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Elizabeth A. Brown
Clerk of Supreme Court

This revision to the Rule again demonstrates that the Commission's definition of "cause" to mean engaging in a significant action related to the unlawful conduct (including conducting the specific mechanics of how a telemarketing campaign is created and implemented or related conduct), and not conduct unrelated to the violation. In the call abandonment example noted above, the Commission determined that the creation and implementation of these campaigns did not *cause* the harm that the TSR was promulgated to prevent. Thus, the Commission created an additional safe harbor for those creating and conducting the campaign. The connection between this conduct and the cause is direct and substantial, and not vague and tenuous.

5. *Cause means to "effect" or "bring about"*

When a rule or statute does not supply a specific definition of a word, the standard definition applies.¹⁴ The TSR does not explicitly define "cause," but there is little debate as to its meaning in the English language. *The New Shorter Oxford English Dictionary* 356-57 (1993) defines "cause" as to "effect, bring about; occasion, produce; induce." *Webster's Ninth New Collegiate Dictionary* 217 (1988) defines "cause" as "to effect by command, authority, or force."

Moreover, it is a well-settled rule of statutory and regulatory construction that words must be construed to have the same meaning throughout a statute or a regulation. As the Supreme Court explained, "the normal rule of statutory interpretation [is] that identical words used in different parts of the same statute are generally presumed to have the same meaning."¹⁵ Similarly, the First Circuit cited the plain-meaning rule in overturning a ruling of the Tax Court, noting "[The] Supreme Court has repeatedly emphasized the importance of the plain meaning rule, stating that if the language of a statute or regulation has a plain and ordinary meaning, courts need look no further and should

¹⁴ *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241-42 (1989).

¹⁵ *IBP, Inc. v. Alvarez*, 126 S. Ct. 514, 523 (2005); see also *Voracek v. Nicholson*, 421 F.3d 1299, 1304 (Fed. Cir. 2005) ("similar terms used in different parts of the same statute or regulation presumptively have the same meaning"); *Norman J. Singer*, 2A Sutherland Statutes and Statutory Construction § 46:06 (6th ed. 2000) ("There is a presumption that the same words used twice in the same act have the same meaning."); 73 AM. JUR. 2D *Statutes* § 149 (2006) ("[I]t has been said to be a normal rule of statutory construction that identical words used in different parts of the same act are intended to have the same meaning.").

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*apply the regulation as it is written.*¹⁶ Here, every use of “cause” in the TSR and its regulatory history conforms with the standard definition.

The staff has not alleged that Dish directed, requested, or coerced any dealer to violate the Rule. Dish did not. Instead, the complaint is alleging that Dish “caused” the dealers to violate the Rule merely by compensating dealers in general for sales, engaging in business with dealers who, on their own accord, telemarketed for Dish Network (and not at Dish’s direction or request), and by failing to monitor and enforce compliance with the TSR.¹⁷ These allegations are plainly insufficient under the Rule. Dish’s purchase of customers from independent dealers has nothing to do with Rule violations – indeed, nothing to do with telemarketing at all – other than in a strict liability sense for doing business with an entity that telemarketed on its own.

No telemarketer will market on behalf of a seller that fails to compensate the telemarketer in some way. That does not make every seller who deals with a telemarketer a cause of the telemarketer’s violations. Even assuming the independent dealers named in the complaint are Dish’s telemarketers, the staff has failed to allege any fact that suggests Dish’s actions meet the standard for liability under section 310.4(b). Nothing here shows that Dish caused the dealers to make the phone calls that violated the Rule.

C. Dish Did Not Assist or Facilitate Telemarketer Violations

To prove that a seller “assisted and facilitated” a telemarketer’s violation of the Rule, the Commission must show that the seller: (1) provided “substantial assistance or support” to a telemarketer while (2) “know[ing] or consciously avoid[ing] knowing” by deliberately ignoring that the telemarketer was engaged in DNC violations.¹⁸ Dish did neither, and the complaint falls far short of alleging sufficient facts to meet this standard.

Specifically, the staff alleges that Dish provided the named independent dealers with substantial assistance by paying them for services in general, allowing them to market Dish goods or services, entering into contracts with consumers who had had contact with the independent dealers, and providing services to consumers who had had contact with the independent dealers, and that Dish had received complaints concerning pre-recorded

¹⁶ *Textron Inc. v. Comm’r*, 336 F.3d 26, 31 (1st Cir. 2003).

¹⁷ Compl. at ¶ 58.

¹⁸ 16 C.F.R. § 310.3(b).

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messages made by two dealers.¹⁹ These allegations are not sufficient to prove third-party liability. General business dealings do not amount to substantial assistance. Nor is the “knowledge or conscious avoidance” standard met when Dish is only aware of one complaint on point, which it promptly investigated, audited the dealer, and took disciplinary action as a result against the dealer. Accordingly, these allegations fail to show that Dish knew or consciously avoided knowledge of these or other dealers’ unlawful TSR activity.

At bottom, the staff’s allegations against Dish are premised on the assertion that Dish engaged in business generally with third parties who, on their own accord, telemarketed, and who, according to the staff, engaged in some unlawful telemarketing, and that Dish was either negligent in failing to provide sufficient oversight of independent dealers, or that Dish “should have known” of the third parties’ alleged TSR misconduct. But those allegations do not meet the legal standard for holding Dish liable for third party conduct.

1. *The seller must provide the telemarketer with substantial assistance*

In the SBP for the Original Rule, the Commission explained that “substantial assistance” must consist of more than “mere casual or incidental dealing with a seller or telemarketer that is unrelated to a violation of the Rule.”²⁰ The Commission has made clear that, for liability to attach, there must be a link between the “substantial assistance” and the violation. There must “be some *connection* between the substantial assistance provided to a deceptive telemarketer and *resulting violations of core provisions* of the revised proposed Rule.”²¹

In a business guidance publication, *Complying With the Telemarketing Sales Rule*, the Commission reiterated the principle that the assistance must relate to the violation:

It is a violation of the Rule to substantially assist a seller or telemarketer while knowing or - consciously avoiding knowing - that the seller or telemarketer is violating the Rule. Thus taking deliberate steps to ensure one’s own ignorance of a seller’s or telemarketer’s Rule violations is an ineffective strategy to avoid liability. The help that a third party provides

¹⁹ Compl. at ¶ 52.

²⁰ 60 Fed. Reg. 43842, 43852 (Aug. 23, 1995).

²¹ 60 Fed. Reg. 30406, 30414 (June 8, 1995) (emphasis added).

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must be more than casual or incidental dealing with a seller or telemarketer that is unrelated to a violation of the Rule.²²

The necessary connection between the substantial assistance and the third-party telemarketers' alleged violation has been clear in nearly all of the enforcement actions the Commission has brought under this provision. Typical of the cases are the following, in which the assistance was so substantial as to be vital to the commission of fraud on consumers:

- Organizing, operating, and filing the articles of incorporation to create a sham non-profit corporation – all for the purpose of taking advantage of the Rule's non-profit exemption. *United States v. Entrepreneurial Strategies, Ltd.*²³
- Selling and renting consumer lists to telemarketers known to be engaging in the marketing of advance-fee credit products, a *per se* violation of the Rule. *FTC v. Guidestar Direct Corp. (d/b/a Carney Direct Marketing)*.²⁴
- Creating scripts, leads, promotional materials, and customer service for deceptive sales transactions; processing and depositing consumers' unsigned bank drafts. *FTC v. SureCheK Sys., Inc.*²⁵
- Operating a "turn-down" room for the violating telemarketers; sending out denial letters to loan applicants. *FTC v. David Wayne Panella (d/b/a Consolidated Financial Servs. or Gateway Servs. Ctr.)*.²⁶

²² *Complying With the Telemarketing Sales Rule 28*, at www.ftc.gov/bcp/online/pubs/buspubs/tsr.htm (emphasis added).

²³ *United States v. Entrepreneurial Strategies, Ltd.*, CV: 2:06-CV-15 (N.D. Ga. Jan. 24, 2006). The Director of the Bureau of Consumer Protection explained "This case demonstrates just the type of conduct the TSR's assisting and facilitating provision was intended to prohibit." Lydia Parnes, Georgia Defendants Settle Charges of 'Assisting and Facilitating' Telemarketing Violations, FTC News Release (Jan. 24, 2006), at <http://www.ftc.gov/os/caselist/0523098/0523098.htm>.

²⁴ CV04-6671 (C.D. Cal. Filed Aug. 11, 2004).

²⁵ No. 1-97-CV-2015 (JTC) (N.D. Ga. filed May 1998).

²⁶ No. C96-0874R (W.D. Wash. April 1997).

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The defendants in the Commission's assisting and facilitating cases, described above, all allegedly provided significant amounts of substantive support to the allegedly illegal conduct of the primary wrongdoer. That type of conduct is consistent with the Commission's explanation in both its rulemaking and business guidance that a Rule violation requires the level of assistance provided to the primary wrongdoer to be more than mere casual or incidental dealing.

In contrast, the staff here has failed to allege any conduct that meets the standard for liability under this section. Dish provided no assistance to any violations committed by any telemarketers because Dish's alleged "assistance" to the dealers was not connected with, let alone "substantial" to, the commission of any Rule violation.

2. *A seller must know – or consciously avoid knowing – about a telemarketer's alleged violations*

The Rule requires that, for assisting and facilitating liability to attach, in addition to substantial assistance, a person must "know or consciously avoid knowing" that one whom he assists is engaged in a practice that violates the Rule.²⁷ The standard of knowledge is defined narrowly to ensure that only those who either know of or deliberately ignore evidence of a Rule violation can be held liable.²⁸ As the Commission explained in its SBP for the Amended Rule, in cases where actual knowledge cannot be proven, constructive knowledge may be shown only if the evidence supports "an inference of deliberate ignorance."²⁹

Here, the only direct "knowledge" allegation is the staff's assertion that Dish allegedly was aware of consumer complaints by two specific dealers regarding pre-recorded messages.³⁰ Yet, as noted above, Dish is only aware of one complaint on point, which it promptly investigated, audited the dealer, and took disciplinary action as a result against the dealer. That extremely limited knowledge (and follow-up response by Dish) does not meet the TSR standard for "assisting and facilitating." Nor does it demonstrate that Dish "consciously avoided" knowledge of dealer TSR violations.

²⁷ 16 C.F.R. § 310.3(b).

²⁸ Although the Commission had initially proposed a broader "knows or should have known" standard, after the first round of rulemaking comments, it decided that such a standard "may have swept too broadly and exposed those only casually associated with deceptive telemarketing to liability as assistors or facilitators." 60 Fed. Reg. 30414 (June 8, 1995).

²⁹ 68 Fed. Reg. 4580, 4612 (Jan. 29, 2003).

³⁰ Compl. at ¶¶ 49 – 50.

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If anything, the draft complaint suggests that Dish should be held liable because its dealer oversight program was not sufficiently effective:

*Dish failed to implement an effective compliance program to monitor and enforce its authorized dealers' compliance with the Amended TSR....*³¹

Yet, it is not enough to show that a defendant was negligent or *should have known* of another party's violation, as the Commission itself noted in the SBP for the Original Rule, "where a person's liability to pay redress or civil penalties depends on the wrongdoing of another person, the 'conscious avoidance' standard is correct."³² The defendant must deliberately *choose to ignore* unavoidable evidence of the other party's unlawful conduct.

As guidance for "conscious avoidance," the SBP cites several criminal cases. These cases involve defendant co-conspirators who deliberately took steps to remain ignorant of glaring details of unlawful conduct,³³ or individuals responsible for marketing a product

³¹ Compl. at ¶ 57.

³² 60 Fed. Reg. 43842, 43852 n. 105 (Aug. 23, 1995).

³³ See *United States v. Diaz*, 864 F.2d 544, 549 (7th Cir.), *cert. denied*, 490 U.S. 1070 (1989) ("The purpose of the [conscious avoidance jury] instruction is: to alert the jury to the fact that the act of avoidance of knowledge of particular facts may itself circumstantially show that the avoidance was motivated by sufficient guilty knowledge to satisfy the statute. . . . It informs the jury that it may look at the charade of ignorance as circumstantial proof of knowledge.") (emphasis added); *United States v. Arbizo* 833 F.2d 244, 248 (10th Cir. 1987) (stating the court's preference for a conscious avoidance jury instruction, which states clearly: "To insure that a defendant is only convicted if his ignorance is willful, rather than negligent, the preferable form of the instruction informs the jury, in addition to the charge given in this case, '(1) that the required knowledge is established if the accused is aware of a high probability of the existence of the fact in question, (2) unless he actually believes it does not exist'") (emphasis added); *United States v. Rothrock* 806 F.2d 318, 322-23 (1st Cir. 1986) (in reviewing the record to determine if it "contain[ed] enough evidence that defendants engaged in a conscious course of deliberate ignorance," the court explained that the purpose of such a standard, which it called "willful blindness," is to impose liability "on people who, recognizing the likelihood of wrongdoing, nonetheless consciously refuse to take basic investigatory steps") (emphasis added); *United States v. Jewell*, 532 F.2d 697, 700 (9th Cir.), *cert. denied*, 426 U.S. 951 (1976) (stating that liability was appropriate where the defendant's ignorance of his direct assistance of unlawful conduct "was solely and entirely a result of his having made a conscious purpose to disregard the nature of [the unlawful conduct], with a conscious purpose to avoid learning the truth") (emphasis added).

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while purposely and deliberately ignoring in-house research regarding that product's dangers.³⁴

The Commission also expresses this position in its business education publication, stating: "*A person violates the Rule if he or she knows of, or takes deliberate steps to ensure his or her own ignorance of, a seller's or telemarketer's Rule violations, yet helps the seller or telemarketer.*"³⁵

The Commission's enforcement approach reflects its stated position. It has pursued assisting and facilitating cases only against defendants who not only provided substantial support to a Rule violator, but also knew or consciously avoided knowing that the violator was involved in illegal activity. In numerous cases, the Commission has explained its allegation that the defendant "knew or consciously avoided knowing" that it was assisting a Rule violation. Typical examples include a defendant accepting money for providing assistance in avoiding Rule compliance,³⁶ or handling consumer complaints and billing disputes in connection with knowledge of a telemarketers' misrepresentations and that high chargeback rates on defendant's credit card merchant accounts strongly indicated fraud.³⁷

Accordingly, the Commission has made clear that, when enforcing provisions of the TSR against sellers for the actions of telemarketers, the Commission must show that the seller "assisted and facilitated" in the unlawful conduct, or that the seller *directed* the telemarketer to violate the Rule, or that the seller *provided the instrument* to violate the Rule, or *triggered the mechanism* to violate the Rule, not that the seller merely made available a legal monetary incentive to do business with a third party in general, and benefited in general from that business relationship.

³⁴ *United States v. Beech-Nut Nutrition Corp.*, 871 F.2d 1181, 1195-1196 (2d Cir.), *cert. denied*, 493 U.S. 933 (1989). In *Beech-Nut*, the Second Circuit emphasized that "[c]onscious avoidance is a concept that deals most directly with knowledge. A conscious-avoidance instruction is appropriate when a defendant claims to lack 'some specific aspect of knowledge necessary to conviction but where the evidence may be construed as deliberate ignorance.'" *Id.* at 1195 (emphasis added).

³⁵ "Complying With the Telemarketing Sales Rule," at www.ftc.gov/bcp/online/pubs/buspubs/tsr.htm (emphasis added).

³⁶ *Entrepreneurial Strategies, Ltd.*, CV: 2:06-CV-15 (N.D. Ga. Jan. 24, 2006).

³⁷ *Woofter*, No. CV-S-97-00515-LDG (RLH) (D. Nev. May 7, 1997). See also e.g.: *Allstate Bus. Distrib'n Ctr.*, No. 00-10335AHM (CTX) (C.D. Cal. 2001); *Cordeiro*, FTC File No. 002 3169 (N.D. Cal. filed Feb. 7, 2001); *SureCheK*, No. SureCheK-1-97-CV-2015 (JTC) (N.D. Ga. filed May 1998).

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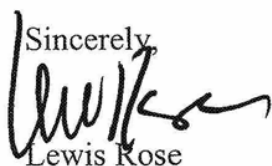
At bottom, there is no evidence that Dish assisted and facilitated dealers in unlawful telemarketing activities, if in fact they did engage in such activities. Even if the dealers are found to have violated the Rule, Dish was not aware of such activities, nor did it take steps to avoid discovering it, or deliberately ignore evidence of the alleged unlawful conduct. If anything, Dish had (and has) an entire program designed to identify and discipline dealers who engage in unlawful conduct, and Dish has taken reasonable steps to make itself aware of any unlawful, unapproved conduct by rogue dealers and promptly address it.

* * *

For these reasons, Dish cannot be held liable for the alleged unlawful acts of independent dealers. If necessary, we are prepared to fully pursue our defenses here, which we anticipate will result in a court opinion consistent with the legislative and regulatory history of the TSR, as discussed throughout this letter.

We hope to be able to discuss these issues with you in person during our upcoming meeting later this month.

With best regards.

Sincerely,

Lewis Rose

cc: Russell Deitch, Esquire
Jeffrey Blum, Esquire
Lori Kalani, Esquire
Alysa Hutnik, Esquire

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EXHIBIT 366

EXHIBIT 366

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Message

From: Blum, Jeffrey [/O=ECHOSTAR COMMUNICATIONS CORP/OU=ECHOSTAR/CN=RECIPIENTS/CN=USERS AND GROUPS/CN=CORPORATE/CN=RIVERFRONT/CN=JEFFREY.BLUM]
Sent: 1/29/2009 10:42:48 AM
To: Dodge, Stanton [stanton.dodge@dishnetwork.com]; Ergen, Charlie [charlie.ergen@dishnetwork.com]
Subject: Do-Not Call

REDACTED-ATTORNEY-CLIENT PRIVILEGED/WORK-PRODUCT the FTC has referred the case to the DOJ. AC/WP
REDACTED-ATTORNEY-CLIENT PRIVILEGED/WORK-PRODUCT

From: Rose, Lewis [mailto:LRose@KelleyDrye.com]
Sent: Thursday, January 29, 2009 8:03 AM
To: Blum, Jeffrey; Kalani, Lori
Cc: Hutnik, Alysa; Boyle, Joseph
Subject: FTC -> DOJ

I received a call today from Russ and Gary informing me that, AC/WP the Commission authorized the filing of the Complaint yesterday. REDACTED-ATTORNEY-CLIENT PRIVILEGED/WORK-PRODUCT

Lew

Lewis Rose
Kelley Drye & Warren LLP
3050 K Street, NW, Suite 400
Washington, DC 20007
202-342-8821 (voice)
202-391-8268 (cell)

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EXHIBIT 367

EXHIBIT 367

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**MINUTES OF THE AUDIT COMMITTEE OF
THE BOARD OF DIRECTORS OF
DISH NETWORK CORPORATION**

February 23, 2009

A regular meeting of the audit committee (the "Audit Committee") of the board of directors (the "Board of Directors") of DISH Network Corporation (the "Corporation"), a Nevada corporation, was held on February 23, 2009 at 8:45 a.m., prevailing Mountain Time, at the Corporation's offices located at 9601 S. Meridian Blvd., Englewood, Colorado 80112.

The following members of the Audit Committee participated:

Tom A. Ortolf, Chairman

Steven R. Goodbarn

Gary S. Howard

Also participating at various times during the meeting at the invitation of the Chairman of the Audit Committee were: David K. Moskowitz, Senior Advisor to the Corporation and a member of the Board of Directors; R. Stanton Dodge, Executive Vice President, General Counsel and Secretary of the Corporation; Bernard L. Han, Executive Vice President and Chief Financial Officer of the Corporation; Paul W. Orban, Senior Vice President and Controller of the Corporation; Michael McClaskey, Senior Vice President and Chief Information Officer of the Corporation (*present for Item 8 only*); Kathy Schneider, Vice President - Finance for the Corporation (*present for Items 10 through 15 only*); John Post, Vice President of Tax Administration for the Corporation (*present for Items 8 and 10 through 13 only*); Brandon E. Ehrhart, Director, Senior Corporate Counsel and Assistant Secretary of the Corporation; Carol MacLeod, Accounting Manager I – SEC Accounting for the Corporation (*present for Item 5 only*); Tim Beggs, Accounting Manager III for the Corporation (*present for Item 8 only*); Amy

Becktell, Accounting Manager III for the Corporation (*present for Item 8 only*); Jason Waldron, Lead Engagement Partner, KPMG LLP ("KPMG"), independent registered public accounting firm for the Corporation; and Jerry Mittleider, SEC Reviewing Partner, KPMG.

The meeting was called to order by Mr. Ortolf, who served as Chairman and presided. Mr. Dodge acted as Secretary of the meeting and Mr. Ehrhart acted as Assistant Secretary of the meeting.

Mr. Ortolf advised that, as each member of the Audit Committee had waived any and all notices that may have been required to be given with respect to a regular meeting of the Audit Committee and a quorum was present, the meeting was properly convened.

Executive Session of Nonemployee Directors

The first item of business was an executive session of the nonemployee members of the Board of Directors.

Review of Fourth Quarter and Year-End Financial Performance

The second item of business was a report presented by Mr. Orban regarding the Corporation's audited financial statements for the year ended December 31, 2008 (the "Financial Statements"). A summary of Mr. Orban's presentation was attached as Exhibit 3A to the board book for the meeting. Among other things, Mr. Orban reviewed certain impairments of, and unrecognized losses on, investment securities, and led a discussion regarding the potential impairment of the 700 MHz spectrum deposit.

Mr. Orban then led a discussion regarding the draft programming dispute accrual memorandum and draft late fee analysis that were distributed at the meeting, and walked the members of the Audit Committee through the changes made to the draft programming dispute accrual memorandum from the fourth quarter 2008.

Mr. Orban then led a discussion regarding the subscriber bad debt calculation and walked the members of the Audit Committee through the methodology used to make the calculation.

Mr. Orban then presented a report on the Corporation's holdings of Sirius equity and debt securities, a summary of which was distributed at the meeting.

Mr. Orban then led a discussion regarding the SAB 99 and 108 materiality analysis, a summary of which was distributed at the meeting. Mr. Orban walked the members of the Audit Committee through the materiality analysis noting, among other things, certain cash flow reclassifications.

Mr. Orban then led a discussion regarding potential prior period tax-related adjustments.

Mr. Orban then presented a report regarding the payments in excess of \$5 million made during the fourth quarter. A summary of Mr. Orban's presentation was attached as Exhibit 3B to the board book for the meeting.

Mr. Orban then noted that a copy of the portfolio summary for the D&O trust fund as of December 31, 2008 was attached as Exhibit 3C to the board book for the meeting.

The members of the Audit Committee reviewed and discussed the Financial Statements with Mr. Orban and the other members of management present at the meeting.

Review of Marketable Securities

The third item of business was a report presented by Mr. Han regarding the Corporation's investments in marketable securities. A summary of Mr. Han's presentation was attached as Exhibit 4A to the board book for the meeting.

Litigation Update

The fourth item of business was an update presented by Mr. Dodge, in his capacity as General Counsel of the Corporation, regarding significant litigation in which the Corporation

and/or its subsidiaries are involved. Mr. Dodge explained that his report and any ensuing discussions were subject to the attorney/client and work product privileges.

Review of Form 10-K

The fifth item of business was a report presented by Mr. Han and Mr. Ehrhart regarding the Corporation's annual report on Form 10-K. A draft of the Form 10-K was attached as Exhibit 6A to the board book for the meeting. Mr. Han walked the members of the Audit Committee through the changes made to the churn calculation and the changes made with respect to the rounding of subscriber numbers. The members of the Audit Committee reviewed and discussed the draft Form 10-K with Messrs. Han and Ehrhart, the other members of management present at the meeting and KPMG.

Management's Report on Internal Control Evaluation and Officer Certifications

The sixth item of business was a report presented by Mr. Han regarding management's evaluation of the effectiveness of its disclosure controls and procedures and internal control over financial reporting. Mr. Han noted that, under the supervision and with the participation of management, including the Chief Executive Officer and Chief Financial Officer, the Corporation evaluated the effectiveness of its "disclosure controls and procedures" (as defined in Rule 13a-15(e) under the Securities Exchange Act of 1934) as of December 31, 2008, and based on that evaluation, the Chief Executive Officer and Chief Financial Officer concluded that the Corporation's disclosure controls and procedures are effective.

Mr. Han further noted that management conducted an evaluation of the effectiveness of the Corporation's internal control over financial reporting based on the framework in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the

Treadway Commission, and that based on that evaluation, management concluded that the Corporation's internal control over financial reporting was effective as of December 31, 2008.

Mr. Han then explained to the members of the Audit Committee and the representatives of KPMG that based on their most recent evaluation of internal control over financial reporting, Mr. Han and Mr. Charles W. Ergen (the Chief Executive Officer of the Corporation) do not believe: (i) that there are any significant deficiencies or material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Corporation's ability to record, process, summarize or report financial information; or (ii) that any fraud, whether or not material, has occurred that involves management or other employees who have a significant role in the Corporation's internal control over financial reporting.

Reg. S-K Item 404 "Related Person" Transactions

The seventh item of business was a discussion led by Mr. Dodge of all existing and new potential SEC Reg. S-K, Item 404 "Related Person" transactions, Nevada Revised Statutes §78.140 transactions and "Sensitive" transactions, as defined by the 2005 Audit Committee Recommendations to generally mean: (i) any non-ordinary course transaction in which the amount involved exceeded \$5,000,000; (ii) related-party transactions; (iii) transactions of a highly confidential nature; (iv) transactions which grant exclusive rights or most favored nations status to any third party; or (v) any other transaction which in the judgment of the board should reasonably be considered sensitive.

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REDACTED-ATTORNEY-CLIENT PRIVILEGED

Mr. Dodge explained that, during 2008, the Corporation (or one of its subsidiaries) employed Mrs. Cantey Ergen and one other member of the Ergen family (the "Ergen Transactions"). The Corporation (or one of its subsidiaries) paid Mrs. Cantey Ergen approximately \$97,000 and paid Ms. Katherine Ergen approximately \$10,000 during 2008, although depending on the time and services that will be provided, these individuals may earn more than that amount during 2009.

Mr. Dodge further explained that, during 2006, Mr. Carl Vogel, Vice Chairman of the Corporation and a member of the Board of Directors, agreed to serve as a director of Shaw Communications Inc. ("Shaw"), a diversified Canadian communications company whose core business is providing broadband cable television, high-speed Internet, digital phone, telecommunications services and satellite direct-to-home services to over three million customers, and Mr. Vogel has beneficial ownership of approximately 70,000 shares of Shaw common stock (the "Vogel Transaction I").

Mr. Dodge further explained that, during 2007, Mr. Gary Howard, a member of the Board of Directors, agreed to serve as a director of WildBlue Communications Inc. ("WildBlue"), a Delaware satellite communications company whose core business is providing satellite based high-speed Internet and with whom the Corporation has entered into a wholesale agreement (the "Howard Transaction").

Mr. Dodge further explained that the limited liability partnership of which Mr. Tom A. Ortolfo is a partner holds approximately nine percent (9%) of the issued and outstanding stock of Spectrographics, Inc. ("Spectrographics") a printing company with which the Corporation

transacts business from time to time and which the Corporation has paid approximately \$269,000, \$87,000, \$294,000 and \$120,000 during the years ended December 31, 2005, 2006, 2007 and 2008, respectively, which payments constituted a maximum of 3% of such company's annual revenue (the "Ortolf Transaction").

Mr. Dodge further explained that, during 2008, Mr. Vogel agreed to serve as a director of iBAHN Corporation ("iBAHN"), a provider of wired and wireless broadband services that, among other things, acts as a sales and third party billing agent for Free-to-Guest ("FTG") programming on behalf of the Corporation (the "Vogel Transaction II").

Mr. Dodge further explained that, during 2008, the Corporation (or one of its subsidiaries) employed Ms. Courtland Wood Colantonio, the daughter of Mr. Stephen Wood, Executive Vice President of Human Resources for the Corporation (the "Wood Transaction"). The Corporation (or one of its subsidiaries) paid Ms. Colantonio approximately \$1,000 during 2008, and expects to pay her approximately \$5,000 during 2009, although depending on the time and services that will be provided, she may earn more than that amount during 2009.

Mr. Dodge further explained that, during 2008, the Corporation (or one of its subsidiaries) employed one member of the family of Mr. Vogel, (the "Vogel Transaction III"). The Corporation (or one of its subsidiaries) paid Mr. Connor Vogel approximately \$5,500 during 2008, and expects to pay him approximately \$5,500 during 2009, although depending on the time and services that will be provided, he may earn more than that amount during 2009.

Mr. Dodge further explained the Corporation and/or its subsidiaries are considering amending or entering into the following agreements with EchoStar Corporation ("SATS") and/or its subsidiaries: (i) an amendment to the 301 Receiver Agreement to revise the pricing of certain model 301 receivers and to include model 322 receivers; (ii) payment of \$5 million from the

Corporation to SATS for the use of five frequencies at the 72.7 orbital slot; and (iii) a trademark license agreement for the Corporation to use the EchoStar name on certain satellites; the terms and conditions of which were more fully described in the spreadsheet attached as Exhibit 8A to the board book for the meeting (collectively, the “New Transactions”).

Mr. Dodge further explained that Section 4.2, Further Assurances, of that certain Separation Agreement by and between the Corporation and SATS dated December 31, 2007 (the “Separation Agreement”), contemplates that the Corporation and SATS may execute such other agreements as may be necessary or desirable in order to effect the purpose of the transactions contemplated by the spin-off. Mr. Dodge further explained that, pursuant to such Section of the Separation Agreement, management is proposing that the Corporation amend or enter into the following agreements: (i) a lease agreement for certain office and warehouse space used by DISH Network Service L.L.C. at the Gilbert, Arizona uplink facility; (ii) an amendment to the payment terms of the Nimbus Agreement to pass through DISH’s allocable share of a \$2,500,000 fee reduction; and (iii) a trademark assignment agreement to transfer the “ViP” trademarks from the Corporation to SATS; upon substantially the terms set forth in the spreadsheet attached as Exhibit 8A to the board book for the meeting.

Mr. Dodge further explained that management has found, and recommended that the Audit Committee and Board of Directors find, that the New Transactions are fair to the Corporation

Mr. Dodge further explained that those members of the Board of Directors who are not also members of the Board of Directors of SATS, Mr. James DeFranco, Mr. Steven R. Goodbarn and Mr. Gary S. Howard, met with certain members of management who are not also members of SATS management to discuss the New Transactions and found, and recommended that the

Audit Committee and Board of Directors find, that the New Transactions are fair to the Corporation and approved, and recommended that the Audit Committee and the Board of Directors approve, the New Transactions on substantially the same terms and conditions described in the spreadsheet attached as Exhibit 8A to the board book for the meeting, with such non-material modifications, changes, or amendments to such terms and conditions as the Chief Executive Officer or Executive Vice President, General Counsel, and Secretary of the Corporation, shall in their discretion approve.

Mr. Howard then led a discussion regarding such review of the New Transactions by Messrs. DeFranco, Goodbarn and Howard. Mr. Dodge then walked the members of the Audit Committee through the spreadsheet attached as Exhibit 8A to the board book for the meeting and responded to several questions from the members of the Audit Committee.

Mr. Dodge further explained that Mr. Charles W. Ergen, Chairman of the Board of Directors and Chief Executive Officer of the Corporation and Mrs. Cantey Ergen, a member of the Board of Directors, are proposing to purchase certain real estate for approximately \$5,000,000 from Winegard Realty Company, an affiliate of Winegard Company ("Winegard"), a company which among other things supplies SATS and the Corporation with satellite antennas (the "Winegard Transaction"). Mr. Dodge walked the members of the Audit Committee through the updated spreadsheet distributed by Mr. Ehrhart at the meeting detailing the Corporation's and SATS' historic transactions with Winegard and other satellite antenna manufacturers.

After discussion and deliberation, upon motion duly made and seconded, the following resolutions were unanimously adopted (with Mr. Howard abstaining with respect to the Howard Transaction and Mr. Ortolf abstaining with respect to the Ortolf Transaction):

WHEREAS, the Ergen Transactions, Vogel Transaction I, Howard Transaction, Ortolf Transaction, Vogel Transaction II, Wood Transaction, Vogel Transaction

III, New Transactions and the Winegard Transaction may potentially be considered related party transactions under SEC Regulation S-K, Item 404, Nevada Revised Statutes §78.140 transactions or “Sensitive” transactions and therefore, out of an abundance of caution, the Audit Committee has been asked to review such transactions; and

Ergen Transactions

NOW, THEREFORE, BE IT RESOLVED, that based upon the information received by the Audit Committee, the above-referenced discussions with the General Counsel of the Corporation, and upon such other matters as are deemed relevant by the Audit Committee, the Audit Committee hereby finds, and hereby recommends that the Board of Directors find, that the prior Ergen Transactions and the continuation of the Ergen Transactions in 2009, provided Mrs. Ergen’s employment compensation does not exceed \$100,000 in 2009 and the aggregate employment compensation of the Ergen children does not exceed \$50,000 in 2009, are fair to the Corporation and its subsidiaries; and further

RESOLVED, that the Audit Committee hereby: (a) ratifies and confirms in all respects, and recommends that the Board of Directors ratify and confirm, the prior Ergen Transactions; and (b) authorizes, ratifies and adopts in all respects, and hereby recommends that the Board of Directors authorize, ratify and adopt, the continuation of the Ergen Transactions in 2009, provided Mrs. Ergen’s employment compensation does not exceed \$100,000 in 2009 and the aggregate employment compensation of the Ergen children does not exceed \$50,000 in 2009; and further

Vogel Transaction I

RESOLVED, that the Audit Committee hereby waives, and hereby recommends that the Board of Directors waive, any conflict of interest (whether actual or potential) in connection with the continuation of the Vogel Transaction I in 2009; and further

RESOLVED, that, for so long as Mr. Vogel is a member of the Board of Directors of Shaw or retains a significant financial stake in Shaw, Mr. Vogel shall recuse himself from any matters presented to the Board of Directors (or its committees) that directly or indirectly involve Shaw or ExpressVu or any of their affiliates; and further

Howard Transaction

RESOLVED, that the Audit Committee hereby waives, and hereby recommends that the Board of Directors waive, any conflict of interest (whether actual or potential) in connection with the continuation of the Howard Transaction in 2009; and further

RESOLVED, that, for so long as Mr. Howard is a member of the Board of Directors of WildBlue or retains a significant financial stake in WildBlue, Mr. Howard shall recuse himself from any matters presented to the Board of Directors (or its committees) that directly or indirectly involve WildBlue or any of its affiliates; and further

Ortolf Transaction

RESOLVED, that the Audit Committee hereby waives, and hereby recommends that the Board of Directors waive, any conflict of interest (whether actual or potential) in connection with the continuation of the Ortolf Transaction in 2009; and further

RESOLVED, that, for so long as Mr. Ortolf retains a significant financial stake in Spectrographics, Mr. Ortolf shall recuse himself from any matters presented to the Board of Directors (or its committees) that directly or indirectly involve Spectrographics or any of its affiliates; and further

Vogel Transaction II

RESOLVED, that the Audit Committee hereby waives, and hereby recommends that the Board of Directors waive, any conflict of interest (whether actual or potential) in connection with the continuation of the Vogel Transaction II in 2009; and further

RESOLVED, that, for so long as Mr. Vogel is a member of the Board of Directors of iBAHN or retains a significant financial stake in iBAHN, Mr. Vogel shall recuse himself from any matters presented to the Board of Directors (or its committees) that directly or indirectly involve iBAHN or any of its affiliates; and further

Wood Transaction

RESOLVED, that based upon the information received by the Audit Committee, the above-referenced discussions with the General Counsel of the Corporation, and upon such other matters as are deemed relevant by the Audit Committee, the Audit Committee hereby finds, and hereby recommends that the Board of Directors find, that the Prior Wood Transaction and the continuation of the Wood Transaction in 2009, provided Mrs. Courtland Wood Colantonio's employment compensation does not exceed \$20,000 in 2009, is fair to the Corporation and its subsidiaries; and further

RESOLVED, that the Audit Committee hereby: (a) ratifies and confirms in all respects, and recommends that the Board of Directors ratify and confirm, the prior Wood Transaction; and (b) authorizes, ratifies and adopts in all respects, and

hereby recommends that the Board of Directors authorize, ratify and adopt, the continuation of the Wood Transaction in 2009; provided Mrs. Colantonio's employment compensation does not exceed \$20,000 in 2009; and further

Vogel Transaction III

RESOLVED, that based upon the information received by the Audit Committee, the above-referenced discussions with the General Counsel of the Corporation, and upon such other matters as are deemed relevant by the Audit Committee, the Audit Committee hereby finds, and hereby recommends that the Board of Directors find, that the Prior Vogel Transaction III and the continuation of the Vogel Transaction III in 2009, provided Mr. Connor Vogel's employment compensation does not exceed \$20,000 in 2009, is fair to the Corporation and its subsidiaries; and further

RESOLVED, that the Audit Committee hereby: (a) ratifies and confirms in all respects, and recommends that the Board of Directors ratify and confirm, the prior Vogel Transaction III; and (b) authorizes, ratifies and adopts in all respects, and hereby recommends that the Board of Directors authorize, ratify and adopt, the continuation of the Vogel Transaction III in 2009; provided Mr. Connor Vogel's employment compensation does not exceed \$20,000 in 2009;

New Transactions

WHEREAS, (a) management and those members of the Board of Directors who are not also members of the Board of Directors of SATS, Mr. James DeFranco, Mr. Steven Goodbarn and Mr. Gary S. Howard, have found and recommended that the Audit Committee and the Board of Directors find, that the New Transactions are fair to the Corporation and its subsidiaries; and (b) Mr. DeFranco, Mr. Goodbarn and Mr. Howard have approved, and recommended that the Audit Committee and the Board of Directors approve, the New Transactions on substantially the same terms and conditions described in the spreadsheet attached as Exhibit 8A to the board book for the meeting, with such non-material modifications, changes, or amendments to such terms and conditions as the Chief Executive Officer or Executive Vice President, General Counsel, and Secretary of the Corporation (each, a "proper officer" and collectively, the "proper officers"), or any one of them, shall in their discretion approve;

NOW, THEREFORE, BE IT RESOLVED, that the Audit Committee hereby approves, ratifies and confirms the recommendations of management and Mr. DeFranco, Mr. Goodbarn and Mr. Howard regarding the New Transactions; and further

RESOLVED, that based upon the information received by the Audit Committee from management, the above-referenced discussions with the General Counsel of the Corporation and other members of management, and upon such other inquiries

and other matters as are deemed appropriate or relevant by the Audit Committee, the Audit Committee hereby finds, and recommends that the Board of Directors find, that the New Transactions are fair to the Corporation and its subsidiaries; and further

RESOLVED, (a) that the Audit Committee hereby approves, and recommends that the Board of Directors approve, the New Transactions on substantially the same terms and conditions described in Exhibit 8A as attached to the board book for the meeting with such non-material modifications, changes, or amendments to such terms and conditions as the proper officers, or any one of them, shall in their discretion approve; and (b) that the consummation of such transactions by any proper officer, with such non-material modifications, changes, or amendments to the terms and conditions of the New Transactions as any proper officer shall approve, shall constitute conclusive evidence that such transactions have been approved hereby; and further

Winegard Transaction

WHEREAS, the members of the Audit Committee have previously been provided with an appraisal of the subject property and the updated spreadsheet detailing the Corporation's and SATS' historic transactions with Winegard and other satellite antenna manufacturers;

NOW, THEREFORE, BE IT RESOLVED, that based upon the information received by the Audit Committee, the above-referenced discussions with the General Counsel of the Corporation and other members of management, the appraisal, the above-referenced purchase pattern information, and upon such other inquiries and other matters as are deemed appropriate or relevant by the Audit Committee, the Audit Committee hereby waives, and recommends that the Board of Directors waive, any conflict of interest (whether actual or potential) in connection with the Winegard Transaction; and further

RESOLVED, that for a period of 24 months Mr. and Mrs. Ergen shall recuse themselves from any matters that directly or indirectly involve: (i) Winegard or any of its affiliates; or (ii) any other antenna vendors; and further

General Enabling Resolutions

RESOLVED, that the proper officers be, and each one of them acting alone or with one or more other proper officers hereby is, authorized, empowered and directed, in the name and on behalf of the Corporation and its subsidiaries, and under their corporate seals or otherwise, from time to time, to make, execute and deliver, or cause to be made, executed and delivered, all such other and further agreements, certificates, instruments or documents, to pay or reimburse all such filing fees and other costs and expenses, and to do and perform or cause to be done or performed all such acts and things, as in their discretion or in the

discretion of any of them may be necessary or desirable to enable the Corporation and its subsidiaries to accomplish the purposes and to carry out the intent or the foregoing resolutions; and further

RESOLVED, that any and all actions previously taken by any of the proper officers of the Corporation and its subsidiaries within the terms of the foregoing resolutions be, and the same hereby are, ratified, and confirmed in all respects.

Internal Audit/SOX 404 Update

The eighth item of business was an update provided by Mr. Beggs and Ms. Beckett regarding the Corporation's internal audit function and compliance with Section 404 of Sarbanes-Oxley ("SOX 404"). A summary of Mr. Beggs' and Ms. Beckett's presentation was attached as Exhibit 9A to the board book for the meeting. Mr. Beggs and Ms. Beckett walked the members of the Audit Committee through their presentation, highlighting, among other things, their summary findings to the non-information technology controls testing results for 2008 and the information technology general controls testing results for 2008. Mr. McClaskey then distributed a presentation on information technology security and fraud remediation and walked the members of the Audit Committee through his presentation.

Private Discussion with Internal Audit (Management and KPMG excused)

The ninth item of business was a private discussion between the members of the Audit Committee and representatives of the Internal Audit Department.

Discussion of Annual Audit Procedures and SOX 404 Update

The tenth item of business was a report presented by Mr. Waldron regarding KPMG's audit of the Financial Statements and Form 10-K for the year ended December 31, 2008. A summary of Mr. Waldron's presentation was distributed to the members of the Audit Committee at the meeting.

The discussion with the independent registered public accounting firm included, among other things, a summary of the status of the 2008 audit, during which Mr. Waldron noted that KPMG had substantially completed its audit procedures and discussed the primary matters still in process.

The discussion with the independent registered public accounting firm also included changes to the initial audit plan, results of the audit and certain required communications, including that, in their professional judgment, KPMG believes that it is independent of the Corporation within the meaning of the securities acts.

Approval of Form and Filing of Form 10-K

The eleventh item of business was the approval of the form and filing of the Corporation's annual report on Form 10-K for the year ended December 31, 2008. After discussion and deliberation, upon motion duly made and seconded, the following resolution was unanimously adopted, subject to the incorporation of the comments made by the members of the Audit Committee at the meeting:

WHEREAS, the Corporation is required to file with the Securities and Exchange Commission (the "Commission") by March 2, 2009, an Annual Report on Form 10-K for the year ended December 31, 2008 (the "Form 10-K");

WHEREAS, a draft of the Form 10-K proposed to be filed with the Commission was attached as Exhibit 6A to the board book for the meeting (the "Draft Form 10-K"), and each member of the Audit Committee has read the Draft Form 10-K and has provided all comments and responses they deem necessary and appropriate to the General Counsel and Chief Financial Officer of the Corporation (or their designees);

WHEREAS, the Draft Form 10-K contains year-end financial statements of the Corporation that were audited by KPMG; and

WHEREAS, management has recommended that the Audit Committee approve (i) as to form the Draft Form 10-K, with such non-material changes as the General Counsel and Chief Financial Officer of the Corporation shall deem necessary and appropriate, and (ii) the filing with the Commission of the Form 10-K (with any

such non-material changes) at such time as the General Counsel and Chief Financial Officer of the Corporation shall determine;

NOW, THEREFORE, BE IT RESOLVED, that the Audit Committee hereby (i) approves, ratifies and confirms the recommendation of management concerning the approval (a) as to form of the Draft Form 10-K, with such non-material changes as the General Counsel and Chief Financial Officer of the Corporation shall deem necessary and appropriate, and (b) of the filing with the Commission of the Form 10-K (with any such non-material changes) at such time as the General Counsel and Chief Financial Officer of the Corporation shall determine; and (ii) based on the review and discussions with management and the independent registered public accounting firm referred to above, recommends to the Board of Directors that (a) the audited financial statements for the year ended December 31, 2008 be included in the Form 10-K, and (b) the Board of Directors approve as to form the Draft Form 10-K, with such non-material changes as the General Counsel and Chief Financial Officer of the Corporation shall deem necessary and appropriate, and the filing with the Commission of the Form 10-K (with any such non-material changes), at such time as the General Counsel and Chief Financial Officer of the Corporation shall determine.

Appointment of KPMG as Independent Registered Public Accounting Firm for the Fiscal Year Ending December 31, 2009

The twelfth item of business was a discussion led by Mr. Ortolf regarding the appointment of KPMG as the Corporation's independent registered public accounting firm for the fiscal year ending December 31, 2009.

After discussion and deliberation, upon motion duly made and seconded, the following resolution was unanimously adopted:

NOW, THEREFORE, BE IT RESOLVED, that the Audit Committee hereby determines that it is in the best interests of the Corporation to have KPMG serve as the Corporation's independent registered public accounting firm for the fiscal year ending December 31, 2009, and therefore the Audit Committee hereby: (i) approves, ratifies and adopts the appointment of KPMG LLP as the independent registered public accounting firm of the Corporation for the fiscal year ending December 31, 2009 (subject to reaching an agreement with respect to fees to be charged to the Corporation by KPMG for its services and subject to ratification by the shareholders); and (ii) recommends that the Board of Directors approve, ratify and adopt the appointment of KPMG as the independent registered public accounting firm of the Corporation for the fiscal year ending December 31, 2009 (subject to reaching an agreement with respect to fees to be charged to the Corporation by KPMG for its services and subject to ratification by the

shareholders); and (iii) recommends that the Board of Directors submit such appointment to the shareholders of the Corporation for ratification at the 2009 Annual Meeting of Shareholders.

Review of Non-Audit Tax Services, Audit-Related Technical Consulting Services and Other Non-Audit Services Performed by KPMG During the Year Ended December 31, 2008 and Authorization of KPMG to Perform Certain Non-Audit Services and Audit-Related Technical Consulting Services

The thirteenth item of business was a discussion led by Messrs. Han and Post regarding the non-audit tax services, audit-related technical consulting services and services related to the audit of the Corporation's 401(k) Employee Savings Plan for the years ending December 31, 2006 and December 31, 2007 provided by KPMG to the Corporation and its subsidiaries during the year ended December 31, 2008, a list of such items was attached as Exhibit 14A to the board book for the meeting.

Messrs. Han and Post then led a discussion regarding management's proposal for KPMG to provide the audit related technical consulting services, non-audit tax services and services related to the audit of the Corporation's 401(k) Employee Savings Plan for the year ended December 31, 2008 during calendar year 2009, a list of such items was attached as Exhibit 14B to the board book for the meeting. Mr. Dodge noted that the Audit Committee should consider management's proposal in light of any bearing it might have on the independence of KPMG.

After discussion and deliberation, upon motion duly made and seconded, the following resolutions were unanimously adopted:

NOW, THEREFORE, BE IT RESOLVED, that the retention of KPMG to provide up to (a) \$580,000 in non-audit tax services in calendar year 2009 with such \$580,000 to be used to: (i) assist in the preparation and filing of federal and state tax returns; (ii) review tax accounting methods and individual transactions; (iii) provide general US tax support; and (iv) provide foreign jurisdiction tax consulting, statutory audits, tax returns and VAT; (b) \$100,000 in audit-related technical consulting services, and (c) \$20,000 in services related to the audit of the Corporation's 401(k) Employee Savings Plan for the year ended December 31, 2008; and further

RESOLVED, that the Chief Executive Officer or Executive Vice President, General Counsel, and Secretary of the Corporation (each, a “proper officer” and collectively, the “proper officers”) of the Corporation be, and each one of them acting alone or with one or more other proper officers hereby is, authorized, empowered and directed, in the name and on behalf of the Corporation and under its corporate seal or otherwise, from time to time, to make, execute and deliver, or cause to be made, executed and delivered, all such other and further agreements, certificates, instruments or documents, to pay or reimburse all such filing fees and other costs and expenses, and to do and perform or cause to be done or performed all such acts and things, as in their discretion or in the discretion of any of them may be necessary or desirable to enable the Corporation to accomplish the purposes and to carry out the intent or the foregoing resolutions; and further

RESOLVED, that any and all actions previously taken by any of the proper officers within the terms of the foregoing resolutions be, and the same hereby are, ratified, and confirmed in all respects.

Annual Review of Audit Committee Charter and Other Recurring Actions Required Under Audit Committee Charter

The fourteenth item of business was the annual review of the Amended and Restated Charter of the Audit Committee led by Mr. Ortolf. To assist the members of the Audit Committee with their consideration of this item, Mr. Ortolf noted that the current charter was attached as Exhibit 16A to the board book for the meeting.

Mr. Dodge led a discussion regarding certain other recurring actions required under the Amended and Restated Charter. Among other things, Mr. Dodge noted that the Audit Committee has the duty and power to recommend and approve the compensation plan for the head of Internal Audit in consultation with management, and that the Audit Committee should periodically: (1) advise the Vice President of Internal Audit for the Corporation that he/she is expected to provide the Audit Committee with (a) summaries of, and as appropriate the full text of, significant reports to management that are prepared by the internal auditing department and (b) management’s responses thereto; and (2) advise management, the Internal Audit Department and the independent registered public accounting firm that they are expected to provide to the

Audit Committee with a timely analysis of significant financial reporting issues and practices and significant internal audit controls and procedures.

Mr. Ehrhart then led a discussion regarding the benchmark report comparing the Corporation's Amended and Restated Audit Committee Charter against the audit committee charters of other comparable corporations, a copy of which was attached as Exhibit 16B to the board book for the meeting. Mr. Ehrhart responded to questions from the members of the Audit Committee regarding the survey.

After discussion and deliberation, upon motion duly made and seconded, the following resolution was unanimously adopted:

NOW, THEREFORE, BE IT RESOLVED, that the Audit Committee hereby: (i) directs the Corporation's legal department to revise the Audit Committee Charter to include that the Audit Committee shall consult with the independent registered public accounting firm to assure the rotation of audit partners as required by law; and (ii) recommends that the Amended and Restated Charter of the Audit Committee as revised to include that the Audit Committee shall consult with the independent registered public accounting firm to assure the rotation of audit partners as required by law, be approved, ratified and adopted by the Board of Directors in all respects.

2009 Budget Review

The fifteenth item of business was a discussion and review of the 2009 budget for the Corporation and its subsidiaries led by Ms. Schneider. Ms. Schneider walked the members of the Audit Committee through her presentation, a copy of which was distributed at the meeting.

Private Discussion with KPMG (Management excused)

The sixteenth item of business was a private discussion between the members of the Audit Committee and KPMG.

Private Discussion with Management (KPMG excused)

CONFIDENTIAL

The seventeenth item of business was a private discussion between the members of the Audit Committee and management.

Adjournment

There being no further business to come before the Audit Committee, upon motion duly made, seconded and unanimously approved, the meeting was adjourned at 3:00 p.m., prevailing Mountain Time.

Tom A. Ortolf
Chairman of the Audit Committee

We, the undersigned, who together with Mr. Ortolf constitute all members of the Audit Committee, hereby waive any and all formal notice of the above meeting and hereby ratify and approve the foregoing minutes.

Steven R. Goodbarn

Gary S. Howard

EXHIBIT 368

EXHIBIT 368

CONFIDENTIAL

DISH NETWORK CORPORATION

Regular Meeting of the Board of Directors

February 24, 2009

A regular meeting of the board of directors (the "Board of Directors") of DISH Network Corporation (the "Corporation"), was held on February 24, 2009 at 5:20 p.m., prevailing Mountain Time, at the Corporation's headquarters located at 9601 S. Meridian Blvd., Englewood, Colorado 80112.

The following members of the Board of Directors participated:

Charles W. Ergen (*via teleconference*)
Cantey M. Ergen (*via teleconference*)
James DeFranco (*via teleconference*)(*present through the 14th item of business*)
David K. Moskowitz
Carl E. Vogel (*via teleconference*)
Steven R. Goodbarn
Tom A. Ortolf
Gary S. Howard (*via teleconference*)

Also participating at various times during the meeting at the invitation of the Chairman of the Board of Directors were R. Stanton Dodge, Executive Vice President, General Counsel and Secretary of the Corporation (*via teleconference*) and Brandon E. Ehrhart, Director, Senior Corporate Counsel and Assistant Secretary of the Corporation.

Call to Order

Mr. Charles W. Ergen, President and Chief Executive Officer of the Corporation and Chairman of the Board of Directors, called the meeting to order and presided. Mr. Dodge acted as Secretary of the meeting and Mr. Ehrhart acted as Assistant Secretary of the meeting.

Notice and Quorum

The Chairman advised that, as each member of the Board of Directors had waived any and all notices that may have been required to be given with respect to a regular meeting of the Board of Directors and a quorum was present, the meeting was properly convened.

Discussion Matters

ITEM 1. REG. S-K ITEM 404 "RELATED PERSON" TRANSACTIONS

Mr. Dodge reviewed all existing and new potential SEC Reg. S-K, Item 404 "Related Person" transactions, Nevada Revised Statutes §78.140 transactions and "Sensitive" transactions, as defined by the 2005 Audit Committee Recommendations to generally mean: (i) any non-

ordinary course transaction in which the amount involved exceeded \$5,000,000; (ii) related party transactions; (iii) transactions of a highly confidential nature; (iv) transactions which grant exclusive rights or most favored nations status to any third party; or (v) any other transaction which in the judgment of the board should reasonably be considered sensitive.

Mr. Dodge explained that, during 2008, the Corporation (or one of its subsidiaries) employed Mrs. Cantey Ergen and one other member of the Ergen family (the "Ergen Transactions"). The Corporation (or one of its subsidiaries) paid Mrs. Cantey Ergen approximately \$97,000 and paid Ms. Katherine Ergen approximately \$10,000 during 2008, although depending on the time and services that will be provided, these individuals may earn more than that amount during 2009.

Mr. Dodge further explained that, during 2006, Mr. Carl Vogel, Vice Chairman of the Corporation and a member of the Board of Directors, agreed to serve as a director of Shaw Communications Inc. ("Shaw"), a diversified Canadian communications company whose core business is providing broadband cable television, high-speed Internet, digital phone, telecommunications services and satellite direct-to-home services to over three million customers, and Mr. Vogel has beneficial ownership of approximately 70,000 shares of Shaw common stock (the "Vogel Transaction I").

Mr. Dodge further explained that, during 2007, Mr. Gary Howard, a member of the Board of Directors, agreed to serve as a director of WildBlue Communications Inc. ("WildBlue"), a Delaware satellite communications company whose core business is providing satellite based high-speed Internet and with whom the Corporation has entered into a wholesale agreement (the "Howard Transaction").

Mr. Dodge further explained that the limited liability partnership of which Mr. Tom A. Ortolfo is a partner acquired approximately nine percent (9%) of the issued and outstanding stock of Spectrographics, Inc. ("Spectrographics") a printing company with which the Corporation transacts business from time to time and which the Corporation has paid approximately \$269,000, \$87,000, \$294,000 and \$120,000 during the years ended December 31, 2005, 2006, 2007 and 2008, respectively, which payments constituted a maximum of 3% of such company's annual revenue (the "Ortolfo Transaction").

Mr. Dodge further explained that, during 2008, Mr. Vogel agreed to serve as a director of iBAHN Corporation ("iBAHN") a provider of wired and wireless broadband services that, among other things, acts as a sales and third party billing agent for Free-to-Guest ("FTG") programming on behalf of the Corporation (the "Vogel Transaction II").

Mr. Dodge further explained that, during 2008, the Corporation (or one of its subsidiaries) employed Ms. Courtland Wood Colantonio, the daughter of Mr. Stephen Wood, Executive Vice President of Human Resources for the Corporation (the "Wood Transaction"). The Corporation (or one of its subsidiaries) paid Ms. Colantonio approximately \$1,000 during 2008, and expects to pay her approximately \$5,000 during 2009, although depending on the time and services that will be provided, she may earn more than that amount during 2009.

Mr. Dodge further explained that, during 2008, the Corporation (or one of its subsidiaries) employed one member of the family of Mr. Vogel, (the "Vogel Transaction III"). The Corporation (or one of its subsidiaries) paid Mr. Connor Vogel approximately \$5,500 during 2008, and expects to pay him approximately \$5,500 during 2009, although depending on the time and services that will be provided, he may earn more than that amount during 2009.

Mr. Dodge further explained that the Corporation and/or its subsidiaries are considering amending or entering into the following agreements with EchoStar Corporation ("SATS") and/or its subsidiaries: (i) an amendment to the 301 Receiver Agreement to revise the pricing of certain model 301 receivers and to include model 322 receivers; (ii) payment of \$5 million from the Corporation to SATS for the use of five frequencies at the 72.7 orbital slot; and (iii) a trademark license agreement for the Corporation to use the EchoStar name on certain satellites; the terms and conditions of which are more fully described in the spreadsheet attached as Exhibit 3A to the board book for the meeting (items (ii) and (iii) are collectively referred to hereinafter as, the "New Transactions"). After discussion of the proposed amendment to the 301 Receiver Agreement, no resolutions were proposed with respect thereto.

Mr. Dodge further explained that Section 4.2, Further Assurances, of that certain Separation Agreement by and between the Corporation and SATS dated December 31, 2007 (the "Separation Agreement"), contemplates that the Corporation and SATS may execute such other agreements as may be necessary or desirable in order to effect the purpose of the transactions contemplated by the spin-off. Mr. Dodge further explained that, pursuant to such Section of the Separation Agreement, management is proposing that the Corporation amend or enter into the following agreements: (i) a lease agreement for certain office and warehouse space used by DISH Network Service L.L.C. at the Gilbert, Arizona uplink facility; (ii) an amendment to the payment terms of the Nimbus Agreement to pass through the Corporation's allocable share of a \$2,500,000 fee reduction; and (iii) a trademark assignment agreement to transfer the "ViP" trademarks from the Corporation to SATS; upon substantially the terms set forth in Exhibit 3A as attached to the board book for the meeting.

Mr. Dodge further explained that Mr. Charles W. Ergen, Chairman of the Board of Directors and Chief Executive Officer of the Corporation and Mrs. Cantey Ergen, a member of the Board of Directors, are proposing to purchase certain real estate for approximately \$5,000,000 from Winegard Realty Company, an affiliate of Winegard Company ("Winegard"), a company which among other things supplies SATS and the Corporation with satellite antennas (the "Winegard Transaction"). Mr. Dodge walked the members of the Board of Directors through the updated spreadsheet distributed by Mr. Ehrhart at the meeting detailing the Corporation's and SATS' historic transactions with Winegard and other satellite antenna manufacturers.

After discussion and deliberation, upon motion duly made and seconded, the following resolutions were unanimously adopted (with Mr. Ergen and Mrs. Ergen abstaining with respect to the Ergen Transactions and the Winegard Transaction, Mr. Vogel abstaining with respect to the Vogel Transaction I, the Vogel Transaction II and the Vogel Transaction III, Mr. Howard abstaining with respect to the Howard Transaction, and Mr. Ortolf with respect to the Ortolf Transaction):

WHEREAS, the Ergen Transactions, Vogel Transaction I, Howard Transaction, Ortolf Transaction, Vogel Transaction II, Wood Transaction, Vogel Transaction III, New Transactions and the Winegard Transaction may potentially be considered related party transactions under SEC Regulation S-K, Item 404, Nevada Revised Statutes §78.140 transactions, or "Sensitive" transactions and therefore, out of an abundance of caution, the Board of Directors has been asked to review such transactions;

Ergen Transactions

WHEREAS, (a) the Audit Committee has found, and recommended that the Board of Directors find, that the prior Ergen Transactions and the continuation of the Ergen Transactions in 2009, provided Mrs. Ergen's employment compensation does not exceed \$100,000 in 2009 and the aggregate employment compensation of the Ergen children does not exceed \$50,000 in 2009, are fair to the Corporation and its subsidiaries; (b) the Audit Committee has waived, and recommended that the Board of Directors waive, any conflict of interest (whether actual or potential) in connection with the prior Ergen Transactions and the continuation of the Ergen Transactions in 2009; and (c) the Audit Committee: (i) ratified and confirmed in all respects, and recommended that the Board of Directors ratify and confirm, the prior Ergen Transactions; and (ii) authorized, ratified and adopted in all respects, and recommended that the Board of Directors authorize, ratify and adopt, the continuation of the Ergen Transactions in 2009; provided Mrs. Ergen's employment compensation does not exceed \$100,000 in 2009 and the aggregate employment compensation of the Ergen children does not exceed \$50,000 in 2009, are fair to the Corporation and its subsidiaries; and

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors hereby approves, ratifies and confirms the recommendations of the Audit Committee regarding the Ergen Transactions; and further

RESOLVED, that based upon the information received by the Board of Directors, the above-referenced discussions with the General Counsel of the Corporation, and upon such other matters as are deemed relevant by the Board of Directors, the Board of Directors hereby finds that the prior Ergen Transactions and the continuation of the Ergen Transactions in 2009, provided Mrs. Ergen's employment compensation does not exceed \$100,000 in 2009 and the aggregate employment compensation of the Ergen children does not exceed \$50,000 in 2009, are fair to the Corporation and its subsidiaries; and further

RESOLVED, that the Board of Directors hereby waives any conflict of interest (whether actual or potential) in connection with the prior Ergen Transactions and the continuation of the Ergen Transactions in 2009; and further

RESOLVED, that the Board of Directors hereby: (a) ratifies and confirms in all respects the prior Ergen Transactions; and (b) authorizes, ratifies and adopts in all respects the continuation of the Ergen Transactions in 2009, provided Mrs. Ergen's employment compensation does not exceed \$100,000 in 2009 and the aggregate employment compensation of the Ergen children does not exceed \$50,000 in 2009; and further

Vogel Transaction I

WHEREAS, the Audit Committee has waived, and recommended that the Board of Directors waive, any conflict of interest (whether actual or potential) in connection with the prior Vogel Transaction I and the continuation of the Vogel Transaction I in 2009;

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors hereby approves, ratifies and confirms the recommendations of the Audit Committee regarding the Vogel Transaction I; and further

RESOLVED, that the Board of Directors hereby waives any conflict of interest (whether actual or potential) in connection with the continuation of the Vogel Transaction I in 2009; and further

RESOLVED, that, for so long as Mr. Vogel is a member of the Board of Directors of Shaw or retains a significant financial stake in Shaw, Mr. Vogel shall recuse himself from any matters presented to the Board of Directors (or its committees) that directly or indirectly involve Shaw or ExpressVu or any of their affiliates; and further

Howard Transaction

WHEREAS, the Audit Committee has waived, and recommended that the Board of Directors waive, any conflict of interest (whether actual or potential) in connection with the prior Howard Transaction and the continuation of the Howard Transaction in 2009;

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors hereby approves, ratifies and confirms the recommendations of the Audit Committee regarding the Howard Transaction; and further

RESOLVED, that the Board of Directors hereby waives, any conflict of interest (whether actual or potential) in connection with the continuation of the Howard Transaction in 2009; and further

RESOLVED, that, for so long as Mr. Howard is a member of the Board of Directors of WildBlue or retains a significant financial stake in WildBlue, Mr. Howard shall recuse himself from any matters presented to the Board of Directors

(or its committees) that directly or indirectly involve WildBlue or any of its affiliates; and further

Ortolf Transaction

WHEREAS, the Audit Committee has waived, and recommended that the Board of Directors waive, any conflict of interest (whether actual or potential) in connection with the prior Ortolf Transaction and the continuation of the Ortolf Transaction in 2009;

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors hereby approves, ratifies and confirms the recommendations of the Audit Committee regarding the Ortolf Transaction; and further

RESOLVED, that the Board of Directors hereby waives any conflict of interest (whether actual or potential) in connection with the continuation of the Ortolf Transaction in 2009; and further

RESOLVED, that, for so long as Mr. Ortolf retains a significant financial stake in Spectrographics, Mr. Ortolf shall recuse himself from any matters presented to the Board of Directors (or its committees) that directly or indirectly involve Spectrographics or any of its affiliates; and further

Vogel Transaction II

WHEREAS, the Audit Committee has waived, and recommended that the Board of Directors waive, any conflict of interest (whether actual or potential) in connection with the prior Vogel Transaction II and the continuation of the Vogel Transaction II in 2009;

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors hereby approves, ratifies and confirms the recommendations of the Audit Committee regarding the Vogel Transaction II; and further

RESOLVED, that the Board of Directors hereby waives any conflict of interest (whether actual or potential) in connection with the continuation of the Vogel Transaction II in 2009; and further

RESOLVED, that, for so long as Mr. Vogel is a member of the Board of Directors of iBAHN or retains a significant financial stake in iBAHN, Mr. Vogel shall recuse himself from any matters presented to the Board of Directors (or its committees) that directly or indirectly involve iBAHN or any of its affiliates; and further

Wood Transaction

WHEREAS, (a) the Audit Committee has found, and recommended that the Board of Directors find, that the prior Wood Transaction and the continuation of the Wood Transaction in 2009, provided Mrs. Courtland Wood Colantonio's employment compensation does not exceed \$20,000 in 2009, is fair to the Corporation and its subsidiaries; (b) the Audit Committee has waived, and recommended that the Board of Directors waive, any conflict of interest (whether actual or potential) in connection with the prior Wood Transaction and the continuation of the Wood Transaction in 2009; and (c) the Audit Committee: (i) ratified and confirmed in all respects, and recommended that the Board of Directors ratify and confirm, the prior Wood Transaction; and (ii) authorized, ratified and adopted in all respects, and recommended that the Board of Directors authorize, ratify and adopt, the continuation of the Wood Transaction in 2009; provided Mrs. Courtland Wood Colantonio's employment compensation does not exceed \$20,000 in 2009; and further;

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors hereby approves, ratifies and confirms the recommendations of the Audit Committee regarding the Wood Transaction; and further

RESOLVED, that based upon the information received by the Board of Directors, the above-referenced discussions with the General Counsel of the Corporation, and upon such other matters as are deemed relevant by the Board of Directors, the Board of Directors hereby finds that the prior Wood Transaction and the continuation of the Wood Transaction in 2009, provided Mrs. Courtland Wood Colantonio's employment compensation does not exceed \$20,000 in 2009, is fair to the Corporation and its subsidiaries; and further

RESOLVED, that the Board of Directors hereby waives any conflict of interest (whether actual or potential) in connection with the prior Wood Transaction and the continuation of the Wood Transaction in 2009; and further

RESOLVED, that the Board of Directors hereby: (a) ratifies and confirms in all respects, the prior Wood Transaction; and (b) authorizes, ratifies and adopts in all respects the continuation of the Wood Transaction in 2009; provided Mrs. Colantonio's employment compensation does not exceed \$20,000 in 2009; and further

Vogel Transaction III

WHEREAS, (a) the Audit Committee has found, and recommended that the Board of Directors find, that the prior Vogel Transaction III and the continuation of the Vogel Transaction III in 2009 is fair to the Corporation and its subsidiaries, provided Mr. Connor Vogel's employment compensation does not exceed \$20,000 in 2009, is fair to the Corporation and its subsidiaries; and further; (b) the

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Audit Committee has waived, and recommended that the Board of Directors waive, any conflict of interest (whether actual or potential) in connection with the prior Vogel Transaction III and the continuation of the Vogel Transaction III in 2009; and (c) the Audit Committee: (i) ratified and confirmed in all respects, and recommended that the Board of Directors ratify and confirm, the prior Vogel Transaction III; and (ii) authorized, ratified and adopted in all respects, and recommended that the Board of Directors authorize, ratify and adopt, the continuation of the Vogel Transaction III in 2009; provided Mr. Connor Vogel's employment compensation does not exceed \$20,000 in 2009; and further;

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors hereby approves, ratifies and confirms the recommendations of the Audit Committee regarding the Vogel Transaction III; and further

RESOLVED, that based upon the information received by the Board of Directors, the above-referenced discussions with the General Counsel of the Corporation, and upon such other matters as are deemed relevant by the Board of Directors, the Board of Directors hereby finds that the Prior Vogel Transaction III and the continuation of the Vogel Transaction III in 2009, provided Mr. Connor Vogel's employment compensation does not exceed \$20,000 in 2009, is fair to the Corporation and its subsidiaries; and further

RESOLVED, that the Board of Directors hereby waives any conflict of interest (whether actual or potential) in connection with the prior Vogel Transaction III and the continuation of the Vogel Transaction III in 2009; and further

RESOLVED, that the Board of Directors hereby: (a) ratifies and confirms in all respects the prior Vogel Transaction III; and (b) authorizes, ratifies and adopts in all respects the continuation of the Vogel Transaction III in 2009; provided Mr. Connor Vogel's employment compensation does not exceed \$20,000 in 2009; and further

New Transactions

WHEREAS, (a) management, those members of the Board of Directors who are not also members of the Board of Directors of SATS, Mr. James DeFranco, Mr. Steven R. Goodbarn and Mr. Gary S. Howard and the Audit Committee have found, and recommended that the Board of Directors find, that the New Transactions are fair to the Corporation and its subsidiaries; and (b) Messrs. DeFranco, Goodbarn and Howard and the Audit Committee have approved, and recommended the Board of Directors approve, the New Transactions on substantially the same terms and conditions described in the spreadsheet attached as Exhibit 3A to the board book for the meeting, with such non-material modifications, changes, or amendments to such terms and conditions as the Chief Executive Officer or Executive Vice President, General Counsel, and Secretary of

the Corporation (each, a “proper officer” and collectively, the “proper officers”), or any one of them, shall in their discretion approve;

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors hereby approves, ratifies and confirms the recommendations of management, Messrs. DeFranco, Goodbarn and Howard and the Audit Committee regarding the New Transactions; and further

RESOLVED, that based upon the information received by the Board of Directors, the above-referenced discussions with the General Counsel of the Corporation and other members of management, and upon such other inquiries and other matters as are deemed appropriate or relevant by the Board of Directors, the Board of Directors hereby finds that the New Transactions are fair to the Corporation; and further

RESOLVED, (a) that the New Transactions be, and they hereby are, approved on substantially the same terms and conditions described in the spreadsheet attached as Exhibit 3A to the board book for the meeting, with such non-material modifications, changes, or amendments to such terms and conditions as the proper officers, or any one of them, shall in their discretion approve; and (b) that the consummation of such transactions by any proper officer, with such non-material modifications, changes, or amendments to the terms and conditions of the New Transactions as any proper officer shall approve, shall constitute conclusive evidence that such transactions have been approved hereby; and further

Winegard Transaction

WHEREAS, the Audit Committee has waived, and recommended that the Board of Directors waive, any conflict of interest (whether actual or potential) in connection with the Winegard Transaction; and

WHEREAS, the members of the Board of Directors have previously been provided with an appraisal of the subject property and an updated spreadsheet detailing the Corporation’s and SATS’ historic transactions with Winegard and other satellite antenna manufacturers;

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors hereby approves, ratifies and confirms the recommendations of the Audit Committee regarding the Winegard Transaction; and further

RESOLVED, that based upon the information received by the Board of Directors, the above-referenced discussions with the General Counsel of the Corporation and other members of management, the appraisal, the above-referenced purchase pattern information and other matters as are deemed appropriate or relevant by the Board of Directors, the Board of Directors hereby waives any conflict of interest

(whether actual or potential) in connection with the Winegard Transaction; and further

RESOLVED, that for a period of 24 months Mr. Ergen shall recuse himself from any matters that directly or indirectly involve: (i) Winegard or any of its affiliates; or (ii) any other antenna vendors; and further

RESOLVED, that the Board of Directors hereby instructs and delegates the authority to those executive officers other than Mr. Ergen to make decisions with respect to any matters that directly or indirectly involve: (i) Winegard or any of its affiliates; or (ii) any antenna vendors, without input from Mr. Ergen for a period of 24 months; and further

General Enabling Resolutions

RESOLVED, that the proper officers be, and each one of them acting alone or with one or more other proper officers hereby is, authorized, empowered and directed, in the name and on behalf of the Corporation and its subsidiaries, and under their corporate seals or otherwise, from time to time, to make, execute and deliver, or cause to be made, executed and delivered, all such other and further agreements, certificates, instruments or documents, to pay or reimburse all such filing fees and other costs and expenses, and to do and perform or cause to be done or performed all such acts and things, as in their discretion or in the discretion of any of them may be necessary or desirable to enable the Corporation and its subsidiaries to accomplish the purposes and to carry out the intent or the foregoing resolutions; and further

RESOLVED, that any and all actions previously taken by any of the proper officers of the Corporation and its subsidiaries within the terms of the foregoing resolutions be, and the same hereby are, ratified, and confirmed in all respects.

ITEM 2. LITIGATION UPDATE

Mr. Dodge, in his capacity as General Counsel of the Corporation, presented a report on the status of the significant litigation in which the Corporation and/or its affiliates are presently involved. Mr. Dodge explained that his report and any ensuing discussions were subject to the attorney/client and work product privileges.

ITEM 3. APPROVAL OF FORM AND FILING OF ANNUAL REPORT ON FORM 10-K AND REPORT ON ACTIVITIES OF AUDIT COMMITTEE

Mr. Ortolf, Chairman of the Audit Committee, presented a report on the general activities of the Audit Committee and the Audit Committee's review of the Corporation's financial statements and Form 10-K for the year ended December 31, 2008. Mr. Howard then led a discussion regarding the impairment analysis for the 700 MHz spectrum. Mr. Vogel noted that other companies have not yet written down AWS or 700 MHz spectrum.

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After discussion and deliberation, upon motion duly made and seconded, the following resolutions were unanimously adopted, subject to the incorporation into the Form 10-K of the comments received from the members of the Audit Committee at their meeting held on February 23, 2009:

WHEREAS, the Corporation is required to file with the Securities and Exchange Commission (the "Commission") by March 2, 2009, an Annual Report on Form 10-K for the year ended December 31, 2008 (the "Form 10-K");

WHEREAS, a draft of the Form 10-K proposed to be filed with the Commission was attached as Exhibit 5A to the board book for the meeting (the "Draft Form 10-K"), and each member of the Board of Directors has read the Draft Form 10-K and has provided all comments and responses they deem necessary and appropriate to the General Counsel and Chief Financial Officer of the Corporation (or their designees);

WHEREAS, the Draft Form 10-K contains year-end financial statements of the Corporation that were audited by KPMG LLP;

WHEREAS, management has recommended that the Audit Committee approve (i) as to form the Draft Form 10-K, with such non-material changes as the General Counsel and Chief Financial Officer of the Corporation shall deem necessary and appropriate, and (ii) the filing with the Commission of the Form 10-K (with any such non-material changes) at such time as the General Counsel and Chief Financial Officer of the Corporation shall determine; and

WHEREAS, the Audit Committee has (a) approved, ratified and confirmed the recommendation of management concerning the approval (i) as to form of the Draft Form 10-K, with such non-material changes as the General Counsel and Chief Financial Officer of the Corporation shall deem necessary and appropriate, and (ii) of the filing with the Commission of the Form 10-K (with any such non-material changes), at such time as the General Counsel and Chief Financial Officer of the Corporation shall determine; and (b) recommended that the Board of Directors approve (i) as to form the Draft Form 10-K with such non-material changes as the General Counsel and Chief Financial Officer of the Corporation shall deem necessary and appropriate, and (ii) the filing with the Commission of the Form 10-K (with any such non-material changes), at such time as the General Counsel and Chief Financial Officer of the Corporation shall determine;

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors hereby approves, ratifies and confirms the recommendation of the Audit Committee concerning the approval as to form and filing of the Form 10-K; and further

RESOLVED, that the Draft Form 10-K, in substantially the form attached as Exhibit 5A to the board book for the meeting, be, and it hereby is, approved as to

form with such non-material changes as the General Counsel and Chief Financial Officer of the Corporation shall deem necessary and appropriate; and further

RESOLVED, that the Form 10-K, in substantially the form attached as Exhibit 5A to the board book for the meeting, with such non-material changes as the General Counsel and Chief Financial Officer of the Corporation shall deem necessary and appropriate, be filed with the Commission at such time as the General Counsel and Chief Financial Officer of the Corporation shall determine; and further

RESOLVED, that the General Counsel and Chief Financial Officer be, and they collectively hereby are, authorized, empowered and directed to prepare or cause to be prepared, to execute or cause to be executed, and to file or cause to be filed with the Commission such non-material amendments and supplements to the Form 10-K as they, collectively, may deem necessary or desirable, or as may be required by the Commission; and further

RESOLVED, that, in the event that an amendment or supplement to the Form 10-K is filed, the members of the Board of Directors shall be provided with redline copies of the revised Form 10-K showing the changes that were made; and further

RESOLVED, that the Chief Executive Officer or Executive Vice President, General Counsel, and Secretary of the Corporation (each, a "proper officer" and collectively the "proper officers") be, and each one of them acting alone or with one or more other proper officers hereby is, authorized, empowered and directed, in the name and on behalf of the Corporation and under its corporate seal or otherwise, from time to time, to make, execute and deliver, or cause to be made, executed and delivered, all such other and further agreements, certificates, instruments or documents, to pay or reimburse all such filing fees and other costs and expenses, and to do and perform or cause to be done or performed all such acts and things, as in their discretion or in the discretion of any of them may be necessary or desirable to enable the Corporation to accomplish the purposes and to carry out the intent or the foregoing resolutions; and further

RESOLVED, that any and all actions previously taken by any of the proper officers within the terms of the foregoing resolution be, and the same hereby is, ratified, and confirmed in all respects.

ITEM 4. DETERMINATION OF NONEMPLOYEE DIRECTOR INDEPENDENCE, FINANCIAL LITERACY AND OTHER QUALIFICATIONS AND DESIGNATION OF "AUDIT COMMITTEE FINANCIAL EXPERT"

Mr. Dodge led a discussion on the independence, financial literacy and other requirements for nonemployee directors and the qualifications necessary for designation as an "audit committee financial expert" pursuant to Item 401(h) of Regulation S-K. Mr. Dodge noted that a copy of the relevant requirements was included as Exhibit 6A to the board book for the meeting. Mr. Dodge explained that management has determined that each of Mr. Steven R.

Goodbarn, Mr. Tom A. Ortolf and Mr. Gary S. Howard each meet the applicable independence, financial literacy and other requirements and that Mr. Goodbarn possesses the applicable qualifications and as an "audit committee financial expert" pursuant to Item 401(h) of Regulation S-K.

After discussion and deliberation, upon motion duly made and seconded, the following resolutions were unanimously adopted (with Messrs. Goodbarn, Ortolf and Howard abstaining with respect to the resolutions applicable to themselves):

Nonemployee Director Independence

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors after due deliberation has determined that Mr. Steven R. Goodbarn, Mr. Tom A. Ortolf and Mr. Gary S. Howard each meet the applicable independence, financial literacy and other requirements of the charters, laws, rules, and regulations applicable to the Corporation, including without limitation, the Audit Committee Charter; the Executive Compensation Committee Charter; the Nominating Committee Charter; Rule 4200(a)(15) of The NASDAQ Stock Market; Section 10A(m)(3) of the Securities Exchange Act of 1934, as amended; Item 407 of Regulation S-K; Rules 10A-3 and 16b-3 of the rules and regulations of the Securities and Exchange Commission; Section 162(m) of the Internal Revenue Code; and Treasury Regulation 1.162-27(e);

Audit Committee Expert

WHEREAS, Mr. Goodbarn has expressed his willingness and desire to be designated as an "audit committee financial expert" pursuant to Item 401(h) of Regulation S-K;

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors after due deliberation has determined that Mr. Goodbarn possesses the applicable qualifications necessary for designation as an "audit committee financial expert" pursuant to Item 401(h) of Regulation S-K; and further

RESOLVED, that Mr. Goodbarn be, and he hereby is, designated as an "audit committee financial expert" pursuant to Item 401(h) of Regulation S-K until the 2010 Annual Meeting of the Board of Directors and until his respective successor is duly designated and qualified.

ITEM 5. 2009 DISCRETIONARY NONELECTIVE CONTRIBUTION TO THE 401(K) PLAN

Mr. Dodge led a discussion regarding management's proposed profit sharing contribution for the year ended December 31, 2008. Mr. Dodge noted that for the years ending December 31, 2004, 2005, 2006, and 2007 the Corporation made discretionary nonelective contributions to the Corporation's 401(k) Employee Savings Plan of its Class A Common Stock to certain employees

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of the Corporation and its subsidiaries in amounts equal to approximately four percent (4%) of such employees' eligible earnings up to a maximum amount of \$4,000 per eligible employee. Mr. Dodge noted that further information regarding the Corporation's historical discretionary nonelective contributions to the Corporation's 401(k) Employee Savings Plan was attached as Exhibit 7A to the board book for the meeting.

After discussion and deliberation, upon motion duly made and seconded, the following resolutions were unanimously adopted:

WHEREAS, management desires to reward employee efforts during 2008, which reward adds value to the Corporation that is at least equal to the anticipated \$12.25 million fair market value of the Class A Common Stock, par value \$0.01 per share, (the "Common Stock") that employees will receive through the proposed 2009 discretionary nonelective contribution to the Corporation's 401(k) Employee Savings Plan (the "401(k) Plan"); and

WHEREAS, the Executive Compensation Committee has recommended that the Board of Directors authorize the Corporation to make the proposed 2009 discretionary nonelective contribution to the 401(k) Plan;

NOW, THEREFORE, BE IT RESOLVED, that, after due deliberation, the Board of Directors hereby approves, ratifies and adopts the recommendation of the Executive Compensation Committee concerning the proposed 2009 discretionary nonelective contribution to the 401(k) Plan; and further

RESOLVED, that the Corporation be, and it hereby is authorized and directed, to issue, from its authorized but unissued shares of Common Stock, shares of Common Stock representing approximately two percent (2%) of 2008 eligible earnings (the exact percentage of eligible earnings shall remain subject to change upon the reasonable exercise of management's judgment) for each eligible participant in the 401(k) Plan and each employee of the Corporation and its subsidiaries that is eligible to participate in the 401(k) Plan, and in each case who was employed by the Corporation or one of its subsidiaries on December 31, 2008; provided that the fair market value of the shares issued for each such eligible employee shall not exceed \$2,000, as determined based upon the closing price for such shares on December 31, 2008; and further

RESOLVED, that the Corporation be, and it hereby is, authorized and directed to contribute those shares of Common Stock to the 401(k) Plan (the exact number of shares to be issued and contributed will be determined upon final eligible earnings calculations by the Corporation), subject to the standard five (5) year vesting schedule under the 401(k) Plan; and further

RESOLVED, that the Chief Executive Officer or Executive Vice President, General Counsel, and Secretary of the Corporation (each, a "proper officer" and collectively the "proper officers") be, and each of them acting alone or with one

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or more other proper officers hereby is, authorized and directed in the name and on behalf of the Corporation to take any and all action that they deem necessary or advisable in order to register or qualify the Common Stock for issuance and sale, request an exemption from registration of the Common Stock, or register as dealer or broker under applicable securities or blue sky laws of the United States of America and of such states and foreign jurisdictions as such officers may deem advisable, and in connection with such registrations, qualifications and exemptions, to execute, acknowledge, verify, deliver, file and publish or cause to be published all such applications, reports, resolutions, surety bonds, consents to service of process, appointment of attorneys to receive service of process, powers of attorneys and other papers and instruments and to take any and all further action that they may deem necessary or advisable in order to maintain such registration, qualification or exemption in effect for as long as they may deem to be in the best interests of this Corporation or as required by law; and that the execution by such officers of any such document or the taking of any such action in connection with the foregoing matters shall be deemed to be conclusive evidence that such officer or officers deem(s) the taking of any such action to be necessary or proper and in the best interests of the Corporation and approve(s) such action; and further

RESOLVED, that the proper officers of the Corporation be, and each of them acting alone or with one or more other proper officers hereby is, authorized, on behalf of the Corporation, to execute any necessary application for the registration or qualification of the Common Stock under the securities or blue sky laws of any state or jurisdiction requiring execution of such an application by a broker-dealer registered in such state or jurisdiction; and further

RESOLVED, that, unless otherwise specifically instructed in writing, the Corporation's transfer agent be, and it hereby is, authorized to execute, deliver and register those certificates for shares of capital stock of the Corporation that may be on hand from time to time, including the Common Stock, even though an officer of the Corporation whose manual or facsimile signature appears on the certificate representing such Common Stock ceases to be such officer before such certificates are executed and delivered; and further

RESOLVED, that the proper officers of the Corporation be, and each of them acting alone or with one or more other proper officers hereby is, authorized to cause to be issued and registered certificates for shares of capital stock of the Corporation in place of certificates reported to have been lost, stolen, mutilated or destroyed or reported to have not been received in the case of certificates mailed by the transfer agent under its first-class insurance coverage policy; such authorization shall be given at such officers' discretion upon receipt of an executed affidavit of loss and an open penalty bond of indemnity with corporate surety in form satisfactory to the transfer agent indemnifying the Corporation and the transfer agent from and against any or all losses, claims or damages that they may incur by reason of the issuance and registration of such replacement

certificates; and further

RESOLVED, that, until it shall have received written notice of the revocation of these resolutions, the transfer agent be, and it hereby is, authorized to proceed with the issuance and registration of replacement certificates under this resolution upon written receipt of written authorization from a proper officer of the Corporation; and further

RESOLVED, that the Board of Directors hereby adopts and incorporates by reference any form of specific resolution or resolutions to carry into effect the purpose and intent of the foregoing resolutions, including forms of resolutions in connection therewith that may be required by the transfer agent and registrar, the Commission, the NASD, and any state, jurisdiction, institution, person or agency, and the Secretary of the Corporation is hereby directed to insert a copy thereof in the minute book of the Corporation and certify the same having been duly adopted thereby.

ITEM 6. APPROVAL OF ANNUAL SHAREHOLDERS MEETING DATE AND RELATED MATTERS

Mr. Dodge proposed that the 2009 Annual Meeting of Shareholders (the "Annual Shareholders Meeting") be held on Monday, May 11, 2009 at 12:00 noon, prevailing Mountain Time, at the Corporation's headquarters located at 9601 S. Meridian Blvd., Englewood, Colorado 80112 to consider and vote upon: (a) the election of the members of the Board of Directors to serve until the next annual shareholders meeting or until their successors are duly elected and qualified; (b) a proposal to ratify the appointment by the Board of Directors of KPMG LLP as the Corporation's independent registered public accounting firm for the fiscal year ending December 31, 2009; (c) a proposal to adopt the 2009 Stock Incentive Plan; and (d) any other business that may properly come before the Annual Shareholders Meeting or any adjournment of the meeting.

Mr. Dodge noted that the Corporation's Bylaws require that notice of the Annual Shareholders Meeting be given to shareholders of record on such date as is established by the Board of Directors not less than ten nor more than sixty days before the date of the Annual Shareholders Meeting. Mr. Dodge then proposed that the record date for determining shareholders entitled to notice of and to vote at the Annual Shareholders Meeting or any adjournment thereof be March 16, 2009.

Mr. Dodge then led a discussion regarding the proposal to adopt the 2009 Stock Incentive Plan (copies of which were distributed to the members of the Board of Directors prior to the meeting). To assist the members of the Board of Directors with their consideration of this agenda item, a memorandum explaining the proposed clarifications to the 2009 Stock Incentive Plan from the 1999 Stock Incentive Plan was attached as Exhibit 8A to the board book for the meeting and a redline version of the 2009 Stock Incentive Plan (which shows the proposed changes and includes annotations explaining the reasons for each change) was attached as Exhibit 8B to the board book for the meeting.

Mr. Dodge then reviewed the draft Proxy Statement attached as Exhibit 8C to the board book for the meeting with the members of the Board of Directors.

After discussion and deliberation, upon motion duly made and seconded, the following resolutions were unanimously adopted:

Approval of Meeting Date and Record Date for the 2009 Annual Meeting of Shareholders

NOW, THEREFORE, BE IT RESOLVED, that the 2009 Annual Meeting of Shareholders (the "Annual Shareholders Meeting") shall be held on Monday, May 11, 2009 at 12:00 noon, prevailing Mountain Time, at the Corporation's headquarters located at 9601 S. Meridian Blvd., Englewood, Colorado 80112, or on such other date and/or at such other location as management shall determine; and further

RESOLVED, that March 16, 2009 be, and it hereby is, established as the record date for determining shareholders of the Corporation entitled to notice of and to vote at the Annual Shareholders Meeting or any adjournment thereof, or on such other date as management shall determine; and further

RESOLVED, that Broadridge Financial Services, Inc., be, and it hereby is, appointed as Election Judge at the Annual Meeting; and further

Establishment of Number of Independent Director Positions for which the Nominating Committee Shall Recommend Independent Director Nominees

RESOLVED, that, in connection with the 2009 Annual Meeting of Shareholders, the number of independent director positions for which the Nominating Committee shall recommend independent director nominees for selection by the Board of Directors be, and it hereby is, established to be three (3); and

ADJOURNMENT

Upon motion duly made and seconded, the meeting was adjourned at 6:15 p.m. in order for Messrs. Steven R. Goodbarn, Tom A. Ortolf and Gary S. Howard to attend a meeting of the Nominating Committee.

CONTINUATION

Following completion of the Nominating Committee meeting, upon motion duly made and seconded, the meeting was reconvened at 6:25 p.m.

Approval of Nominees for Election to the Board of Directors

WHEREAS, management has recommended that the Board of Directors nominate Charles W. Ergen, Cantey M. Ergen, James DeFranco, David K. Moskowitz and Carl E. Vogel for election to the Board of Directors in connection with the 2009 Annual Meeting of Shareholders; and

WHEREAS, the Nominating Committee has recommended Steven R. Goodbarn, Tom A. Ortolf and Gary S. Howard for selection by the Board of Directors as independent director nominees for election to the Board of Directors in connection with the 2009 Annual Meeting of Shareholders;

NOW, THEREFORE, BE IT RESOLVED, (a) that Charles W. Ergen, Cantey M. Ergen, James DeFranco, David K. Moskowitz, Carl E. Vogel, Steven R. Goodbarn, Tom A. Ortolf and Gary S. Howard be, and they hereby are, selected as nominees for election to the Board of Directors; (b) that the Board of Directors unanimously recommends a vote FOR the election of all the nominees named herein; and (c) that such nominees be presented to the shareholders of the Corporation for election at the 2009 Annual Shareholders Meeting; and further

Appointment of KPMG LLP as Independent Registered Public Accounting Firm for the Fiscal Year Ending December 31, 2009

RESOLVED, (a) that the Board of Directors hereby determines that it is in the best interests of the Corporation to have KPMG LLP continue to serve as the Corporation's independent registered public accounting firm for the fiscal year ending December 31, 2009, and therefore, as recommended by the Audit Committee, the Board of Directors hereby approves, ratifies and adopts the appointment of KPMG LLP as the independent registered public accounting firm of the Corporation for the fiscal year ending December 31, 2009 (subject to reaching an agreement with respect to fees to be charged to the Corporation by KPMG LLP for its services and subject to ratification by the shareholders); (b) that the Board of Directors unanimously recommends a vote FOR ratification of such appointment; and (c) that such appointment be presented to the shareholders of the Corporation for ratification at the Annual Shareholders Meeting; and further

Approval of 2009 Stock Incentive Plan

RESOLVED, that the Board of Directors deems it to be advisable and in the best interests of the Corporation to adopt the 2009 Stock Incentive Plan, to, among other things, grant certain awards (the "Awards") of options to purchase shares of the Corporation's Class A Common Stock, par value \$0.01 per share, (the "Class A Common Stock") to certain directors, officers and key employees of the Corporation and its subsidiaries; and further

RESOLVED, that a committee be, and it hereby is, established to administer the 2009 Plan as provided therein, such committee to consist of the members of the Board of Directors (the "Committee"); and further

RESOLVED, that at such times as shall seem appropriate, the Committee may grant Awards under the 2009 Stock Incentive Plan upon such terms as set forth therein, and as are otherwise determined by the Committee; and further

Delegation of Authority to Make Option Grants

RESOLVED, that the Board of Directors hereby delegates the authority to Mr. Ergen, as Chairman of the Board of Directors, to make grants of options to purchase the Class A Common Stock, effective at the end of each quarter, to new employees and existing employees of the Corporation or its subsidiaries in connection with promotion or other recognition, as Mr. Ergen deems appropriate, without further need to consult with or seek prior approval from the full Board of Directors or the Executive Compensation Committee, consistent with the criteria established in the 2009 Stock Incentive Plan (collectively, the "Plans"), and that the actions taken by Mr. Ergen in connection therewith shall be deemed approved, ratified and confirmed by the Board of Directors and the Executive Compensation Committee as of the date such action is taken; provided however, that no authority is hereby granted to Mr. Ergen to make grants to: (a) executive officers or directors of the Corporation (executive officers of the Corporation are those persons identified as executive officers in the Corporation's annual report on Form 10-K); (b) "affiliates" of the Corporation, as such term is used in Section 16 of the Securities Exchange Act of 1934, and as interpreted by the General Counsel of the Corporation; (c) in excess of one hundred thousand (100,000) shares to an individual employee at or below the Vice President level; or (d) in excess of five hundred thousand (500,000) shares to an individual employee at or above the Senior Vice President level, without advance approval of the Compensation Committee; and further

RESOLVED, that the Corporation reserve and set aside from its authorized but unissued Class A Common Stock a total of 80,000,000 shares to be deliverable upon exercise of Awards to be granted under the 2009 Stock Incentive Plan, such reservation to continue so long as and to the extent required to satisfy Awards that may be so granted; and further

RESOLVED, that the Corporation be, and it hereby is, authorized to prepare a Registration Statement of the Corporation on Form S-8 (the "Registration Statement") under the Securities Act of 1933, as amended (the "Act") relating to the sale or resale of Class A Common Stock under the 2009 Stock Incentive Plan, and that the proper officers of the Corporation be, and each of them singly hereby is, authorized to execute the Registration Statement on behalf of the Corporation, and that the Corporation be, and it hereby is, authorized to file the Registration Statement

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or any amendment thereto with the Securities and Exchange Commission; and further

RESOLVED, that for the purposes of registering under the Act the Class A Common Stock proposed to be issued under the 2009 Plan, R. Stanton Dodge, 9601 S. Meridian Blvd., Englewood, Colorado 80112, is hereby appointed as the Corporation's agent for service of process; and further

RESOLVED, that any officers of the Corporation be, and each of them hereby is, authorized and directed, by and on behalf of the Corporation, and in its name, to execute and file or cause to be filed such consents to service of process, powers of attorney, applications and other documents with any state authorities, and to do such other things and acts as such officer or officers may deem necessary or appropriate in order to register or qualify the Class A Common Stock for offer and sale under the securities or blue sky laws of any such states; provided, however, that the Corporation shall not hereunder qualify as a foreign corporation in any such state or consent to service of process in any such state other than with respect to claims arising under the securities laws of such state; and further

RESOLVED, that there is hereby adopted and incorporated herein by reference the full text of any resolution or resolutions in statutory or regulatory form that may be required by any state authority in connection with any such registration or notification, and the Secretary or any other appropriate officer of this Corporation, is hereby authorized and empowered to certify to any such state authority that any such form of resolution required by such authority has been adopted, including among the resolutions so adopted, the following resolution under the Uniform Securities Act; and further

RESOLVED, that it is desirable and in the best interest of the Corporation that the Class A Common Stock proposed to be issued under the 2009 Stock Incentive Plan be qualified or registered for sale in various states; that the Chief Executive Officer, the President or any Vice President and the Secretary or any Assistant Secretary hereby are authorized to determine the states in which appropriate action shall be taken to qualify or register for sale all or such part of the securities of the Corporation as said officers may deem advisable; that said officers are hereby authorized to perform on behalf of the Corporation any and all such acts as they may deem necessary or advisable in order to comply with the applicable laws of any such states, and in connection therewith to execute and file all requisite papers and documents, including, but not limited to, applications, reports, surety bonds, irrevocable consents and appointments of attorneys for service of process; and the execution of such officers of any such paper or document or the doing by them of any act in connection with the foregoing matters shall conclusively establish their authority therefor from the Corporation and the approval and ratification by the Corporation of the papers and documents so executed and the action so taken; and further

RESOLVED, that the officers of the Corporation be, and each of them hereby is, authorized and directed to cause the Corporation to pay any and all expenses and fees arising in connection with the sale of the Class A Common Stock proposed to be issued under the 2009 Stock Incentive Plan, the registration of such Class A Common Stock under the Act, and the filing of applications under the securities or blue sky laws of the various states and jurisdictions of the United States, and otherwise in connection with these resolutions; and further

RESOLVED, that the corporate seal of this Corporation may be affixed to any instrument or document executed pursuant to the foregoing resolutions; and further

RESOLVED, (a) that the Board of Directors unanimously recommends a vote FOR approval of the 2009 Stock Incentive Plan; and (b) that the 2009 Stock Incentive Plan be presented to the shareholders of the Corporation for approval at the Annual Shareholders Meeting; and further

Approval of Form, Filing and Distribution of the Proxy Statement

RESOLVED, that the draft Proxy Statement, in substantially the form attached as Exhibit 8C to the board book for the meeting, be, and it hereby is, approved as to form with such non-material changes as the General Counsel and Chief Financial Officer of the Corporation shall deem necessary and appropriate; and further

RESOLVED, that the Proxy Statement, in substantially the form attached as Exhibit 8C to the board book for the meeting, with such changes as the General Counsel and Chief Financial Officer of the Corporation shall deem necessary and appropriate, be filed with the Securities and Exchange Commission (the "Commission") pursuant to Section 14(a) of the Securities Exchange Act of 1934, as amended, at such time as the General Counsel and Chief Financial Officer of the Corporation shall determine; and further

RESOLVED, that the General Counsel and Chief Financial Officer be, and they collectively hereby are, authorized, empowered and directed to prepare or cause to be prepared, to execute or cause to be executed, and to file or cause to be filed with the Commission such amendments and supplements to the Proxy Statement as they, collectively, may deem necessary or desirable, or as may be required by the Commission; and further

RESOLVED, that, in the event that an amendment or supplement to the Proxy Statement is filed, the members of the Board of Directors shall be provided with redline copies of the revised Proxy Statement showing the changes that were made; and further

RESOLVED, that the Corporation be, and it hereby is, directed to distribute the Proxy Statement, in substantially the form previously distributed to the members of the Board of Directors, with such changes as the General Counsel and Chief

Financial Officer of the Corporation shall deem necessary and appropriate, to each shareholder owning the Corporation's voting securities on the record date of March 16, 2009, and further

General Enabling Resolutions

RESOLVED, that the Chief Executive Officer or Executive Vice President, General Counsel, and Secretary of the Corporation (each, a "proper officer" and collectively the "proper officers") be, and each one of them acting alone or with one or more other proper officers hereby is, authorized, empowered and directed, in the name and on behalf of the Corporation and under its corporate seal or otherwise, from time to time, to make, execute and deliver, or cause to be made, executed and delivered, all such other and further agreements, certificates, instruments or documents, to pay or reimburse all such filing fees and other costs and expenses, and to do and perform or cause to be done or performed all such acts and things, as in their discretion or in the discretion of any of them may be necessary or desirable to enable the Corporation to accomplish the purposes and to carry out the intent or the foregoing resolutions; and further

RESOLVED, that any and all actions previously taken by any of the proper officers within the terms of the foregoing resolution be, and the same hereby is, ratified, and confirmed in all respects.

ITEM 7. DISCUSSION OF INVESTMENT POLICIES

Mr. Moskowitz led a discussion regarding the cash management and strategic investment policies of the Corporation. Mr. Moskowitz walked the members of the Board of Directors through the existing policies noting that, among other things, the Corporation's cash management policy is comparable to those of other companies surveyed. REDACTED-ATTORNEY-CLIENT PRIVILEGED

REDACTED-ATTORNEY-CLIENT PRIVILEGED Mr. Moskowitz noted that the strategic investment policy is subject to Mr. Ergen's general \$50 million spending limit. The members of the Board of Directors then reconfirmed that management was not to exceed \$50 million in expenditures without specific authorization from the Board of Directors and that management should provide a further update to the members of the Board of Directors at the next regular meeting.

ITEM 8. DISCUSSION OF LETTER FROM HERMES FUND MANAGERS LIMITED

Mr. Dodge led a discussion regarding the letter received from F&C Management Ltd. dated November 4, 2008, a copy of which was attached as Exhibit 10A to the board book for the meeting.

ITEM 9. REVIEW OF CERTAIN ITEMS PREVIOUSLY APPROVED BY THE BOARD OF DIRECTORS

Mr. Dodge reviewed certain items approved by the Board of Directors within the last twelve months and the status of each such item, as well as certain items approved by the Board of Directors in prior years that authorized the expenditure of over \$100 million and that remain active. Mr. Dodge noted that to assist the members of the Board of Directors a list of such items was included in the board book for the meeting.

ITEM 10. DISCUSSION OF CREDIT MARKETS

Mr. Carl E. Vogel, Vice Chairman of the Board of Directors, provided an update on the credit markets.

ITEM 11. REVIEW OF SCHEDULE FOR NEXT REGULAR MEETINGS OF THE BOARD OF DIRECTORS, AUDIT COMMITTEE AND EXECUTIVE COMPENSATION COMMITTEE

Mr. Dodge reviewed the schedule for the regular meetings of the Board of Directors, Audit Committee and Executive Compensation Committee for the next year.

ITEM 12. DISCUSSION OF D&O TRUST

Mr. Moskowitz led a discussion on the general state of the indemnification trust for directors and officers of the Corporation. A summary of Mr. Moskowitz' presentation was distributed at the meeting. Mr. Moskowitz walked the members of the board of directors through his presentation, noting, among other things, that the form of the Corporation's indemnification trust for its directors and officers remains valid and the various types of D&O insurance coverage and their estimated costs. The members of the Board of Directors then instructed management to continue to investigate the possibility of procuring of \$10 million in "Side A" D&O insurance coverage.

ITEM 13. CHAIRMAN'S REPORT

Mr. Ergen presented a report on the general state of the business of the Corporation and other matters including, among other things, upcoming satellite launches and operations. To assist the members of the Board of Directors with their consideration of this item, a memorandum regarding upcoming satellite launches was attached as Exhibit 2A to the board book for the meeting.

ITEM 14. APPROVAL OF MINUTES AND SIGNING OF CONSENTS

Mr. Dodge explained that minutes of the Regular Meeting of the Board of Directors of DISH Network Corporation held on November 6, 2008; minutes of the Special Meeting of the Board of Directors of DISH Network Corporation held on December 18, 2008; and minutes of the Special Meeting of the Board of Directors of DISH Network Corporation held on December 22, 2008 were distributed by email prior to the meeting.

After brief discussion and deliberation, upon motion duly made and seconded, the following resolution was unanimously adopted:

NOW, THEREFORE, BE IT RESOLVED, that the minutes of the Regular Meeting of the Board of Directors of DISH Network Corporation (the "Corporation") held on November 6, 2008; the minutes of the Special Meeting of the Board of Directors of the Corporation held on December 18, 2008; and the minutes of the Special Meeting of the Board of Directors of the Corporation held on December 22, 2008, in substantially the forms distributed by email prior to the meeting, be, and they hereby are, approved, ratified and confirmed in all respects.

ITEM 15. CHAIRMAN'S REPORT (cont'd)

Mr. Vogel provided an update on certain proposed transaction with respect to Sirius.

Termination

There being no further business to come before the meeting, the meeting was, upon motion duly made and seconded, terminated at 7:10 p.m., prevailing Mountain Time.

R. Stanton Dodge
Secretary

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1 **APEN**

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18 *Attorneys for Special Litigation Committee of*
19 *Nominal Defendant DISH Network*
20 *Corporation*

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15
16 PLUMBERS LOCAL UNION NO. 519 PENSION
17 TRUST FUND and CITY OF STERLING
18 HEIGHTS POLICE AND FIRE RETIREMENT
19 SYSTEM, derivatively on behalf of nominal
20 defendant DISH NETWORK CORPORATION,

21 Plaintiffs,

22 v.

23 CHARLES W. ERGEN; JAMES DEFRANCO;
24 CANTEY M. ERGEN; STEVEN R.
25 GOODBARN; DAVID MOSKOWITZ; TOM A.
26 ORTOLF; CARL E. VOGEL; GEORGE R.
27 BROKAW; JOSEPH P. CLAYTON; and GARY
28 S. HOWARD,

Defendants,

DISH NETWORK CORPORATION, a Nevada
corporation,

Nominal Defendant

FILED

NOV 28 2018

Sharon L. Blum
CLERK OF COURT

FUS

CASE NO.: A-17-763397-B
DEPT. NO.: XI

**VOLUME 16 OF APPENDIX TO
THE REPORT OF THE SPECIAL
LITIGATION COMMITTEE OF
DISH NETWORK CORPORATION**

HOLLAND & HART LLP

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| <u>Ex.</u> | <u>Date</u> | <u>Description</u> | <u>Page No.</u> |
|------------|-------------|--|-----------------|
| 369 | 03/05/2009 | Email from T. Rukas to J. Slater, et al. | 8406 |
| 370 | 03/05/2009 | Email from B. Van Emst to S. McElroy | 8475 |
| 371 | 03/12/2009 | Email from S. Dodge to C. Ergen | 8479 |
| 372 | 03/25/2009 | Email from S. Dodge to C. Ergen, et al. | 8481 |
| 373 | | Intentionally Omitted | 8484 |
| 374 | 04/16/2009 | Email from R. Musso to J. Blum and B. Van Emst | 8486 |
| 375 | 05/03/2009 | Email from L. Rose to D. Crane-Hirsch | 8489 |
| 376 | 05/03/2009 | Draft Stipulated Judgment and Order for Permanent Injunction Against DISH Network L.L.C. | 8491 |
| 377 | 05/05/2009 | Amended and Restated Charter of The Audit Committee | 8533 |
| 378 | 05/05/2009 | DISH Minutes of Regular Board Meeting | 8539 |
| 379 | 05/11/2009 | DISH Minutes of Annual Board Meeting | 8551 |
| 380 | 05/26/2009 | Email from D. Moskowitz to J. Blum | 8559 |
| 381 | | Intentionally Omitted | 8561 |
| 382 | 07/10/2009 | Email from A. Ahmed to M. Mills, et al. | 8563 |
| 383 | 07/13/2009 | Letter from L. Joseph to M. Martinez, et al. | 8567 |
| 384 | 07/15/2009 | Email from J. Blum to C. Ergen, et al. | 8572 |
| 385 | | Intentionally Omitted | 8575 |
| 386 | 07/20/2009 | Abstract of 2009 Attorney General AVC | 8577 |
| 387 | 07/20/2009 | Email from B. Kitei to C. Ergen, J. DeFranco, et al. | 8589 |
| 388 | 07/21/2009 | Calendar Invitation from R. Musso to J. Blum | 8591 |
| 389 | 08/03/2009 | Audit Committee Update Internal Audit & SOX 404 | 8593 |
| 390 | 08/04/2009 | DISH Minutes of Board Meeting | 8605 |

DATED this 28th day of November 2018.

By



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*Attorneys for the Special Litigation Committee of
Nominal Defendant DISH Network Corporation*

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of November 2018, a true and correct copy of the foregoing **VOLUME 16 OF APPENDIX TO THE REPORT OF THE SPECIAL LITIGATION COMMITTEE OF DISH NETWORK CORPORATION** 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:

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By: 
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