee stock options.

(6) Mr. Moskowitz's beneficial ownership includes: (i) 124,854 Class A Shares; (ii) 17,713 Class A Shares held in the 401(k) Plan; (iii) the right to acquire 700,000 Class A Shares within 60 days upon the exercise of employee stock options; (iv) 1,328 Class A Shares held as custodian for his minor children; (v) 8,184 Class A Shares held as trustee for Mr. Ergen's children; (vi) 30,000 Class A Shares held by a charitable foundation for which Mr. Moskowitz is a member of the Board of Directors; (vii) 2,286 Class A Shares held in the employee stock purchase plan; and (viii) 26,130,903 Class A Shares issuable upon

conversion of the Class B Shares held by certain trusts established by Mr. Ergen for the benefit of Mr. Ergen's family for which Mr. Moskowitz is trustee.

(7) The address of Barclays Global Investors, N.A. ("Barclays") is 45 Fremont Street, San Francisco, California, 94105. The shares listed as beneficially owned by Barclays includes 17,295,435 shares owned by Barclays Global Investors, N.A., of which Barclays has sole voting power as to 15,358,895 shares, as well as (i) 894,105 shares owned by Barclays Global Fund Advisors, (ii) 2,443,128 shares owned by Barclays Global Investors, LTD., (iii) 245,697 shares owned by Barclays Global Investors Japan Trust and Banking Company Limited and (iv) 1,023,085 shares owned by Barclays Global Investors Japan Limited. This information is based solely upon a Schedule 13G filed on May 9, 2007.

(8) The address of Dodge & Cox is 555 California Street, 40th Floor, San Francisco, California, 94104. Of the shares beneficially owned, Dodge & Cox has sole voting power as to 13,878,279 shares. This information is based solely upon a Schedule 13G filed on February 8, 2007.

(9) The address of Fairholme Capital Management, L.L.C. ("Fairholme") is 1001 Brickell Bay Drive, Suite 3112, Miami, Florida, 33131. Of the shares beneficially owned, Fairholme has shared voting power as to 10,684,224 shares and shared dispositive power as to all 13,713,642 shares. This information is based solely upon a Schedule 13G filed on February 14, 2007.

(10) The address of Harris Associates L.P. ("Harris") is Two North LaSalle Street, Suite 500, Chicago, Illinois, 60602. Of the shares beneficially owned, Harris has shared voting power as to 10,403,450 shares and shared dispositive power as to 9,775,000. This information is based solely upon a Schedule 13G filed on February 14, 2007.

(11) Mr. DeFranco's beneficial ownership includes: (i) 3,762,752 Class A Shares; (ii) 18,521 Class A Shares held in the 401(k) Plan; (iii) the right to acquire 164,000 Class A Shares within 60 days upon the exercise of employee stock options; (iv) 50,000 Class A Shares held as custodian for his minor children; (v) 8,183 Class A Shares held in the names of his children; and (vi) 2,250,000 Class A Shares controlled by Mr. DeFranco as general partner of a partnership.

(12) Mr. Dugan's beneficial ownership includes: (i) 430 Class A Shares; (ii) 3,030 Class A Shares held in the 401(k) Plan; and (iii) the right to acquire 521,020 Class A Shares within 60 days upon the exercise of employee stock options.

(13) Mr. Rayner's beneficial ownership includes: (i) 5 Class A Shares; (ii) 252 Class A Shares held in the 401(k) Plan; and (iii) the right to acquire 321,993 Class A Shares within 60 days upon the exercise of employee stock options.

(14) Mr. Vogel's beneficial ownership includes: (i) 10,165 Class A Shares; (ii) 252 Class A Shares held in the 401(k) Plan; and (iii) the right to acquire 310,000 Class A Shares within 60 days upon the exercise of employee stock options.

(15) Mr. Ortolf's beneficial ownership includes: (i) 200 Class A Shares held in the name of one of his children; (ii) 61,000 Class A Shares held by a partnership of which Mr. Ortolf is a partner; and (iii) the right to acquire 60,000 Class A Shares within 60 days upon the exercise of nonemployee director stock options;

(16) Mr. Schroeder's beneficial ownership includes: (i) 15,100 Class A Shares; and (ii) the right to acquire 70,000 Class A Shares within 60 days upon the exercise of nonemployee director stock options.

(17) Mr. Daines' beneficial ownership includes: (i) 15 Class A Shares; (ii) 519 Class A Shares held in the 401(k) Plan; and (iii) the right to acquire 72,000 Class A Shares within 60 days upon the exercise of employee stock options.

(18) Mr. Goodbarn's beneficial ownership includes: (i) 5,000 Class A Shares; and (ii) the right to acquire 65,000 Class A Shares within 60 days upon the exercise of nonemployee director stock options.

(19) Mr. Han's beneficial ownership includes the right to acquire 70,000 Class A Shares within 60 days upon the exercise of employee stock options.

(20) Mr. Howard's beneficial ownership includes: (i) 100 Class A Shares owned by his spouse; and (ii) the right to acquire 60,000 Class A Shares within 60 days upon the exercise of nonemployee director stock options.

(21) Includes: (i) 4,440,838 Class A Shares; (ii) 90,615 Class A Shares held in the 401(k) Plan; (iii) the right to acquire 4,774,014 Class A Shares within 60 days upon the exercise of employee stock options; (iv) 2,311,000 Class A Shares held in a partnership; (v) 234,059,154 Class A Shares issuable upon conversion of Class B Shares; (vi) 101,570 Class A Shares held in the name of, or in trust for, children and other family members; (vii) 30,000 Class A Shares held by a charitable foundation for which Mr. Moskowitz is a member of its board of directors; (viii) 100 Class A Shares held by a spouse; and (ix) 8,912 Class A Shares held in the employee stock purchase plan. Class A and Class B Common Stock beneficially owned by both Mr. and Mrs. Ergen is only included once in calculating the aggregate number of shares owned by directors and executive officers as a group.

(22) As of the close of business on November 30, 2007, there were 238,435,208 outstanding shares of Class B Common Stock. On November 9, 2007, 4,245,151 shares of Class B Common Stock were contributed to trusts the beneficiaries of which are members of Mr. Ergen's family. Neither Mr. Ergen nor any of the Directors and Executives Officers are the trustee of these trusts.

(23) Mrs. Ergen beneficially owns all of the Class B Shares owned by her spouse, Mr. Ergen.

(24) Held by certain trusts established by Mr. Ergen for the benefit of Mr. Ergen's family of which Mr. Moskowitz is trustee.

AMENDMENT OF THE COMPANY'S ARTICLES OF INCORPORATION

A Certificate of Amendment to the Company's Articles of Incorporation is expected to be filed with the Nevada Secretary of State with respect to the Amendment 20 days after the date that this Information Statement is sent to the Company's stockholders. The Effective Date of the Amendment is expected to be January 20, 2008. However, the Company's Board of Directors reserves the right to abandon the Name Change and/or the Corporate Opportunities Amendment at any time prior to the Effective Date if they deem it appropriate to do so.

DISSENTER'S RIGHTS OF APPRAISAL

The Nevada Revised Statutes do not provide for dissenter's rights in connection with the proposed Amendment to our Articles of Incorporation.

INTEREST OF CERTAIN PERSONS IN MATTERS TO BE ACTED UPON

No director, executive officer, nominee for election as a director, associate of any director, executive officer or nominee or any other person has any substantial interest, direct or indirect, by security holdings or otherwise, in the proposed Amendment to our Articles of Incorporation or in any action covered by the related resolutions adopted by the Board of Directors, which is not shared by all other stockholders.

HOUSEHOLDING AND WHERE YOU CAN FIND MORE INFORMATION

We have adopted a procedure approved by the SEC called "householding." Under this procedure, service providers that deliver our communications to shareholders may deliver a single copy of our proxy statements, annual reports and/or information statements to multiple shareholders sharing the same address, unless one or more of these shareholders notifies us that they wish to continue receiving individual copies. This householding procedure will reduce our printing costs and postage fees.

We will deliver promptly upon written or oral request a separate copy of this Information Statement to a shareholder at a shared address to which a single copy of the document was delivered. Please notify our transfer agent at the address provided below to receive a separate copy of this Information Statement.

If you are eligible for householding, but you and other shareholders with whom you share an address currently receive multiple copies of our proxy statements, annual reports and/or information statements, or if you hold stock in more than one account, and in either case you wish to receive only a single copy for your household, please contact our transfer agent, Computershare Trust Company, P.O. Box 43070, Providence, RI 02940-3070, telephone number 1-877-437-8901.

As a reporting company, we are subject to the informational requirements of the Exchange Act and accordingly file our annual report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, proxy statements and other information with the SEC. The Public may read and copy any materials filed with the SEC at the SEC's Public Reference Room at 100 F Street, NE, Washington, DC 20549. Please call the SEC at (800) SEC-0330 for further information on the Public Reference Room. As an electronic filer, our public filings are maintained on the SEC's Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC. The address of that website is http://www.sec.gov. In addition, our annual report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Exchange Act may be accessed free of charge through our website as soon as reasonably practicable after we have electronically filed such material with, or furnished it to, the SEC. The address of that website is http://www.echostar.com.

You should rely only on the information contained in, or incorporated by reference as an Annex to, this Information Statement. We have not authorized anyone else to provide you with different information. You should not assume that the information in this Information Statement is accurate as of any date other than December 31, 2007, or such earlier date as is expressly set forth herein.

By Order of the Board of Directors

/s/ R. Stanton Dodge

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

Dated: December 31, 2007

Annex 1

Certificate of Amendment of Articles of Incorporation

CERTIFICATE OF AMENDMENT OF
ARTICLES OF INCORPORATION
OF
ECHOSTAR COMMUNICATIONS CORPORATION
(Pursuant to Sections 78.385 and 78.390 of the Nevada Revised Statutes)

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

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

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

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

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

Name

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

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

Voting and Conversion Rights

1. *Voting Rights.*

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

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

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

2. *Conversion Rights*.

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

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

(c) Upon any adjustment of the Conversion Rate then and in each such case the Corporation shall give written notice thereof, by first-class mail, postage prepaid, addressed to the registered holders of Class B Common Stock and Class C Common Stock at the addresses of such holders as shown on the books of the Corporation, which notice shall state the Conversion Rate resulting from such adjustment and the increase or decrease, if any, in the number of shares receivable at such price upon the conversion of Class B Common Stock or Class C Common Stock, setting forth in reasonable detail the method of calculation and the facts upon which such calculation is based.

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

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

(ii) If any capital reorganization or reclassification of the capital stock of the Corporation, or consolidation or merger of the Corporation with another corporation, or the sale of all or substantially all of its assets to another corporation shall be effected in such a way that holders of Class A Common Stock shall be entitled to receive stock, securities or assets with respect to or in exchange for a Class A Common, then, as a condition of such reorganization, reclassification, consolidation, merger or sale, lawful and adequate provision shall be made whereby the holders of Class B Common Stock and Class C Common Stock shall thereafter have the right to receive, in lieu of Class A Common Stock of the Corporation immediately theretofore receivable upon the conversion of such Class B Common Stock and Class C Common Stock, such shares of stock, securities or assets as may be issued or payable with respect to or in exchange for a number of outstanding Class A Common Stock equal to the number of Class A Common Stock immediately theretofore receivable upon the conversion or such Class B Common Stock and Class C Common Stock had such reorganization, reclassification, consolidation, merger or sale not taken place, and in any such case appropriate provision shall be made with respect to the rights and interests of the holders of the Class B Common Stock and Class C Common Stock to the end that the provisions hereof (including without limitation provisions for adjustments of the Conversion Rate and of the number of shares receivable upon the conversion of such Class B Common Stock and Class C Common Stock) shall thereafter be applicable, as nearly as may be, in relation to any shares of stock, securities or assets thereafter receivable upon the conversion of such Class B Common Stock and Class C Common Stock. The Corporation shall not effect any such reorganization, reclassification, consolidation, merger or sale, unless prior to the consummation thereof the surviving corporation (if other than the Corporation), the corporation resulting from such consolidation or the corporation purchasing such assets shall assume by written instrument executed and mailed to the registered holders of the Class B Common Stock and Class C Common Stock at the last address of such holders appearing on the books of the Corporation, the obligation to deliver to such holders such shares of stock, securities or assets as, in accordance with the foregoing provisions, such holders may be entitled to receive.

(e) In case at any time:

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

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

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

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

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

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

Corporate Opportunity

1. *Certain Acknowledgements; Definitions*. The provisions of this Article VIII shall, to the fullest extent permitted by law, delineate the doctrine of "corporate opportunities," as it applies to the Corporation, define the conduct of certain affairs of the Corporation and its Subsidiaries and the Corporation's and its Subsidiaries' directors and officers as they may involve EchoStar Holding Corporation ("EchoStar") and its Subsidiaries, and the powers, rights, duties and liabilities of the Corporation and its Subsidiaries and the Corporation's and its Subsidiaries' directors, officers and employees in connection therewith. In recognition and anticipation that (a) directors and officers of the Corporation and its Subsidiaries may serve as directors, officers and employees of EchoStar and its Subsidiaries, (b) the Corporation and its Subsidiaries, directly or indirectly, may engage and are expected to continue to engage in the same, similar or related lines of business as those engaged in by EchoStar and its Subsidiaries and other business activities that overlap with or compete with those in which EchoStar and its Subsidiaries may engage, (c) the Corporation and its Subsidiaries may have an interest in the same areas of business opportunity as EchoStar and its Subsidiaries, (d) the Corporation and its Subsidiaries may engage in material business transactions with EchoStar and its Subsidiaries, including, without limitation, receiving services from, providing services to or being a significant customer or supplier to EchoStar and its Subsidiaries, and that the Corporation, EchoStar and/or one or more of their respective Subsidiaries may benefit from such transactions, and (e) as a consequence of the foregoing, it is in the best interests of the

Corporation that the rights of the Corporation and its Subsidiaries, and the duties of any directors or officers of the Corporation or any of its Subsidiaries, be determined and delineated in respect of (x) any transactions between the Corporation and its Subsidiaries, on the one hand, and EchoStar and its Subsidiaries, on the other hand, and (y) any potential transactions or matters that may be presented to officers and directors of the Corporation and its Subsidiaries, or of which such officers or directors may otherwise become aware, which potential transactions or matters may constitute business opportunities of the Corporation or any of its Subsidiaries, and in recognition of the benefits to be derived by the Corporation and its Subsidiaries through its continued contractual, corporate and business relations with EchoStar and its Subsidiaries and of the benefits to be derived by the Corporation and its Subsidiaries by the possible service as directors or officers of the Corporation and its Subsidiaries of persons who may also serve from time to time as directors, officers and employees of EchoStar or any of its Subsidiaries, the provisions of this Article VIII shall, to the fullest extent permitted by law, regulate and define the conduct of the business and affairs of the Corporation and its Subsidiaries in relation to EchoStar and its Subsidiaries, and as such conduct and affairs may involve EchoStar's and its Subsidiaries directors, officers and employees, and the powers, rights, duties and liabilities of the Corporation and its Subsidiaries and their respective officers and directors in connection therewith and in connection with any potential business opportunities of the Corporation and its Subsidiaries. Any person purchasing or otherwise acquiring any shares of capital stock of the Corporation, or any interest therein, shall be deemed to have notice of and to have consented to the provisions of this Article VIII. For purposes of this Article VIII, "Control" and derivative terms means the possession of the power to direct or cause the direction of the management and policies of a person, whether through the possession of voting securities, by contract or otherwise; and "Subsidiary" means, with respect to any person, any other person that such first person directly or indirectly Controls. References in this Article VIII to "directors," "officers" or "employees" of any person shall be deemed to include those persons who hold similar positions or exercise similar powers and authority with respect to any such person that is a limited liability company, partnership, joint venture or other non-corporate entity or any close corporation governed directly by its stockholders.

2. *Certain Agreements and Transactions Permitted*. No contract, agreement, arrangement or transaction (or any amendment, modification or termination thereof) entered into between the Corporation and/or any of its Subsidiaries, on the one hand, and EchoStar and/or any of its Subsidiaries, on the other hand, before EchoStar ceased to be a wholly-owned subsidiary of the Corporation shall be void or voidable or be considered unfair to the Corporation or any of its Subsidiaries for the reason that EchoStar or any of its Subsidiaries is a party thereto, or because any directors, officers or employees of EchoStar or a Subsidiary of EchoStar are a party thereto, or because any directors, officers or employees of EchoStar or a Subsidiary of EchoStar were present at or participated in any meeting of the board of directors, or committee thereof, of the Corporation, or the board of directors, or committee thereof, of any Subsidiary of the Corporation, that authorized the contract, agreement, arrangement or transaction (or any amendment, modification or termination thereof), or because his, her or their votes were counted for such purpose. The Corporation may from time to time enter into and perform, and cause or permit any of its Subsidiaries to enter into and perform, one or more contracts, agreements, arrangements or transactions (or amendments, modifications or supplements thereto) with EchoStar or any Subsidiary thereof pursuant to which the Corporation or a Subsidiary thereof, on the one hand, and EchoStar or a Subsidiary thereof, on the other hand, agree to engage in contracts, agreements, arrangements or transactions of any kind or nature with each other, or agree to compete, or to refrain from competing or to limit or restrict their competition, with each other, including to allocate and cause their respective directors, officers and employees (including any such persons who are directors, officers or employees of both) to allocate opportunities between, or to refer opportunities to, each other. To the fullest extent permitted by law, no such contract, agreement, arrangement or transaction (nor any such amendments, modifications or supplements), nor the performance thereof by the Corporation, EchoStar or any Subsidiary of the Corporation or EchoStar, shall be considered contrary to any fiduciary duty owed to the Corporation (or to any Subsidiary of the Corporation, or to any stockholder of the Corporation or any of its Subsidiaries) by any director or officer of the Corporation (or by any director or officer of any Subsidiary of the Corporation) who is also a director, officer or employee of EchoStar or any Subsidiary thereof. To the fullest extent permitted by law, no director or officer of the Corporation or any Subsidiary of the Corporation who is also a director, officer or employee of EchoStar or any Subsidiary thereof shall have or be under any fiduciary duty to the

Corporation (or to any Subsidiary of the Corporation, or to any stockholder of the Corporation of any of its Subsidiaries) to refrain from acting on behalf of the Corporation or EchoStar, or any of their respective Subsidiaries, in respect of any such contract, agreement, arrangement or transaction or performing any such contract, agreement, arrangement or transaction in accordance with its terms and each such director or officer of the Corporation or any Subsidiary of the Corporation who is also a director, officer or employee of EchoStar or any Subsidiary thereof shall be deemed to have acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation, and shall be deemed not to have breached his or her duties of loyalty to the Corporation and their respective stockholders, and not to have derived an improper personal benefit therefrom.

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

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

5. *Renunciation*. In addition to, and notwithstanding the foregoing provisions of this Article VIII, a potential transaction or business opportunity (1) that the Corporation or its Subsidiaries is not financially able, contractually permitted or legally able to undertake, or (2) that is, from its nature, not in the line of the

Corporation's or its Subsidiaries' business, is of no practical advantage to the Corporation or its Subsidiaries or that is one in which the Corporation or its Subsidiaries has no interest or reasonable expectancy, shall not, in any such case, be deemed to constitute a corporate opportunity belonging to the Corporation, or any of its Subsidiaries, and the Corporation, on behalf of itself and each Subsidiary, to the fullest extent permitted by law, hereby renounces any interest therein.

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

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

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

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

[Signature Page Follows]

IN WITNESS WHEREOF, I have hereunto set my hand to this Certificate of Amendment of Articles of Incorporation on this [ ] day of [ ].

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

Electronically Filed
08/29/2014 04:27:11 PM

CLERK OF THE COURT

MDSM

J. Stephen Peek
Nevada Bar No. 1758
Robert J. Cassity
Nevada Bar No. 9779
HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
Phone: (702) 669-4600
Fax: (702) 669-4650

Holly Stein Sollod (*Pro Hac Vice*)
HOLLAND & HART LLP
555 17th Street, Suite 3200
Denver, Co 80202
Phone: (303) 295-8085
Fax: (303) 975-5395

David C. McBride *(Pro Hac Vice)*
Robert S. Brady *(Pro Hac Vice)*
C. Barr Flinn *(Pro Hac Vice)*
YOUNG, CONWAY, STARGATT & TAYLOR, LLP
Rodney Square
1000 North King Street
Wilmington, DE 19801
Phone: (302) 571-6600
Fax: (302) 571-1253

Attorneys for the Special Litigation Committee of Dish Network Corporation

DISTRICT COURT

CLARK COUNTY, NEVADA

IN RE DISH NETWORK CORPORATION DERIVATIVE LITIGATION	Case No. A-13-686775-B Dept. No. XI **MOTION TO DISMISS FOR FAILURE TO PLEAD DEMAND FUTILITY**

The Special Litigation Committee (the "SLC"), on behalf of DISH Network Corporation ("DISH"), hereby moves to dismiss the Verified Second Amended Shareholder Derivative Complaint of Jacksonville Police and Fire Pension Fund Pursuant to Rule 23.1 of the Nevada Rules of Civil Procedure for failure to plead a legally sufficient excuse for the plaintiff's failure to make a pre-suit demand on the SLC (the "Motion").

This Motion is supported by the following Memorandum of Points and Authorities, the papers and pleadings on file herein, and any oral argument the Court may allow.

DATED this 29th day of August, 2014

J. Stephen Peek
Nevada Bar No. 1758
Robert J. Cassity
Nevada Bar No. 9779
HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134

Holly Stein Sollod (*Pro Hac Vice*)
HOLLAND & HART LLP
555 17th Street, Suite 3200
Denver, CO 80202

David C. McBride *(Pro Hac Vice)*
Robert S. Brady *(Pro Hac Vice)*
C. Barr Flinn *(Pro Hac Vice)*
YOUNG, CONWAY, STARGATT & TAYLOR, LLP
Rodney Square
1000 North King Street
Wilmington, DE 19801

Attorneys for the Special Litigation Committee of Dish Network Corporation

NOTICE OF MOTION

TO: ALL INTERESTED PARTIES

PLEASE TAKE NOTICE that the MOTION TO DISMISS FOR FAILURE TO PLEAD DEMAND FUTILITY will come for hearing before Department XI of the above-entitled Court on the 28th day of October, 2014 at 8:30 a.m.

DATED this 29th day of August, 2014

J. Stephen Peek
Robert J. Cassity
HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134

Holly Stein Sollod (*Pro Hac Vice*)
HOLLAND & HART LLP
555 17th Street, Suite 3200
Denver, CO 80202

David C. McBride *(Pro Hac Vice)*
Robert S. Brady *(Pro Hac Vice)*
C. Barr Flinn *(Pro Hac Vice)*
YOUNG, CONWAY, STARGATT & TAYLOR, LLP
Rodney Square
1000 North King Street
Wilmington, DE 19801

Attorneys for the Special Litigation Committee of Dish Network Corporation

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS FOR FAILURE TO PLEAD DEMAND FUTILITY

PRELIMINARY STATEMENT

Pursuant to the schedule established by the Court, before this motion to dismiss is argued, the SLC will have completed its investigation and made a determination as to whether the claims asserted in the Second Amended Complaint (the "Second Amended Complaint" or "Complaint," cited herein as "SAC") are in the best interest of DISH and should proceed against the defendants. If the SLC determines that the claims should proceed, this motion will be moot.[1] DISH could be re-aligned as the plaintiff. There would be no *derivative* claims and therefore no need for a demand or a showing of demand futility. However, if the SLC determines that the claims should not proceed, the issue of demand futility must be decided by this Court.[2]

The motion to dismiss should be granted because, before the plaintiff may proceed derivatively on behalf of DISH, it must make a demand on the SLC or establish that such demand would have been futile. The plaintiff did not make the required pre-suit demand.[3] Nor has it established that demand would have been futile.

As detailed herein, the plaintiff must establish demand futility as to the members of the SLC, rather than the full board. This is so because, before the Second Amended Complaint was filed, the board had delegated to the SLC its authority to respond to a demand or otherwise determine whether claims should be asserted. Also, the Second Amended Complaint relies

---

[1] There could be one exception: The motion could remain relevant to any dispute between the parties as to whether the derivative plaintiff or the SLC should pursue the claims on behalf of DISH.

[2] If the Court concludes that the plaintiff has pled demand futility and thus denies this motion, and the SLC has determined that the claims are not in the best interest of DISH, the Court will then need to determine whether it must defer to the business judgment of the SLC, applying the standard applicable to investigation-based determinations made by special litigation committees. The SLC will address that standard if and when it becomes necessary to do so.

[3] Pursuant to the Court's instructions, the derivative plaintiff made a demand after its original complaint had been filed and amended. Generally, when a demand is made, the derivative plaintiff is deemed to concede that the demand is not futile and that the derivative plaintiff cannot proceed with the litigation, and the derivative plaintiff must await the response to the demand and decide whether to challenge the response. Here, in directing that a demand be made, the Court stated that the derivative plaintiff was making no such concession. (Transcript of Hearing on Motion for Expedited Discovery at 66 (Sept. 19, 2013) ("September 19, 2013 Transcript") (THE COURT: "You're not conceding anything. . . . I'm not saying you've conceded anything."))

HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134

primarily upon events subsequent to the prior complaints and therefore asserts primarily new claims. *See In re UnitedHealth Group Inc. Deriv. Litig.*, No. 27 CV 06-8085, 2007 WL 5557050 (D. Minn. Feb. 6, 2007) (rejecting "claims of demand futility solely on the basis that the Directors were not disinterested" and instead "consider[ing] whether it would have been futile for Plaintiffs to make a demand upon the SLC"). As for the two claims in the Second Amended Complaint that had been asserted in the prior complaints, the Court has already directed that a demand for those claims be made on the SLC. For those claims also, demand futility therefore must be established as to the SLC.

The plaintiff has not established that demand would have been futile because the Second Amended Complaint does not allege particularized facts showing that a majority of the members of the SLC lack independence from a relevant person. The Second Amended Complaint does not contain any allegations concerning any relationship between Mr. Lillis and Ergen. The derivative plaintiff had indeed conceded Lillis's independence from Ergen by proposing that Lillis be a member of a new special transaction committee, the purpose of which was to protect DISH from Ergen. The allegations that Lillis had "professional relationships" many years ago with Vogel and Cullen do not suggest that Lillis would be beholden to Vogel and Cullen. They are substantially identical to allegations that the Courts have long held do not suffice to establish a lack of independence for demand futility purposes.

To even argue that Mr. Brokaw lacks independence, the derivative plaintiff asserts baselessly and incorrectly that Cantey Ergen would become the legal guardian of Mr. Brokaw's son if something tragic happened to the Brokaws. In fact, as the record makes clear, Mr. Brokaw's brother would become legal guardian if something tragic were to happen to the Brokaws. At most, the allegation of the godparent relationship between Mr. Brokaw's son and Cantey Ergen amounts to an allegation of friendship (derived from a relationship between Mr. Brokaw's mother-in-law and Cantey Ergen). The courts have routinely held that such friendship does not suffice to establish a lack of independence for demand futility purposes.

Finally, there also are no allegations that Mr. Ortolf lacks independence. His work at DISH more than twenty years ago constitutes the sort of prior professional relationship that the

HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134

courts have held does not suffice to establish a lack of independence. The allegation that Ortolf's daughter still works at DISH is not coupled with any allegation that she works in anything other than an entry-level position. The Delaware courts have addressed substantially identical allegations and concluded that they do not suffice to establish a lack of independence for demand futility purposes.

As detailed herein, the allegations that the SLC has not acted independently are not even close to correct. On the motion for preliminary injunction, the SLC did not proclaim that "none of the Defendants had breached fiduciary duties," as the Complaint alleges. The SLC rather opposed only the specific form of preliminary relief sought: an injunction barring Ergen and all experienced directors but one from participating in DISH's efforts to acquire LightSquared. The SLC opposed the relief because it did not believe that it would be in DISH's best interest. The Court agreed, denying the relief and granting far more limited relief. To the extent that the SLC stated that the value of DISH's bid for LightSquared was fair, its statement was correct. Indeed, the derivative plaintiff now contends that the bid was so fair that it should not have been terminated. To the very limited extent that, on the motion for preliminary injunction, the SLC made factual determinations, it has been proven correct by the findings of the Bankruptcy Court, as detailed herein.

The derivative plaintiff has not adequately alleged a lack of independence on the part of a majority of the SLC, has not established that demand is futile and therefore has not established that it has standing to bring this action. It may not proceed with its claims, but must defer to the determination of the SLC.

PROCEDURAL BACKGROUND

A. The Derivative Action

On August 9, 2013, the plaintiff filed its initial complaint in this shareholder derivative action on behalf of nominal defendant DISH. The complaint named as defendants Charles W. Ergen, Joseph P. Clayton, James DeFranco, Cantey M. Ergen, Steven R. Goodbarn, David K. Moskowitz, Tom A. Ortolf, Carl E. Vogel, and various unknown Doe individuals and Rose entities. Shortly thereafter, on September 12, 2013, the plaintiff filed its Verified Amended

HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134

Derivative Complaint (the "First Amended Complaint," and together with the initial complaint, the "Prior Complaints"). In connection with the First Amended Complaint, on September 13, 2013, the plaintiff filed a motion asking the Court to "enjoin Ergen and his loyalists on the Board from influencing or interfering with Dish's efforts to buy LightSquared's assets." (Motion for Preliminary Injunction and for Discovery on an Order Shortening Time at 11 (Sept. 13, 2013)) The plaintiff did not make a demand on the board prior to filing the original complaint or the First Amended Complaint.

B. Formation of the DISH Special Litigation Committee

Shortly after the original complaint was filed in this action, on September 18, 2013, the DISH board formed the SLC to consider, among other things, whether this action should be dismissed, pursued or settled. The statutory authority supporting the formation of the SLC is found in NRS 78.125, which provides that the board "may designate one or more committees which, to the extent provided in the resolution or resolutions or in the bylaws of the corporation, have and may exercise the powers of the board of directors in the management of the business and affairs of the corporation." To that end, the board vested the SLC with plenary authority and funding to investigate, analyze, and evaluate all of the claims of the First Amended Complaint, to decide whether the claims should be dismissed, stayed or prosecuted and to take any and all actions on behalf of DISH in this litigation, including addressing any amended pleadings. The board resolution authorizing the formation of the SLC specifically delegated to the SLC the power and authority of the board of directors to review, investigate and evaluate the claims asserted in the Derivative Litigation, which is defined as the shareholder derivative action filed by the Jacksonville Police and Fire Pension Fund in the District Court, Clark County, Nevada (together with any amendments, revisions or other pleadings related thereto or generated thereby) and any similar shareholder derivative actions that may be filed from time to time.

The DISH board formed the SLC with two independent directors, Tom A. Ortolf and George R. Brokaw (who joined the board on October 7, 2013). The board added the third

HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134