

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF DISH NETWORK
DERIVATIVE LITIGATION.

JACKSONVILLE POLICE AND FIRE
PENSION FUND,

Appellant,

vs.

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.

Electronically Filed
SUPREME COURT No. 69012
May 27 2016 09:29 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

**JOINT APPENDIX
VOLUME 37 of 44**

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

¹ JA = Joint Appendix

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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
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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
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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

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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

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2013-08-12	Errata to Verified Shareholder Complaint	Vol. 1	JA000038 – JA000039
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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
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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

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2016-02-02	Notice of Appeal	Vol. 43	JA010734 – JA010746
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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
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2013-10-03	Plaintiff's Appendix of Exhibits to Status Report	Vol. 5 Vol. 6	JA001115 – JA001251 JA001252 – JA001335
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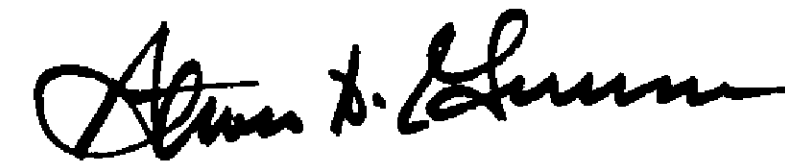
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2015-07-02	Special Litigation Committee's Supplemental Reply in Support of the Motion to Defer to the SLC's Determination that the Claims Should Be Dismissed (Filed Under Seal)	Vol. 38 Vol. 39	JA009499 – JA009501 JA009502 – JA009552
2013-09-12	Verified Amended Derivative Complaint	Vol. 1	JA000049 – JA000094

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2013-08-09	Verified Shareholder Derivative Complaint	Vol. 1	JA000001 – JA000034

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DISTRICT COURT

CLARK COUNTY, NEVADA

**IN RE DISH NETWORK CORPORATION
DERIVATIVE LITIGATION**

Case No. A-13-686775-B


Dept. No. XI

**APPENDIX OF EXHIBITS TO
SUPPLEMENTAL REPLY IN SUPPORT
OF THE MOTION TO DEFER TO THE
SLC's DETERMINATION THAT THE
CLAIMS SHOULD BE DISMISSED**

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C	May 28, 2013 Email from T. Ortolf to C. Ergen – FILED UNDER SEAL	24 - 25
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DATED this 2nd day of July 2015


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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 2nd day of July 2015, a true and correct copy of the foregoing
3 **APPENDIX OF EXHIBITS TO SUPPLEMENTAL REPLY IN SUPPORT OF THE**
4 **MOTION TO DEFER TO THE SLC's DETERMINATION THAT THE CLAIMS**
5 **SHOULD BE DISMISSED** was served by the following method(s):

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

8 Please see the attached E-Service Master List

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

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SUPP. REPLY EX. A

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19 **CLARK COUNTY, NEVADA**

20 **IN RE DISH NETWORK CORPORATION**
21 **DERIVATIVE LITIGATION**

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

22
23 **DECLARATION OF**
24 **CHARLES M. LILLIS**

25 I, Charles M. Lillis, pursuant to NRS 53.045, declare as follows:

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

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

3. I submit this Declaration in support of the SLC's Motion to Defer to the SLC's Determination that the Claims Should Be Dismissed (the "Motion to Defer"), which asks this Court to dismiss the Second Amended Complaint (the "Complaint"), filed by Jacksonville Police and Fire Pension Fund ("Jacksonville"), based upon the investigation and conclusions reached by the Special Litigation Committee (the "SLC") of the board of directors (the "Board") of DISH Network Corporation ("DISH"), as documented in the DISH Network Corporation Report of the Special Litigation Committee, October 24, 2014 (the "SLC Report").

I. Expertise

4. I joined the Board of DISH effective as of November 5, 2013 and serve on the Audit Committee, Compensation Committee, and Nominating Committee of the DISH Board.

5. I have worked in the communications industry for many years, both as an officer and a director. I have also held various academic positions related to my business expertise.

6. I currently serve on the boards of directors of two for-profit corporations, SomaLogic, Inc. and DISH. I have also been appointed by the Governor of Oregon to serve as the Chair of the Board of Trustees of the University of Oregon, which is a position that I continue to hold.

7. In the past, I have served on the boards of directors for Agilera, Inc., Ascent Entertainment Grp., Charter Communications, Inc. ("Charter") and various affiliates, Medco Health Solutions, Inc., MediaOne Group, Inc. ("MediaOne"), On Command Corporation, SUPERVALU Inc., Time Warner Entertainment Company, L.P., Williams Companies, Inc., and Washington Mutual Inc. and affiliated entities. Generally, I acted as an independent, outside director for these companies. I have frequently served on audit and compensation committees for these boards.

8. I have also been the Dean of the University of Colorado's college of business and a professor at Washington State University. I also served on the University of Washington

1 Business Advisory Board, the University of Washington Foundation Board, and the University
2 of Colorado Foundation Board.

3 9. I spent the bulk of my career at MediaOne, which was initially a division of US
4 West Diversified Group ("US West") with its own tracking stock and which later became an
5 independent corporation when US West was spun off. I joined US West in 1985 and I held
6 various senior management positions, including as President of US West Diversified Group
7 and Executive Vice President of US West. Thereafter, from 1997 to 2000, I served as the
8 President, CEO, and Chair of the Board of MediaOne. In 2000, MediaOne was acquired by
9 AT&T.

10 10. After MediaOne's acquisition, in 2000, approximately twenty people who had
11 been employed by MediaOne worked together to form LoneTree Capital Partners
12 ("LoneTree"). LoneTree was a private equity firm specializing in the telecommunication,
13 broadband, and Internet technologies sector. Rick Post, Franck Eichler, and I were LoneTree's
14 principals. The other former MediaOne employees who helped to form LoneTree were
15 employees of LoneTree.

16 11. Mr. Cullen was one of the former MediaOne employees employed by
17 LoneTree. At LoneTree, Cullen was primarily involved in identifying potential investment
18 opportunities in the cable industry. Due to the burst of the tech bubble shortly after LoneTree
19 was formed, most of LoneTree's employees, including Mr. Cullen, moved on to other
20 opportunities relatively quickly. LoneTree stopped making new investments in 2004.

21 12. In 2004, I co-founded Castle Pines Capital LLC ("Castle Pines"). I was one of
22 the managing members of Castle Pines from 2004 until Castle Pines's acquisition by Wells
23 Fargo Bank, N.A. ("Wells Fargo") in 2011. Following Castle Pines acquisition, I acted as an
24 advisor to Wells Fargo for some time.

25 13. Prior to beginning my professional career, I earned a Bachelor of Arts and
26 Master of Business Administration from the University of Washington. Thereafter, I earned a
27 Doctor of Philosophy in business from the University of Oregon.
28

1 **II. Independence**

2 14. In June of 2013, Mr. Cullen informally approached me about joining the Board
3 of DISH. I was told that DISH was interested in gaining the benefit of my independent
4 financial and managerial experience. Initially I was busy with other endeavors and I had not
5 been looking to join another board. So, I did not immediately agree to join the DISH Board.

6 15. After considering the matter further, I eventually decided to agree to join
7 DISH's Board because I find DISH's ongoing strategy with respect to the wireless industry
8 interesting and it is an area in which I have substantial experience. Other than my role as a
9 director of DISH, I have no financial ties to Mr. or Mrs. Ergen. I had only met Mr. Ergen once
10 before joining the DISH Board.

11 16. As affirmed by DISH in its public filings, I satisfy the independence
12 requirements of the NASDAQ exchange on which DISH's stock trades.

13 17. In my capacity as a director of DISH, I receive an annual retainer of \$60,000
14 which is paid in equal quarterly installments, \$1,000 for each Board meeting attended in
15 person, and \$500 for each Board meeting attended by telephone. I was paid a retainer of
16 \$25,000 for my service on the SLC. In total, I received \$17,000 for my services as a director
17 in 2013. My director fees for 2013 did not include any amounts for my service on the SLC,
18 which I joined in December 2013. Additionally, in connection with my election to the Board
19 in 2013, I was granted an option to acquire 7,500 Class A Shares of DISH at an exercise price
20 of \$57.92 per share under DISH's 2001 Nonemployee Director Stock Option Plan (the "2001
21 Director Plan"). Moving forward, pursuant to DISH's 2001 Director Plan, DISH will have
22 discretion to grant me, as a continuing nonemployee director, an option to acquire Class A
23 Shares annually.

24 18. The compensation that I receive as a director of DISH is not a material portion
25 of my income or net worth. Moreover, while I am gratified to serve on DISH's Board, my
26 DISH directorship is but one position among many in my long career.

1 19. I am fully capable of considering the claims asserted by Jacksonville through
2 the exercise of my own independent business judgment, considering only DISH's best interest,
3 and have done so as a member of the SLC.

4 20. I would not be willing to take an action that I viewed as improper in order to
5 retain my position on DISH's Board or to please Mr. Ergen, Mr. Cullen, Mr. Vogel, or anyone
6 else. My self-respect and my longstanding reputation are far too important for me to tarnish.

7 21. I understand that, probably because of my experience and independence,
8 Jacksonville proposed that I serve as a member of the special transaction committee that
9 Jacksonville contended was needed to protect DISH from Mr. Ergen's control of DISH's bid
10 for LightSquared. (Transcript of Hearing on Motion for Preliminary Injunction at 130-32 (Nov.
11 25, 2013)).

12 **III. Challenged Relationships**

13 22. I am an independent director, without any conflict of interest with respect to the
14 claims asserted by Jacksonville. I am not aware of any basis on which my independence or
15 disinterest can be legitimately challenged. Nonetheless, Jacksonville has alleged that I was not
16 able to disinterestedly consider the best interests of DISH with respect to the claims that
17 Jacksonville would like to pursue because of my business relationships with Carl Vogel and
18 Tom Cullen. (SAC ¶ 309).

19 23. The Second Amended Complaint alleges that I have had "professional
20 relationships" with Carl Vogel and Tom Cullen. (SAC ¶ 309). That is true. Mr. Vogel and
21 Mr. Cullen, like me, each have long histories within the communications industry. I have
22 supervised, overseen, or worked with both Mr. Vogel and Mr. Cullen in the course of my
23 career. In each instance, I have had productive professional relationships with them and I
24 respect their work. But, I am not indebted to either of them. My only business relationship
25 with either of them currently involves our mutual work for DISH.

26 24. The Second Amended Complaint accurately alleges that, while I was chairman
27 and chief executive of MediaOne, more than 15 years ago, I "worked closely with and
28 supervised Cullen." (SAC ¶ 310). For a portion of my service as the President and chief

1 executive of MediaOne, Mr. Cullen was the President of MediaOne Ventures Inc., a subsidiary
2 of MediaOne. Mr. Cullen worked to develop MediaOne's high speed internet strategy.

3 25. MediaOne was acquired by AT&T in 2000. The Complaint alleges that Mr.
4 Vogel had "just served" as an officer of AT&T when AT&T bought MediaOne (SAC ¶ 310),
5 and that Mr. Vogel "spearheaded" the acquisition (SAC ¶ 31). In truth, to my knowledge, Mr.
6 Vogel was not involved in AT&T's acquisition of MediaOne. If Mr. Vogel was involved in
7 AT&T's acquisition of MediaOne behind the scenes, it was not something that I was aware of.

8 26. The Complaint alleges, "In July 2000, following AT&T's acquisition of
9 MediaOne, Lillis and Cullen formed private equity firm LoneTree Capital." (SAC ¶ 310). That
10 is only partially accurate. As I explain above, after AT&T's acquisition of MediaOne, Mr.
11 Cullen was one of approximately 20 former MediaOne employees who went on to work at
12 LoneTree, the private equity firm that I co-founded with two different former MediaOne
13 executives, MediaOne's former Chief Financial Officer Rick Post and MediaOne's former
14 General Counsel Frank Eichler. Mr. Cullen was not a principal or an owner of LoneTree.

15 27. After MediaOne's acquisition by AT&T, Mr. Cullen, Mr. Vogel, and I each
16 eventually became professionally involved with Charter. From late 2001 to early 2005, Mr.
17 Vogel was the President and Chief Executive Officer of Charter. From 2003 to 2005, Mr.
18 Cullen was the Senior Vice President, and then the Executive Vice President, of Advanced
19 Services and Business Development for Charter. And, from October 7, 2003 to March 28,
20 2005 I served on the board of directors of Charter (the "Charter Board").

21 28. I was asked to join the Charter Board by Paul Allen, Charter's controlling
22 stockholder. I had known Mr. Allen for some time. Among other things, he and I had
23 discussed combining MediaOne's and Charter's cable properties and I had spoken with Mr.
24 Allen about various investment opportunities outside of Charter. It is entirely possible that Mr.
25 Cullen suggested to Mr. Allen that I be added to Charter's Board. I did not have a relationship
26 with Mr. Vogel before I joined Charter's Board. And, in any event, Mr. Allen, not Mr. Cullen
27 or Mr. Vogel, determined that I should join the Charter Board.

28

1 29. The Complaint alleges that when I was on the Charter Board, I “played a role”
2 in “awarding Vogel a \$500,000 special bonus in July 2004.” (SAC ¶ 310). That is not
3 accurate.

4 30. According to the SEC filings, in May of 2004, the compensation committee of
5 the Charter Board awarded Mr. Vogel a bonus of \$500,000 in recognition of his
6 accomplishment of various objectives for Charter. I did not join Charter’s compensation
7 committee until July of 2004, after the compensation committee had approved Mr. Vogel’s
8 2004 bonus. Mr. Allen, Charter’s controlling stockholder would also have been involved in
9 any decision to award Mr. Vogel a substantial bonus. I played no role with respect to the
10 \$500,000 bonus paid to Mr. Vogel in 2004; I do not even recall the question of Mr. Vogel’s
11 2004 bonus being presented to the full Charter Board.

12 31. The Complaint also alleges that I “resigned from the Charter board to protest
13 the termination of Vogel, and sent [my] fellow directors an email ‘berating’ them for a poor
14 performance review of Vogel.” (SAC ¶ 310) That allegation is also inaccurate. I did not
15 resign to protest Mr. Vogel’s termination.

16 32. On January 27, 2005, I informed the Charter Board that I would be resigning
17 within the next 60 days. My resignation was effective on March 28, 2005. I resigned from the
18 Charter Board because I felt that Mr. Allen rather than Charter’s Board was in control of the
19 company. I was not comfortable continuing to serve on the Charter Board under that
20 circumstance.

21 33. When I resigned from the Charter Board, the directors’ fees that I forewent by
22 resigning did not play a role in my decision. Although Jacksonville has asserted that my
23 willingness to resign and abandon these fees demonstrates some “owingness” to Mr. Vogel,
24 (Opposition p. 25) in actuality, it is simply a prior instance in which I was more concerned
25 with proper corporate governance than with continuing to receive standard directors’ fees.

26 34. The Complaint notes that Mr. Vogel serves as a member of the board of
27 directors of the National Cable & Telecommunications Association, and asserts that I am a
28 member of that organization. (SAC ¶ 312). I have never attended a meeting of the National

1 Cable & Telecommunications Association. I do not believe that I have been involved with this
2 organization since prior to 2001.

3 35. Based on my prior experience with Mr. Vogel and Mr. Cullen, I respect the
4 diligence and business acumen of each of them. But, nothing in my prior interactions with Mr.
5 Vogel or Mr. Cullen has made me feel indebted or beholden to either of them in any way.

6 36. If I believed that Mr. Vogel or Mr. Cullen had breached a fiduciary duty to
7 DISH, I would not hesitate to vote or advocate for DISH taking appropriate action to address
8 that breach, including pursuing litigation against Mr. Vogel, Mr. Cullen, or both of them if that
9 was the best step for DISH to take. Based on the SLC's investigation, I do not think that Mr.
10 Vogel or Mr. Cullen breached any fiduciary duty owed to DISH, as explained more fully in the
11 SLC's Report.

12 **IV. SLC Investigation**

13 37. As a member of the SLC, I and the other members of the SLC oversaw a
14 thorough investigation of the claims alleged by Jacksonville. The SLC Report and the Motion
15 to Defer accurately describe the procedures for and the scope of the SLC's investigation in
16 more detail than I address here.

17 38. With respect to each claim asserted by Jacksonville, the SLC discussed the legal
18 issues that would determine whether DISH might be able to recover on that claim with our
19 counsel and directed that all necessary legal analysis be performed. I reviewed information
20 provided by the SLC's counsel. I also reviewed the briefing in connection with all of the
21 parties' motions to dismiss this action and considered those legal arguments, including the
22 arguments made by Jacksonville.

23 39. With respect to each claim asserted, the SLC discussed what information would
24 be necessary to accurately understand the factual background for the claim. Then, with the
25 guidance of our counsel, we directed that the information be gathered and reviewed. Although
26 I rely on counsel to confirm the precise number of pages of documents reviewed and each
27 custodian from whom documents were collected, the specific numbers of documents and
28

1 custodians described in the SLC Report seem consistent with the SLC's directions and my
2 understanding of the process.

3 40. At the SLC's request, counsel to the SLC passed along to me and the other SLC
4 members for review a subset of the documents analyzed by counsel, still thousands of pages of
5 documents. I personally reviewed the documents that I found most important to the
6 investigation, which included each of the deposition transcripts as well as the decisions of the
7 Bankruptcy Court in the Adversary Proceeding and the Plan Confirmation Proceeding. At the
8 SLC's request, counsel also provided multiple cogent summaries and timelines of the factual
9 information relevant to the claims for the SLC's review, which I reviewed in particular detail.

10 41. After joining the SLC, I participated in almost all of the interviews conducted
11 by the SLC, as did Mr. Brokaw and Mr. Ortolf. Although counsel led the questioning at the
12 interviews, I and the other SLC members also asked questions that we felt needed to be
13 answered. Where I felt that a question needed to be answered, I asked the question regardless
14 of whether the question might have been asked in a prior interview of the person in question
15 before I joined the SLC.

16 42. Each of my legal or factual questions was answered in the course of the
17 investigation.

18 43. The SLC met numerous times over the course of our investigation to discuss
19 (1) the information and legal advice that we had received, (2) what additional information or
20 advice we believed would be useful for our investigation, and (3) the future steps necessary for
21 the completion of our investigation.

22 **V. The SLC's Interim Report**

23 44. Jacksonville's assertion that the SLC had reached a conclusion with respect to
24 DISH's monetary claims by November of 2013 (SAC ¶¶ 203, 314-317; Opposition, pp. 7-8) is
25 not accurate.

26 45. When I joined the SLC, the SLC had concluded that the injunctive relief
27 requested by Jacksonville would not be in DISH's best interests. As for the claims for
28 monetary relief, the SLC had concluded that, if the claims had merit, DISH would be able to

1 recover from the defendants any appropriate damages. However, the SLC had further
2 concluded that, if the injunctive relief interfered with DISH's effort to acquire LightSquared's
3 assets, DISH might not be able to recover any resulting damages from any person.

4 46. At that time, the SLC had not reached a conclusion with respect to whether it
5 would be in DISH's best interest to assert monetary claims against Mr. Ergen or any other
6 defendant. The merits of DISH's monetary claims remained a subject for investigation by the
7 SLC.

8 **VI. The SLC's Motion to Dismiss for Failure to Plead Demand Futility**

9 47. During the course of the SLC's investigation, the members of the SLC
10 evaluated each member's independence. We updated this evaluation upon the filing of the
11 Second Amended Complaint. We concluded that each member of the SLC was independent.
12 Based upon my observations, Mr. Ortolf and Mr. Brokaw took the SLC's investigation
13 seriously, acted independently, and reached their determinations in good faith, based upon the
14 best interests of DISH and its minority stockholders.

15 48. I do not believe that either I or any other member of the SLC faces a material
16 risk of personal liability from the claims asserted in the Complaint. As detailed in the SLC
17 Report, the claims asserted against the Director Defendants lack merit. Also, it is my
18 understanding that under Nevada law, a director may only be held liable for damages where the
19 director breached his or her fiduciary duties and "[t]he breach of those duties involved
20 intentional misconduct, fraud or a knowing violation of the law." (Nev. Rev. Stat. Ann.
21 § 78.138(7)). Knowing my own motivations, having investigated the claims, and having
22 worked at length with Mr. Brokaw and Mr. Ortolf, I am confident that no SLC member
23 engaged in intentional misconduct, fraud, or a knowing violation of the law.

24 49. I authorized the SLC's Motion to Dismiss for Failure to Plead Demand Futility
25 (the "Motion to Dismiss") based on my confidence that the SLC was independent and fully
26 capable of overseeing the litigation of any claims that our investigation determined should
27 proceed.

28

1 50. When I approved the SLC's Motion to Dismiss, I had not reached a final
2 determination with respect to whether the claims asserted in the Complaint should be pursued
3 by DISH; I had simply determined that Jacksonville was not needed for the pursuit of those
4 claims, because I had determined that the members of the SLC were independent and capable
5 of overseeing any appropriate litigation on behalf of DISH.

6 **VII. The SLC's Report**

7 51. Over the last 13 months, I estimate that I personally spent more than a hundred
8 hours on the SLC's investigation.

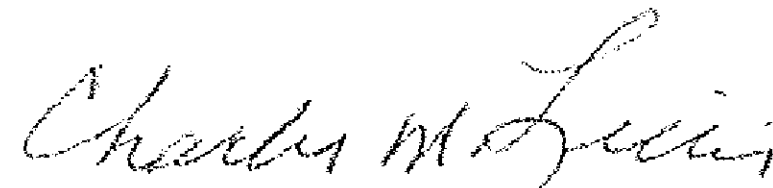
9 52. At the close of the investigation, I reviewed several successive drafts of the SLC
10 Report. The final SLC Report accurately reflects the SLC's findings, analysis, and
11 determinations.

12 53. My assessment of the merits of each of the claims asserted by Jacksonville was
13 based on the relevant facts and law as well as my many years of business experience. I
14 reached that assessment based on my own good faith evaluation of the claims.

15 54. My decision that the SLC should recommend that DISH not pursue litigation
16 with respect to any of the claims in the Complaint was not affected by my relationship with
17 Mr. or Mrs. Ergen, Carl Vogel, or Tom Cullen or anything other than what I believe to be the
18 best interest of DISH and its minority stockholders.

19
20 I declare under penalty of perjury under the law of the State of Nevada that the foregoing is
21 true and correct.

22
23 EXECUTED this 17th day of November, 2014 at _____, _____.

24
25 
26 _____
Charles M. Lillis

SUPP. REPLY EX. B

SUPP. REPLY EX. B

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16
17
18
19

DISTRICT COURT
CLARK COUNTY, NEVADA

20 IN RE DISH NETWORK CORPORATION
21 **DERIVATIVE LITIGATION**
22
23
24

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

DECLARATION OF
GEORGE R. BROKAW

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

- 26 1. I am over 18 years of age and am competent to testify to the matters set forth in
27 this Declaration.
28 2. I have personal knowledge of the matters set forth in this Declaration.

3. I submit this Declaration in support of the SLC's Motion to Defer to the SLC's Determination that the Claims Should Be Dismissed (the "Motion to Defer"), which asks this Court to dismiss the Second Amended Complaint (the "Complaint"), filed by Jacksonville Police and Fire Pension Fund ("Jacksonville"), based upon the investigation and conclusions reached by the Special Litigation Committee (the "SLC") of the board of directors (the "Board") of DISH Network Corporation ("DISH"), as documented in the DISH Network Corporation Report of the Special Litigation Committee, October 24, 2014 (the "SLC Report").

I. Expertise

4. I joined the Board of DISH effective October 7, 2013 and serve on the Audit Committee, Compensation Committee, and Nominating Committee of the DISH Board.

5. I have worked in the finance industry for two decades, including as a managing director and managing partner of investment banking and private equity firms. I have also served on the boards of directors of multiple companies.

6. I currently serve as a Managing Partner of Traftlet Brokaw & Co., LLC. I also serve on the boards of directors of two for-profit public corporations – Alico, Inc. and DISH – and one not-for-profit organization – The Carter Burden Center for the Aging.

7. In the past, I have served on several boards of directors, including among others, that of North American Construction Group, North American Energy Partners Inc., Capital Business Credit LLC, Exclusive Resorts, LLC, Ovation LLC, Timberstar Southwest LLC, and Value Place Holdings LLC. In some cases, I served as a director as a result of an investment made by capital invested by firms at which I worked. Generally, I served as an outside director for these companies.

8. I have spent the bulk of my career in the financial services industry. I began my career as an associate in Mergers & Acquisitions at Dillon Read Capital Management in 1994. In 1996, I joined Lazard Frères & Co. LLC, where I ultimately became a Managing Director. At Lazard, I provided corporations with financial advice concerning mergers & acquisitions, financing, and financial restructuring. Thereafter, I served as a Managing Partner

1 and Head of Private Equity at Perry Capital, L.L.C. for six years and a Managing Director at
2 Highbridge Capital Management, LLC for one year.

3 9. In the course of my career, I have become familiar with the mechanics of
4 financial transactions broadly, including issues with respect to mergers and acquisitions,
5 bankruptcy proceedings, and distressed and non-distressed investments.

6 10. Prior to beginning my professional career, I earned a Bachelor of Arts from
7 Yale University and a Master of Business Administration from the University of Virginia
8 Darden School of Business. I earned a Juris Doctor from the University of Virginia School of
9 Law in 1994 and was admitted to the New York Bar in 1995. I remain a member of the New
10 York Bar.

11 **II. Independence**

12 11. In the summer of 2013, I was approached by Mr. Ergen to join the DISH Board.
13 It is my understanding that DISH wanted to add investment banking expertise to its Board
14 because DISH anticipated pursuing other acquisitions, and could benefit from the insights of an
15 experienced investment banker.

16 12. Previously, in February of 2013, I had provided Mr. Ergen with some general
17 unpaid advice with respect to DISH's efforts to make various acquisitions. When Mr. Ergen
18 asked me to join the DISH Board, he explained that that DISH could benefit from my
19 experience, particularly my experience from my time at Lazard, and my insight for its future
20 acquisition efforts.

21 13. When I agreed to join the DISH Board, I understood that I would also be joining
22 the SLC. Contrary to Jacksonville's suggestion (Opposition, p. 23), the fact that I joined
23 DISH's Board and contemporaneously joined the SLC does not in any way affect my ability to
24 act independently in DISH's best interests as a member of the SLC.

25 14. Other than my role as a director of DISH, I have no financial ties to Mr. or Mrs.
26 Ergen. I have not personally done business with either Mr. or Mrs. Ergen, with the exception
27 of my service on DISH's Board.
28

1 15. Contrary to Jacksonville's allegations, neither I nor my family has received
2 monetary gifts or payments from the Ergens in the past and we expect none in the future.

3 16. As affirmed by DISH in its public filings, I satisfy the independence
4 requirements of the NASDAQ exchange on which DISH's stock trades.

5 17. In my capacity as a director of DISH, I receive an annual retainer of \$60,000
6 which is paid in equal quarterly installments, \$1,000 for each Board meeting attended in
7 person, and \$500 for each Board meeting attended by telephone. I also receive a \$5,000
8 annual retainer for my service as the Chairman of the Nominating Committee of DISH's Board
9 and a retainer of \$25,000 for my service on the SLC. In total, I received \$32,250 for my
10 services as a director and SLC member in 2013. Additionally, in connection with my election
11 to the Board in 2013, I was granted an option to acquire 7,500 Class A Shares of DISH at an
12 exercise price of \$57.92 per share under DISH's 2001 Nonemployee Director Stock Option
13 Plan (the "2001 Director Plan"). Moving forward, pursuant to DISH's 2001 Director Plan,
14 DISH will have discretion to grant me, as a continuing nonemployee director, an option to
15 acquire Class A Shares annually. The compensation that I receive as a director of DISH is not
16 a material portion of my income or net worth.

17 18. I am fully capable of considering the claims asserted by Jacksonville through
18 the exercise of my own independent business judgment, considering only DISH's best interest,
19 and have done so as a member of the SLC.

20 19. I would not be willing to take an action that I viewed as improper in order to
21 retain my position on DISH's Board or please Mr. or Mrs. Ergen. Not only would doing so be
22 a violation of my own integrity, but by primary role is as a capital manager. In that role, I
23 manage funds in a fiduciary capacity. Any breach of my fiduciary duties to DISH would
24 reflect on my ability to act as an investment fund manager. My integrity and my reputation for
25 integrity are far too important to cast aside by breaching my fiduciary duties to DISH and its
26 minority stockholders.

20. I would not hesitate to resign from the DISH Board if I felt that I could not serve on the Board in an independent manner or if I felt that I could not carry out my duties due to a conflict of interest.

III. Challenged Relationships

21. As noted in the Complaint (§ 27), Mrs. Ergen is my son's godmother. In its Opposition to the SLC's Motion to Dismiss for Failure to Plead Demand Futility (the "Opposition"), Jacksonville asserts that I chose Mrs. Ergen to be the godmother to my son (Opposition pp. 5-6), and that I have "a close relationship[.]" with the Ergens. (Opposition, p. 23). This is only partially accurate.

22. My son has three godparents. Our tradition is to have two godparents of the child's gender and one godparent of the opposite gender for the child. I chose my son's two godfathers; my wife chose my son's one godmother. My wife chose Mrs. Ergen to be my son's godmother because Mrs. Ergen grew up with and remains a friend of my mother-in-law; I supported her decision. My wife is from Australia and did not have an established network of old friends in this country when she picked Mrs. Ergen to be our son's godmother. When our daughter was born, my wife selected two different women to be our daughter's godmothers, and I selected our daughter's one godfather.

23. Mrs. Ergen falls within my and my family's wide general social circle. When my wife sends pictures of our children to groups of people, Mrs. Ergen is sometimes included. As she does with other friends, my wife speaks with Mrs. Ergen from time to time by telephone. To my knowledge, Mrs. Ergen has never visited New York specifically to see my family. But, when Mrs. Ergen is in New York, she will sometimes visit our family in the course of her trip. My recollection is that Mrs. Ergen visits my family about once or twice a year. My family, with the possible exception of my wife, has never taken a trip to Colorado in order to visit Mrs. Ergen (or Mr. Ergen), but when we are in Colorado to ski, we may also visit Mrs. Ergen. Due to his schedule, Mr. Ergen is rarely involved in these visits. My relationship with Mr. Ergen is almost entirely focused on business.

1 24. Jacksonville's assertion (SAC ¶ 308) that Mrs. Ergen or Mr. and Mrs. Ergen
2 would become my son's guardian if something happened to my wife and me is baseless. My
3 will specifies that, if my wife and I die, my brother would become my son's legal guardian.

4 25. The Ergens would have no responsibility for either of my children in the event
5 that something horrible happened to my wife and me. They have no financial responsibility for
6 my son. There is no sense in which DISH recovering money from Mr. Ergen would equate to
7 taking money from my son, as Jacksonville has suggested.

8 26. The Complaint also alleges that I have "provided Ergen with free professional
9 advice on multiple occasions." (SAC ¶ 308). That is accurate. I am a former investment
10 banker, with decades of experience. In any given week, several business people will reach out
11 for my advice on various matters. I answer their questions and build relationships without any
12 expectation of compensation. It is not only typical, but expected, for professionals to provide
13 uncompensated counsel within my industry.

14 27. I first interacted with Mr. Ergen more than a decade ago, while at Lazard,
15 representing a Lazard client. Lazard was engaged to assist in sorting out a joint venture
16 between the client and DISH. Thus, I was adverse to DISH in that engagement. Since then,
17 Mr. Ergen has called occasionally and I have provided free professional advice. These
18 conversations began before I married my wife and had nothing to do with my mother-in-law's
19 friendship with Mrs. Ergen.

20 28. My most significant business discussion with Mr. Ergen, before I joined the
21 DISH Board, was in February of 2013, when I had a general discussion with Mr. Ergen
22 concerning DISH's strategic options related to acquisition activity at that time. I understand
23 that this conversation may have led most directly to Mr. Ergen asking me to join DISH's
24 Board.

25 29. Neither the social connection between my family and Mrs. Ergen nor my
26 business interactions with Mr. Ergen is akin to the relationship of close relatives. I might
27 consider the Ergens to be friends, but I take seriously my responsibilities as a fiduciary of
28 DISH. I would never put the Ergens' interests ahead of my fiduciary duties, that is to say,

1 ahead of the interests of DISH and its minority stockholders. Thus, I did not and I would not
2 take the Ergens' personal interests into account in deciding whether DISH should pursue
3 claims against them or any other person named a defendant in the Complaint. If I had
4 concluded that it would have been in DISH's best interest to pursue claims against the Ergens
5 or anyone else, I would have recommended that the claims be pursued and taken appropriate
6 action as a director of DISH to see that DISH's best interests were served.

7 **IV. SLC Investigation**

8 30. As a member of the SLC, I and the other members of the SLC oversaw a
9 thorough investigation of the claims alleged by Jacksonville. The SLC Report and the Motion
10 to Defer accurately describe the procedures for and the scope of the SLC's investigation in
11 more detail than I address here.

12 31. With respect to each claim asserted by Jacksonville, the SLC discussed the legal
13 issues that would determine whether DISH might be able to recover on that claim with our
14 counsel and directed that all necessary legal analysis be performed. I reviewed information
15 provided by the SLC's counsel. I also reviewed the briefing in connection with all of the
16 parties' motions to dismiss this action and considered those legal arguments, including the
17 arguments made by Jacksonville.

18 32. With respect to each claim asserted, the SLC discussed what information would
19 be necessary to accurately understand the factual background for the claim. Then, with the
20 guidance of our counsel, we directed that the information be gathered and reviewed. Although
21 I rely on counsel to confirm the precise number of pages of documents reviewed and each
22 custodian from whom documents were collected, the specific numbers of documents and
23 custodians described in the SLC Report seem consistent with the SLC's directions and my
24 understanding of the process.

25 33. At the SLC's request, counsel to the SLC passed along to me and the other SLC
26 members for review a subset of the documents analyzed by counsel, still thousands of pages of
27 documents. I personally reviewed the documents that I found most important to the
28 investigation, which included the deposition transcripts, some relevant filings from

1 LightSquared's bankruptcy, including the decisions of the Bankruptcy Court in the Adversary
2 Proceeding and the Plan Confirmation Proceeding, each of the significant filings in this action,
3 and the documentation concerning Mr. Ergen's LightSquared Secured Debt trades. I
4 performed my own analysis of those Secured Debt trades, based upon my personal experience
5 with distressed bank debt. At the SLC's request, counsel also provided multiple cogent
6 summaries and timelines of the factual information relevant to the claims for the SLC's review,
7 which I similarly reviewed.

8 34. I participated in almost all of the interviews conducted by the SLC in the course
9 of our investigation, as did Mr. Lillis and Mr. Ortolf. Although counsel led the questioning at
10 the interviews, I and the other SLC members also asked questions that we felt needed to be
11 answered.

12 35. Each of my legal or factual questions was answered in the course of the
13 investigation.

14 36. The SLC met numerous times over the course of our investigation to discuss
15 (1) the information and legal advice that we had received, (2) what additional information or
16 advice we believed would be useful for our investigation, and (3) the future steps necessary for
17 the completion of our investigation.

18 **V. The SLC's Interim Report**

19 37. In the initial stage of the SLC's investigation, when providing direction with
20 respect to the SLC's Interim Report, the SLC considered whether the injunctive relief sought
21 by Jacksonville would be in DISH's best interest. The SLC requested and received
22 information related to its goal of answering that question on an expedited basis, while deferring
23 its investigation of whether the pursuit of claims for monetary relief against Mr. Ergen and
24 others would be in DISH's best interest.

25 38. Jacksonville's assertion that the SLC had reached a conclusion with respect to
26 DISH's monetary claims by November of 2013 (SAC ¶¶ 203, 314-317; Opposition, pp. 7-8) is
27 not accurate.
28

1 39. At the time of the SLC's Interim Report, we concluded that the injunctive relief
2 requested by Jacksonville would not be in DISH's best interests. As for the claims for
3 monetary relief, we concluded that, if the claims had merit, DISH would be able to recover
4 from the defendants any appropriate damages. However, we further concluded that, if the
5 injunctive relief interfered with DISH's effort to acquire LightSquared's assets, DISH might
6 not be able to recover any resulting damages from any person.

7 40. At that time, the SLC had not reached a conclusion with respect to whether it
8 would be in DISH's best interest to assert monetary claims against Mr. Ergen or any other
9 defendant. The merits of DISH's monetary claims remained a subject for investigation by the
10 SLC.

11 **VI. The SLC's Motion to Dismiss for Failure to Plead Demand Futility**

12 41. During the course of the SLC's investigation, the members of the SLC
13 evaluated each member's independence. We updated this evaluation upon the filing of the
14 Second Amended Complaint. We concluded that each member of the SLC was independent.
15 Based upon my observations, Mr. Ortolf and Mr. Lillis took the SLC's investigation seriously,
16 acted independently, and reached their determinations in good faith, based upon the best
17 interests of DISH and its minority stockholders.

18 42. I do not believe that either I or any other member of the SLC faces a material
19 risk of personal liability from the claims asserted in the Complaint. As detailed in the SLC
20 Report, the claims asserted against the Director Defendants lack merit. Also, it is my
21 understanding that under Nevada law, a director may only be held liable for damages where the
22 director breached his or her fiduciary duties and "[t]he breach of those duties involved
23 intentional misconduct, fraud or a knowing violation of the law." (Nev. Rev. Stat. Ann.
24 § 78.138(7)). Knowing my own motivations, having investigated the claims, and having
25 worked at length with Mr. Lillis and Mr. Ortolf, I am confident that no SLC member engaged
26 in intentional misconduct, fraud, or a knowing violation of the law.

27 43. I authorized the SLC's Motion to Dismiss for Failure to Plead Demand Futility
28 (the "Motion to Dismiss") based on my confidence that the SLC was independent and fully

1 capable of overseeing the litigation of any claims that our investigation determined should
2 proceed.

3 44. When I approved the SLC's Motion to Dismiss, I had not reached a final
4 determination with respect to whether the claims asserted in the Complaint should be pursued
5 by DISH; I had simply determined that Jacksonville was not needed for the pursuit of those
6 claims, because I had determined that the members of the SLC were independent and capable
7 of overseeing any appropriate litigation on behalf of DISH.

8 **VII. The SLC's Report**

9 45. Over the last 13 months, I estimate that I personally spent hundreds of hours on
10 the SLC's investigation.

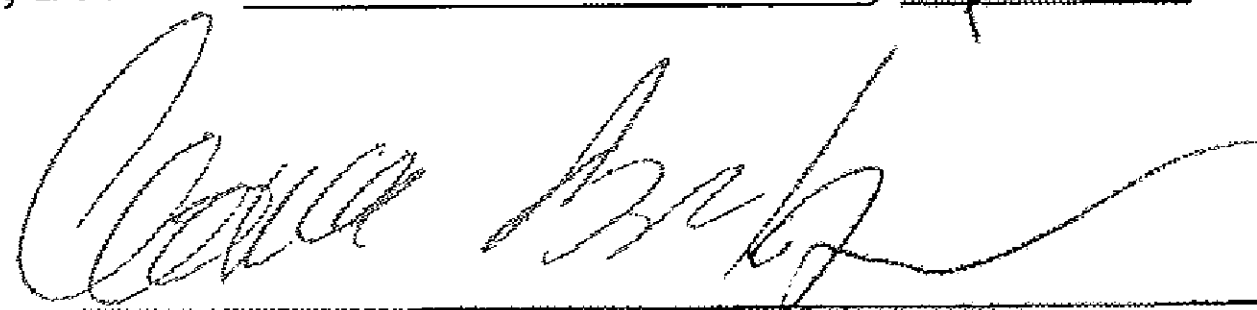
11 46. At the close of the investigation, I reviewed several successive drafts of the SLC
12 Report. The final SLC Report accurately reflects the SLC's findings, analysis, and
13 determinations.

14 47. My assessment of the merits of each of the claims asserted by Jacksonville was
15 based on the relevant facts and law as well as my many years of business experience. I
16 reached that assessment based on my own good faith evaluation of the claims.

17 48. My decision that the SLC should recommend that DISH not pursue litigation
18 with respect to any of the claims in the Complaint was not affected by my relationship with
19 Mr. or Mrs. Ergen, or anything other than what I believe to be the best interest of DISH and its
20 minority stockholders.

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

23
24 EXECUTED this 17th day of November, 2014 at 1:36, pm.

25
26 

27 George R. Brokaw
28

SUPP. REPLY EX. C

FILED UNDER SEAL

SUPP. REPLY EX. C

SUPP. REPLY EX. D

FILED UNDER SEAL

SUPP. REPLY EX. D

SUPP. REPLY EX. E

FILED UNDER SEAL

SUPP. REPLY EX. E