12-12080-scc Doc 1023 Filed 11/15/13 Docket #1023 Date Filed: 11/15/2013 Pg 1 of 33

James H.M. Sprayregen, P.C. Paul M. Basta, P.C. Joshua A. Sussberg KIRKLAND & ELLIS LLP 601 Lexington Avenue New York, NY 10021 (212) 446-4800

Counsel to the Special Committee

UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK

)
In re:) Chapter 11
)
LIGHTSQUARED INC., et al.,) Case No. 12-12080 (SCC)
)
Debtors. ¹) Jointly Administered
)

SPECIAL COMMITTEE STATUS REPORT

The debtors in these Chapter 11 Cases (as defined below), along with the last four digits of each debtor's federal or foreign tax or registration identification number, are: LightSquared Inc. (8845), LightSquared Investors Holdings Inc. (0984), One Dot Four Corp. (8806), One Dot Six Corp. (8763), SkyTerra Rollup LLC (N/A), SkyTerra Rollup Sub LLC (N/A), SkyTerra Investors LLC (N/A), TMI Communications Delaware, Limited Partnership (4456), LightSquared GP Inc. (6190), LightSquared LP (3801), ATC Technologies, LLC (3432), LightSquared Corp. (1361), LightSquared Finance Co. (6962), LightSquared Network LLC (1750), LightSquared Inc. of Virginia (9725), LightSquared Subsidiary LLC (9821), Lightsquared Bermuda Ltd. (7247), SkyTerra Holdings (Canada) Inc. (0631), SkyTerra (Canada) Inc. (0629), and One Dot Six TVCC Corp. (0040). The location of the debtors' corporate headquarters is 10802 Parkridge Boulevard, Reston, VA 20191.



The special committee of the boards of directors (the "Special Committee")² of LightSquared Inc. and LightSquared GP Inc. (together with the above-captioned debtors and debtors in possession, collectively, "LightSquared"), files this status report and respectfully states as follows:

Status Report

- 1. Since its appointment, the Special Committee has been focused on two principle objectives: maximizing value for the benefit of all stakeholders and ensuring that the integrity of this process is maintained through the conclusion of these chapter 11 cases. More specifically, the Special Committee has assisted LightSquared in negotiating bidding procedures and "locking-up" DISH Network's sale proposal.³ The Special Committee has also been in close contact with -- and received regular updates from -- Moelis & Company regarding the marketing process. And the Special Committee has analyzed and evaluated litigation against certain GPS companies and related entities and the litigation described below.
- 2. In connection with the foregoing initiatives, and since its formation, the Special Committee has conducted more than 20 noticed meetings (including several meetings involving the Special Committee members, its counsel and key stakeholder principals and their

The members of the Special Committee are Alan J. Carr, Neal P. Goldman, and Christopher T. Rogers.

The Special Committee was recently troubled to learn that the ad hoc group of lenders under the LightSquared LP credit agreement (the "Ad Hoc Group of LP Lenders"), who individually are parties to that certain Plan Support Agreement with the proposed stalking horse purchaser L-Band Acquisition, LLC (a DISH Network affiliate, "L-Band"), do not believe that L-Band is in fact "locked-up" or otherwise committed to the stalking horse transaction. Instead, the Ad Hoc Group of LP Lenders has suggested that certain open issues exist with respect to L-Band's stalking horse purchase agreement negotiated with the Ad Hoc Group of LP Lenders [Doc. No. 972]. It has therefore been suggested that L-Band is free to walk at any time because of these unresolved issues. The Special Committee was not aware that the stalking horse agreement was anything other than substantially complete (as contemplated in the plan support agreement between L-Band and the Ad Hoc Group of LP lenders) at the time of entry of the Court's Amended Agreed Final Order (A) Authorizing Debtors To Use Cash Collateral, (B) Granting Adequate Protection to Prepetition Secured Parties, and (C) Modifying Automatic Stay [Docket No. 544]. As a result, the Special Committee continues to believe and assume that L-Band is, in fact, committed and bound to the stalking horse purchase agreement and contemplated transactions.

respective advisors). In addition, the Special Committee and its professionals have participated in countless phone calls and conferences with various stakeholders.⁴

- 3. The Special Committee has analyzed and evaluated the merits -- and potential consequences -- associated with commencing litigation against DISH and certain related entities in connection with the purchase of LightSquared indebtedness. With the twin objectives of maximizing value and maintaining integrity at the forefront of its mind, the Special Committee has carefully listened to the audio of the November 7th chambers conference, considered the Court's ruling on the motions to dismiss at the hearing on October 29, 2013, reviewed the discovery produced pursuant to the protective order, conferred with various parties in interest, including the advisors to the Ad Hoc Group of LP Lenders, and directly engaged in discussion and debate with LightSquared's management. At the conclusion of this process, the Special Committee determined it was appropriate to authorize LightSquared to file the complaint that is attached hereto as Exhibit A.
- 4. At its core, LightSquared specifically negotiated a credit agreement that included restrictions on competitors purchasing the company's indebtedness. This was of course purposeful and designed to ensure that competitors, who are looking to maximize value for their own account and often at the expense of a direct competitor (and/or its creditors and other stakeholders), are excluded from participating and gaining access to a competitor's capital structure and confidential information. The Special Committee believes -- and the discovery it has reviewed suggests -- that DISH and its related parties sought to accomplish indirectly what they could not accomplish directly; own LightSquared's debt and advance the interests of LightSquared's competitor, not LightSquared.

The Special Committee is also in the process of engaging an expert to advise the Special Committee directly on matters related to the Federal Communications Commission's review of pending spectrum license modifications and FCC law more generally.

12-12080-scc Doc 1023 Filed 11/15/13 Entered 11/15/13 20:05:56 Main Document Pg 4 of 33

5. At the same time, the Special Committee is cognizant that the L-Band sale transaction continues to represent a source of value. Moreover, the Special Committee is well aware that commencement of an action against DISH and certain of its related parties could impact the proposed timeline on which the transaction is to be implemented.⁵ After thorough and careful deliberation, however, the Special Committee concluded that, on balance, commencement of the action -- in the more streamlined form attached hereto -- is in the best interest of LightSquared and its stakeholders. Among other things, this action is needed to (a) get to the bottom of something that, on its face, seems wrong, (b) ensure that the integrity of these (and all) chapter 11 cases is respected, and, just as importantly, (c) redress a harm that defeats the very purpose for which certain credit agreement restrictions were designed.⁶

LightSquared and the Special Committee will be prepared to address timing concerns and the appropriate schedule for the action -- including how the action impacts the plan and sale process -- at a chambers or status conference (subject to the Court's availability).

As noted in the complaint, LightSquared recognizes that the Court has ruled that equitable disallowance does not exist as a claim for relief in this jurisdiction. Thus, LightSquared asserts this claim in the complaint solely to preserve its right to appeal the previous ruling.

Notice

6. Notice of this Status Report will be provided by electronic mail, facsimile, regular or overnight mail, and/or hand delivery to (a) the U.S. Trustee, (b) the entities listed on the Consolidated List of Creditors Holding the 20 Largest Unsecured Claims filed pursuant to Bankruptcy Rule 1007(d), (c) counsel to LightSquared, (d) counsel to the Prepetition Agents, (e) counsel to the DIP Agent, (f) counsel to the ad hoc secured group of Prepetition LP Lenders, (g) counsel to Harbinger Capital Partners, LLC, (h) the Internal Revenue Service, (i) the United States Attorney for the Southern District of New York, (j) the Federal Communications Commission, (k) Industry Canada, and (l) all parties who have filed a notice of appearance in the Chapter 11 Cases. The Special Committee respectfully submits that no other or further notice is required or necessary.

New York, New York Dated: November 15, 2013 /s/ Joshua A. Sussberg
James H.M. Sprayregen, P.C.
Paul M. Basta, P.C.
Joshua A. Sussberg
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, NY 10021
(212) 446-4800

Counsel to the Special Committee

EXHIBIT A

Matthew S. Barr Alan J. Stone Andrew M. Leblanc Karen Gartenberg MILBANK, TWEED, HADLEY & M^CCLOY LLP One Chase Manhattan Plaza New York, NY 10005-1413 (212) 530-5000

Counsel to Plaintiff-Intervenors and Debtors and Debtors in Possession

UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK	.X
In re:	: Chapter 11
LIGHTSQUARED INC., et al.,	: Case No. 12-12080 (SCC)
Debtors.	: Jointly Administered: Adv. Proc. No. 13-01390 (SCC)
LIGHTSQUARED LP, LIGHTSQUARED INC., LIGHTSQUARED INVESTORS HOLDINGS INC. TMI COMMUNICATIONS DELAWARE LIMITED PARTNERSHIP, LIGHTSQUARED GP INC., ATC TECHNOLOGIES, LLC, LIGHTSQUARED CORP., LIGHTSQUARED INC. OF VIRGINIA, LIGHTSQUARED SUBSIDIARY LLC, SKYTERRA HOLDINGS (CANADA) INC., AND SKYTERRA (CANADA) INC.	: : : : : : : : : : : : : : : : : : :
Plaintiff-Intervenors,	· :
- against- SP SPECIAL OPPORTUNITIES LLC, DISH NETWORK CORPORATION, ECHOSTAR CORPORATION, AND CHARLES W. ERGEN, Defendants.	:::::::::::::::

Plaintiffs LightSquared LP, LightSquared Inc., LightSquared Investors Holdings Inc., TMI Communications Delaware Limited Partnership, LightSquared GP Inc., ATC Technologies, LLC, LightSquared Corp., LightSquared Inc. of Virginia, LightSquared Subsidiary LLC, SkyTerra Holdings (Canada) Inc., and SkyTerra (Canada) Inc., as debtors and debtors in possession (collectively, with certain of their affiliate debtors and debtors in possession, "LightSquared") in the above-captioned chapter 11 cases (the "Chapter 11 Cases") and plaintiff-intervenors in this adversary proceeding, hereby file this Complaint-in-Intervention against Defendants SP Special Opportunities, LLC ("SPSO"), DISH Network Corporation ("DISH"), EchoStar Corporation ("EchoStar"), and Charles W. Ergen. In support of the requested relief, LightSquared alleges as follows:

NATURE OF ACTION

- 1. This action arises out of a plan devised by Charles Ergen—acting through entities that he controls and dominates, DISH, EchoStar, and SPSO—to acquire LightSquared's spectrum assets on terms and conditions that were dictated by Mr. Ergen. In so doing, SPSO, DISH, EchoStar, and Mr. Ergen violated LightSquared's October 10, 2010 Credit Agreement (as amended, modified, and amended and restated, the "Credit Agreement"), a related Assignment and Assumption agreement, and the law.
- 2. For many years, DISH, under the direction of Mr. Ergen, has been seeking to diversify away from its core satellite television subscription business and into the terrestrial

The debtors in these Chapter 11 cases, along with the last four digits of each debtor's federal or foreign tax or registration identification number, are: LightSquared Inc. (8845), LightSquared Investors Holdings Inc. (0984), One Dot Four Corp. (8806), One Dot Six Corp. (8763), SkyTerra Rollup LLC (N/A), SkyTerra Rollup Sub LLC (N/A), SkyTerra Investors LLC (N/A), TMI Communications Delaware Limited Partnership (4456), LightSquared GP Inc. (6190), LightSquared LP (3801), ATC Technologies, LLC (3432), LightSquared Corp. (1361), LightSquared Finance Co. (6962), LightSquared Network LLC (1750), LightSquared Inc. of Virginia (9725), LightSquared Subsidiary LLC (9821), Lightsquared Bermuda Ltd. (7247), SkyTerra Holdings (Canada) Inc. (0631), SkyTerra (Canada) Inc. (0629), and One Dot Six TVCC Corp. (0040).

wireless business. As part of that strategy, DISH has already purchased significant amounts of wireless spectrum and continues to pursue opportunities to acquire more spectrum. Because of LightSquared's bankruptcy, DISH, acting through its agent Mr. Ergen, apparently saw a chance to purchase LightSquared's valuable assets at a price dictated by DISH, and devised and implemented a plan to achieve that goal.

- 3. Events in these Chapter 11 Cases have revealed that Mr. Ergen's plan had three elements. *First*, from April 2012 to April 2013, DISH sought to purchase enough LightSquared debt to block the approval of any plan of reorganization not supported by DISH. However, because both DISH and EchoStar were prohibited from purchasing LightSquared's debt, Mr. Ergen, who is the Executive Chairman and controlling shareholder of both companies, purchased LightSquared debt through an investment vehicle, SPSO. ² By May 2013, DISH through SPSO had acquired the sought-after blocking position in LightSquared's debt.
- 4. **Second**, another investment vehicle, L-Band Acquisition LLC ("LBAC")—owned first by Mr. Ergen and later by DISH—made an unsolicited cash bid for LightSquared's spectrum assets. Because DISH already controlled a blocking position in LightSquared's debt at the time this bid was made on May 15, 2013, LightSquared's other creditors had little choice but to put forward and support a plan of organization that called for DISH acquiring LightSquared's spectrum. Such a plan was submitted on July 23, 2013, just days after exclusivity terminated.
- 5. *Third*, to complete Mr. Ergen's plan, if the creditors' plan of reorganization were approved, part of the purchase price paid by LBAC (using the cash of DISH's shareholders) would then be used to pay off Mr. Ergen's prior purchases of

2

Mr. Ergen, as a natural person, is similarly prohibited from purchasing LightSquared debt.

LightSquared's debt through SPSO.³ In effect, DISH's corporate assets would be used to purchase LightSquared's spectrum assets to benefit DISH's long-term business strategy. As an observer noted to an EchoStar senior executive, "Watching Charlie in action is fascinating if not truly awesome. He has boxed everyone in. There is no place to hide without giving him control of the spectrum required to build out the network. Or without paying him enough money that all his efforts will be paid off handsomely."

- 6. This plan, however, was predicated on one key component: DISH would have to purchase LightSquared's debt in violation of LightSquared's Credit Agreement. To circumvent the transfer restrictions in the Credit Agreement, DISH disguised its purchases of interests in the loan (the "LP Debt") by having DISH and EchoStar act through their Executive Chairman, Mr. Ergen, with the help of DISH's Treasurer and EchoStar executive, Jason Kiser, and investment advisory firm, Sound Point Capital Management L.P. ("Sound Point") and its founder Stephen Ketchum.
- 7. Under the Credit Agreement, LightSquared LP's direct competitors, including DISH and EchoStar, and their subsidiaries, are "Disqualified Companies" that cannot be "Eligible Assignees" of rights under the Credit Agreement. In other words, the Credit Agreement explicitly bars DISH, EchoStar, and any entity they directly or indirectly control from holding the LP Debt.
- 8. Because DISH was determined to augment its spectrum holdings with the spectrum holdings of LightSquared, Mr. Ergen created SPSO, through another entity Special Opportunities Holdings LLC ("SO Holdings"), and acquired over \$1 billion worth of the LP Debt. Mr. Kiser directed SPSO's purchases of the LP Debt through Sound Point.

3

If this plan is completed, plaintiffs in related litigation have alleged that Mr. Ergen stands to make a substantial personal profit at DISH's expense.

- 9. In the weeks leading up to the expiration of LightSquared's exclusive period to file a plan of reorganization that it had negotiated with an ad hoc group of lenders under the Credit Agreement (the "Ad Hoc Secured Group"), SPSO delayed the closing of trades. And then, in May 2013, DISH, through its agent Mr. Ergen and using a different entity, LBAC, submitted a bid for LightSquared's spectrum assets.
- LightSquared had joined its capital structure contrary to the language of LightSquared's Credit Agreement and held a sufficient stake to direct LightSquared's bankruptcy cases. *Second*, LightSquared was deprived of its statutory and bargained-for right to negotiate exclusively with its stakeholders to develop a plan of reorganization because SPSO had become its largest creditor. *Third*, DISH had virtually guaranteed that its bid, through LBAC, for LightSquared would be successful because, through SPSO, it had substantial leverage over any plan of reorganization that would not result in LightSquared's assets being transferred to LBAC. In addition, the plan of reorganization required LightSquared to release DISH, Mr. Ergen, and their affiliates from all claims that LightSquared or any interested party may assert against them. In other words, DISH would absolve itself from liability for its wrongful conduct in breaching the Credit Agreement, which was the key component of its plan to secure LightSquared's assets.
- 11. Therefore, LightSquared brings this action (i) against SPSO for declaratory relief, (ii) against SPSO for breach of contract, (iii) against SPSO for disallowance of claim under 11 U.S.C. § 502(b), (iv) against SPSO for equitable disallowance⁴ of SPSO's LP

LightSquared recognizes that the Court has ruled that equitable disallowance does not exist as a claim for relief in this jurisdiction. Thus, LightSquared asserts this claim to preserve its right to take any appeal from the Court's ruling.

Debt, and (v) against SPSO, DISH, EchoStar, and Mr. Ergen for tortious interference with the Credit Agreement.

JURISDICTION AND VENUE

- 12. This is an adversary proceeding pursuant to rule 7001 of the Federal Rules of Bankruptcy Procedure.
- 13. The Court has original jurisdiction under 28 U.S.C. § 1334(b) in that this is a civil proceeding.
- 14. This adversary proceeding is a "core" proceeding pursuant to 28 U.S.C. § 157 because it concerns the administration of LightSquared's estates and seeks disallowance of claims against the estates. Alternatively, this adversary proceeding is related to the Chapter 11 Cases to the extent that the claims arise out of conduct involving SPSO's acquisition of claims against the estates.
- 15. This Court has personal jurisdiction over SPSO, DISH, EchoStar, and Mr. Ergen pursuant to rule 7004(f) of the Federal Rules of Bankruptcy Procedure because this is a civil proceeding arising under, and related to a case, under the Bankruptcy Code.
- Venue of this adversary proceeding in this district is proper pursuant to 28U.S.C. §§ 1408 and 1409.

PARTIES AND KEY PLAYERS

17. Plaintiff LightSquared LP is a limited partnership organized and existing under the laws of the State of Delaware with its principal place of business in Reston, Virginia. LightSquared LP is a debtor in these Chapter 11 Cases.

- 18. Plaintiff LightSquared Inc. is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in Reston, Virginia.

 LightSquared Inc. is a debtor in these Chapter 11 Cases.
- 19. Plaintiff LightSquared Investors Holdings Inc. is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in Reston, Virginia. LightSquared Investors Holdings Inc. is a debtor in these Chapter 11 Cases.
- 20. Plaintiff TMI Communications Delaware Limited Partnership is a limited partnership organized and existing under the laws of the State of Delaware with its principal place of business in Reston, Virginia. TMI Communications Delaware Limited Partnership is a debtor in these Chapter 11 Cases.
- 21. Plaintiff LightSquared GP Inc. is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in Reston, Virginia. LightSquared GP Inc. is a debtor in these Chapter 11 Cases.
- 22. Plaintiff ATC Technologies, LLC is a limited liability company organized and existing under the laws of the State of Delaware with its principal place of business in Reston, Virginia. ATC Technologies, LLC is a debtor in these Chapter 11 Cases.
- 23. Plaintiff LightSquared Corp. is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in Reston, Virginia.

 LightSquared Corp. is a debtor in these Chapter 11 Cases.
- 24. Plaintiff LightSquared Inc. of Virginia is a corporation organized and existing under the laws of the State of Virginia with its principal place of business in Reston, Virginia. LightSquared Inc. of Virginia is a debtor in these Chapter 11 Cases.

- 25. Plaintiff LightSquared Subsidiary LLC is a limited liability company organized and existing under the laws of the State of Delaware with its principal place of business in Reston, Virginia. LightSquared Subsidiary LLC is a debtor in these Chapter 11 Cases.
- 26. Plaintiff SkyTerra Holdings (Canada) Inc. is a corporation organized and existing under the laws of the Province of Ontario with its principal place of business in Ontario, Canada. SkyTerra Holdings (Canada) Inc. is a debtor in these Chapter 11 Cases.
- 27. Plaintiff SkyTerra (Canada) Inc. is a corporation organized and existing under the laws of the Province of Ontario with its principal place of business in Ontario, Canada. SkyTerra (Canada) Inc. is a debtor in these Chapter 11 Cases.
- 28. Defendant SPSO is a limited liability company organized and existing under the laws of the State of Delaware with its headquarters in New York, New York. SPSO's sole member and managing member is SO Holdings. SO Holdings is a limited liability company whose sole member and managing member is Mr. Ergen.
- 29. Defendant Mr. Ergen is a citizen of the State of Colorado. He is the Executive Chairman of the board of directors, an employee, and majority owner of both DISH and EchoStar. Mr. Ergen—personally and through his family trusts—beneficially owns and controls over 88% of DISH's voting shares and over 80% of EchoStar's voting shares.

 Therefore, Mr. Ergen is the controlling shareholder of DISH and EchoStar. By virtue of his voting and ownership stake in DISH and EchoStar, Mr. Ergen controls DISH's and EchoStar's day-to-day affairs. At all material times, Mr. Ergen was and is an authorized agent of both DISH and EchoStar, acting for their benefit. Mr. Ergen controls SPSO by serving as managing member

of SO Holdings, the managing member of SPSO. DISH and EchoStar control SPSO, directly or indirectly, through Mr. Ergen.

- 30. Defendant DISH is a public corporation organized and existing under the laws of the State of Nevada with its principal place of business in Englewood, Colorado. DISH provides broadband and satellite television services and aims to expand its broadband offerings, including by building a terrestrial broadband network. DISH is a direct competitor of LightSquared.
- 31. Defendant EchoStar is a public corporation organized and existing under the laws of the State of Nevada with its principal place of business in Englewood, Colorado. EchoStar is a satellite communications company that currently operates, leases, or manages a number of satellites, including the satellites that provide services to DISH. EchoStar is a direct competitor of LightSquared.
- 32. LBAC is a wholly-owned subsidiary of DISH, even though it was initially established by Mr. Ergen. Mr. Ergen formed LBAC for the sole purpose of bidding on, and acquiring, LightSquared's spectrum assets with funds from DISH and/or EchoStar. DISH and EchoStar control LBAC directly and through Mr. Ergen.
- 33. Mr. Kiser is an employee of both DISH and EchoStar and served as Treasurer of DISH and an executive at EchoStar. At all material times, Mr. Kiser was and is an authorized agent of both DISH and EchoStar, acting within the scope of his agency and for their benefit. Mr. Kiser, in his capacity as Treasurer of DISH and an executive of EchoStar, controlled SPSO by directing SPSO's purchases of the LP Debt. DISH and EchoStar controlled SPSO, directly or indirectly, through Mr. Kiser.

- 34. Sound Point is an investment management and advisory firm. At all material times, it served as trading manager and investment advisor for SPSO—whose portfolio comprises entirely of its holdings of the LP Debt.
- 35. Mr. Ketchum is the founder and managing member of Sound Point. He managed SPSO's trades in the LP Debt.

GENERAL ALLEGATIONS

A. DISH Seeks To Acquire LightSquared's Spectrum

- (i) LightSquared Offers Significant Integrated Wireless Broadband Capabilities
- 36. Since its founding, LightSquared has provided wholesale mobile satellite communications and broadband services throughout North America. Through its ownership of several satellites and licenses to use mobile satellite service spectrum issued by the Federal Communications Commission ("FCC") issues, LightSquared delivers voice and data services to mobile devices used by the military, first responders and other safety professionals, and individuals throughout North America.
- 37. Over the past few years, LightSquared has sought to develop an ancillary terrestrial network ("<u>ATC Network</u>") that would integrate its satellite service with terrestrial satellite ground stations to provide fourth generation long term evolution (4G-LTE) broadband mobile services all over the United States.
- 38. In 2010, LightSquared obtained FCC authorization to build an ATC Network that would provide broadband coverage to at least 260 million people by the end of 2015. LightSquared invested billions of dollars to develop its ATC Network.
- 39. In February 2012, in response to allegations from GPS manufacturers that LightSquared's proposed use of its spectrum would cause interference with GPS devices, the

FCC issued a notice proposing to suspend indefinitely LightSquared's authorization to build out its ATC Network.

- 40. LightSquared was unable to proceed with the build out of its ATC Network as a result of the FCC's notice. LightSquared sought to reach an agreement with its creditors that would allow it to pursue a resolution with the FCC, while forbearing on its obligations under its respective credit agreements. When those negotiations were unsuccessful, on May 14, 2012, LightSquared commenced these Chapter 11 Cases.
 - (ii) DISH Seeks To Expand Its Spectrum Holdings
- 41. Although they are separate publicly-traded companies (DISH spun-off from EchoStar in 2008), DISH and EchoStar operate as a combined enterprise. Several high-ranking executives, including Mr. Ergen, hold the exact same positions at both entities. Several employees, including Mr. Ergen and Mr. Kiser, have email addresses at both DISH and EchoStar. A majority of the members of EchoStar's board of directors are current or former DISH officers or directors.
- 42. DISH and EchoStar have a symbiotic relationship. DISH depends on EchoStar's infrastructure—EchoStar owns and operates the satellites that DISH uses to provide its subscription satellite television and broadband services. DISH and EchoStar are party to cooperation agreements between and among their respective wholly- or partially-owned subsidiaries to provide wireless broadband service.
- 43. Since at least 2008, DISH has focused on expanding its wireless broadband capabilities. Instead of obtaining spectrum licenses directly, DISH's business strategy has been and is to purchase spectrum licenses held by other industry players, including DISH's direct competitors. In 2008, for instance, DISH acquired about \$712 million of 700

MHz wireless spectrum licenses. On March 9, 2012, DISH bought reorganized DBSD North America, Inc. (a satellite communications company) and the assets of TerreStar Networks, Inc. (a wireless broadband provider), including 40MHz of 2 GHz wireless spectrum licenses, for \$2.86 billion. In April 2013, DISH made a bid for Sprint Nextel Corporation. More recently, DISH unsuccessfully attempted to buy Clearwire Corporation from Sprint Nextel Corporation. Thus, DISH's strategic plan is to obtain more wireless broadband spectrum capacity.

B. DISH and EchoStar Cannot Acquire LP Debt Directly or Indirectly

- 44. To finance the build out of its ATC Network, on October 10, 2010, LightSquared LP and certain of its affiliates entered into the Credit Agreement with UBS AG, Stamford Branch ("<u>UBS</u>"), as Administrative Agent, and entities that were, or would serve as, "Lenders" under the Credit Agreement.
- Agreement to third parties, the Credit Agreement contains strict transfer restrictions regarding those assignments. Specifically, section 10.04(b) of the Credit Agreement provides that a Lender can only "assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement." The Credit Agreement proscribes that "Eligible Assignee" "shall not include Borrower or any of its Affiliates or Subsidiaries, any natural person or any Disqualified Company." (Credit Agreement, § 1.01.) A "Disqualified Company" is "any operating company that is a direct competitor of the Borrower," as well as "any known subsidiary thereof." (Id.)
- 46. Section 10.04(b)(ii)(C) of the Credit Agreement requires an assignee to execute and deliver to UBS an "Assignment and Assumption." In each "Assignment and Assumption," the assignee represents and warrants, among other things, that "it meets all

requirements of an Eligible Assignee under the Credit Agreement." (Annex 1 to Assignment and Assumption, § 1.2(a).)

- 47. Each "Assignment and Assumption" is a "Loan Document," and thus, is part of the entire contract between the parties to the Credit Agreement. At all relevant times, LightSquared was an intended beneficiary of each "Assignment and Assumption."
- 48. The parties intended for the transfer restrictions to prohibit LightSquared's direct competitors from acting as "Lenders," themselves or through other entities they had the power to control in anyway.
- 49. The parties intended for the transfer restrictions to be as broad as possible, yet specific about which entities the Credit Agreement forbade from holding the LP Debt. Thus, the Credit Agreement includes a list of "Disqualified Companies." As of October 10, 2010, EchoStar was on the "Disqualified Company" list. On May 9, 2012, LightSquared added DISH and several other entities. Therefore, DISH, EchoStar, and all entities they control directly or indirectly in any way cannot be "Eligible Assignees."

C. SPSO, on Behalf of DISH and EchoStar, Purchases LP Debt

- (i) DISH's Treasurer and EchoStar Senior Executive Directs SPSO's Purchases
- 50. Notwithstanding these clear transfer restrictions, in April 2012, SPSO began buying portions of the LP Debt in the marketplace on behalf of Bal Harbour Capital Management, LLC. Upon information and belief, Bal Harbour Capital Management is a money manager for Mr. Ergen.
- 51. At all material times, SPSO used personnel from DISH and EchoStar to handle all trades. Specifically, Mr. Kiser directed the trades at Mr. Ergen's behest.

- 52. The process generally worked as follows: Mr. Ketchum or his colleagues at Sound Point would contact Mr. Kiser at DISH/EchoStar, offering a specific amount of the LP Debt at a discounted price. Mr. Kiser would then authorize Mr. Ketchum to make the purchases. In connection with each purchase, as required by section 10.04(b)(ii)(C) of the Credit Agreement, SPSO executed and delivered to UBS an "Assignment and Assumption." In each "Assignment and Assumption," SPSO represented and warranted that "it meets all requirements of an Eligible Assignee under the Credit Agreement."
- 53. For instance, on April 13, 2012, Mr. Kiser made the first purchase from UBS. Mr. Ketchum offered Mr. Kiser \$5 million of the LP Debt. Mr. Kiser then ordered him to "[b]uy them (flat)." In connection with this purchase (and all subsequent purchases), on September 6, 2012, SPSO executed an "Assumption and Assignment," in which it represented and warranted that "it meets all requirements of an Eligible Assignee under the Credit Agreement."
- 54. Similarly, on May 2, 2012, Mr. Ketchum told his colleague "EchoStar wants up to \$50mm LightSquared at [redacted]." That same day, Mr. Kiser sought Mr. Ergen's consent to make the purchase of "\$10-\$20mm lightsquared block." Mr. Ergen told Mr. Kiser that he "will take it" and authorized him to purchase more "if the size goes up." On May 3, 2012, Mr. Ketchum confirmed to Mr. Kiser, "[w]e bought \$20 million LightSquared at [redacted]. Confirming \$30 million more to go."
- 55. On May 4, 2012, a Sound Point employee told Mr. Kiser that he had "[b]ought \$247,259,046 of LightSquared TL for Bal Harbour @ [redacted] via Jefferies today." Mr. Kiser responded, "[C]onfirmed." Upon information and belief, officers of DISH/EchoStar managed and oversaw all of SPSO's trades in the LP Debt.

- 56. At all relevant times, DISH and EchoStar knew that the trades violated the Credit Agreement's transfer restrictions. For example, on May 9, 2012, Mr. Ketchum told Mr. Kiser that "[a]n amendment was just created whereby DISH Network Corp, DBSD, Clearwire, DirecTV, XM Satellite Radio Inc. were named as disqualified buyers. Charlie is not named."
- 57. The next day, Mr. Ketchum forwarded to Mr. Kiser the amendment to the Credit Agreement that added DISH as a "Disqualified Company." The amendment he forwarded included handwritten notes that circled the words "Disqualified Company" and stated "includes any known Subsidiary thereof."
- 58. On October 4, 2012, Mr. Kiser wrote Mr. Ergen specifically regarding the transfer restrictions, stating, "I still can't get confirmation the restricted list they had in place that prevented the company from buying them has fallen away due to the BK. Any interest."
- 59. Notwithstanding, Mr. Ergen, on that same day, responded, "If we can't be sure the company can buy them, then I am interested to increase my position at the 75 level at least up to a 33% ownership level of the class." In other words, while LightSquared had the benefit of the exclusivity periods, Mr. Ergen wanted DISH/EchoStar to acquire a blocking position in the LP Debt—either through direct purchases by "the company" or through SPSO. The purpose of these purchases was to assist DISH's goal to purchase LightSquared's spectrum assets by blocking any other plan of reorganization.
 - 60. By April 2013, Mr. Kiser had ordered over \$1 billion of the LP Debt.
 - (ii) SPSO Actively Conceals, and Misrepresents, Its Ties to DISH and EchoStar
- 61. Throughout the trading process, Sound Point worked to conceal that DISH, EchoStar, and Mr. Ergen were behind the large purchases of the LP Debt.

- 62. On May 6, 2012, when rumors of the one of the trades began circulating in the news media, a Sound Point employee asked Mr. Ketchum, "Are Charlie/Jason going to be mad about this?"
- 63. Mr. Ketchum responded, "They are not really mad although they would prefer it wasn't public." That same day, Mr. Ketchum instructed his colleagues to keep the buyer's identity concealed: "FYI—the WSJ and Reuters are nosing around about last week's large LightSquared trade. We obviously don't respond to calls from financial reporters about matters like this, but Sound Point may be referenced in the financial press as part of this trade."
- 64. On May 7, 2012, the rumors continued to build tying DISH and Mr. Ergen to the trades. One Sound Point employee asked another, "Did Steve [Ketchum] tell you what to say here? I don't know what we are supposed to disclose." The other employee responded, "He in general said to refer everything to him and not comment."
- 65. The same day, Mr. Ketchum approached Mr. Kiser to develop a strategy for outright denying that DISH, EchoStar, or Mr. Ergen had anything to do with the trades: "I am not responding, but we should discuss whether we should employ a more strenuous strategy around denial."
- 66. The denials continued for over a year, and as a result, so did the rumors concerning the true identity of the LP Debt purchasers. Indeed, some press reports suggested that the buyer was Carlos Slim, chief executive of Telmex and America Movil, and Cablevision Systems Corporation, a cable television and broadband internet provider—not DISH, EchoStar, or Mr. Ergen.
- 67. For instance, a July 9, 2012 Forbes article stated, "Ergen has neither confirmed nor denied any attempted grab at LightSquared debt, and [an analyst] says that people

involved have begun to speculate it might be Carlos Slim or others behind the purchase. Sources have speculated that Cablevision, owned by the Dolan family and one of the country's largest telecom and media company, could be a potential suitor as well."

- 68. In fact, it was not until May 21, 2013 that SPSO's counsel confirmed for the first time the connection between SPSO and Mr. Ergen.
- 69. Even then, SPSO continued to deny that DISH and EchoStar had any involvement in the trades despite the fact that executives of both companies were initiating and directing those trades. For instance, in a July 9, 2013 submission to the Court, SPSO's counsel stipulated that "Mr. Ergen has not disclosed to DISH or EchoStar the amounts, prices or dates of SPSO's purchases of Prepetition LP Obligations." The implication was that DISH and EchoStar had no knowledge at all of SPSO's trades at all. This statement does not square with the facts. It was the Treasurer of DISH and an executive at EchoStar, Mr. Kiser, who directed and authorized each trade at particular prices on particular dates, and thus, DISH and EchoStar were well aware of the prices, dates, and amounts of SPSO's purchases. Moreover, several other DISH and EchoStar executives and officers knew that Mr. Ergen was trading in the LP Debt, including members of DISH's legal and business teams.

D. SPSO Manipulates Trade Closings

70. On August 29, 2012, LightSquared filed a motion seeking to extend its exclusive period to file a chapter 11 plan until February 8, 2013 to give LightSquared more time to resolve its regulatory issues. Ultimately, after LightSquared reached an agreement with the

See Exhibit A to the Joinder of SP Special Opportunities, LLC to the Ad Hoc Secured Group of LightSquared LP Lenders' (I) Reply in Further Support of the Emergency Motion of the Ad Hoc Secured Group of LightSquared LP Lenders to Enforce this Court's Order Pursuant to 11 U.S.C. § 1121(d) Further Extending LightSquared's Exclusive Periods to File a Plan of Reorganization and to Solicit Acceptances Thereof, and (II) Objection to LightSquared's Cross-Motion for Entry of Order Pursuant to 11 U.S.C. § 105(a) Relieving LightSquared of Certain Obligations Thereunder, and the Joinders Thereto [Docket No. 728].

parties, the Court extended LightSquared's exclusive period to file a chapter 11 plan until January 31, 2013.

- 71. On January 17, 2013, LightSquared filed another motion seeking to further extend its exclusive period to file a chapter 11 plan to July 20, 2013.
- negotiated a resolution to the motion with its stakeholders, including the Ad Hoc Secured Group. The agreement was reflected in the Court's February 13, 2013 *Order Pursuant to 11 U.S.C. § 1121(d) Further Extending LightSquared's Exclusive Periods to File a Plan of Reorganization and to Solicit Acceptances Thereof* [Docket No. 522] (the "Exclusivity Stipulation"). Among other provisions, the Exclusivity Stipulation extended LightSquared's exclusive period until July 15, 2013. It also required the parties to engage in good faith negotiations regarding the terms of a consensual chapter 11 plan.
- 73. Over the subsequent weeks, SPSO purchased another \$648,757,090.54 of the LP Debt.
- 74. Between March and May 2013, the Ad Hoc Secured Group and its professionals could not determine whether it had sufficient holdings to constitute a group because several trades with its existing members had not closed after weeks of being "hung." This made it impossible for LightSquared to identify with whom to negotiate a plan while the exclusivity period gradually expired.
- 75. On January 14, 2013, UBS sought to close a trade with SPSO that had been pending for months. Mr. Ketchum, in an email to his colleague, said he "forwarded this to EchoStar." Three days later, his colleague, asked Mr. Ketchum "would you mind following up with EchoStar [because] UBS has asked to close again." By January 24, 2013, UBS was still

pressuring to close the trades and Sound Point continued to delay. "Try and hold them off for another day," another Sound Point executive responded.

- 76. Then, on February 13, 2013, according to the same Sound Point employee, "Jefferies was eager to settle" over \$82 million of trades. Those trades took months to close.
- 77. On April 17, 2013, Mr. Ketchum forwarded an email to Mr. Kiser concerning over \$289 million of the LP Debt that had still not been funded.
- 78. On April 23, 2013, Mr. Ketchum wrote Mr. Kiser, "Kevin thinks we can hold them off on any payments until at least May 15."
- 79. On April 25, 2013, Jefferies followed up with Sound Point to close \$88 million of trades. When a Sound Point employee sought from Mr. Ketchum "a reason and an eta" on why the trades had not closed, a Sound Point executive suggested to tell Jefferies "we are waiting on funding from our investor." Mr. Ketchum rejected that idea, proposing instead, "Let's not say that. Let's just say we are in the process of exiting some other large positions we have to pay for this and that I have spoken with Steve Sander (head of sales) about this." None of these reasons were true, and the trades remained pending for several weeks.
- 80. Eventually, on June 13, 2013, SPSO joined the Ad Hoc Secured Group and within days closed several hundreds of millions of dollars in "hung" trades.

E. DISH, Through LBAC, Bids for LightSquared's Assets

- 81. On May 15, 2013, LBAC, DISH's other controlled entity, submitted an unsolicited bid for LightSquared's L-Band spectrum for \$2 billion—approximately the amount of the outstanding LP Debt.
- 82. On July 23, 2013—a week after the exclusivity period expired—the Ad Hoc Secured Group filed the DISH/EchoStar-friendly plan of reorganization, supported by

SPSO, that contemplates a sale of LightSquared's spectrum assets with LBAC serving as a stalking horse bidder at its sub-par price for LightSquared's spectrum assets.

LightSquared's largest creditors, through SPSO, with sufficient voting powers to block any competing plan of reorganization that did not result in a sale of LightSquared's spectrum to DISH at a price they dictated, through LBAC. In addition, as part of the asset purchase agreement incorporated in the creditors' plan of reorganization, DISH, Mr. Ergen, and their affiliates, including SPSO, would obtain a release of claims LightSquared may have against them by acquiring those claims as part of the sale. DISH, through LBAC, would acquire from LightSquared "all rights, privileges, claims, demands, choses in action, prepayments, deposits, refunds, indemnification rights, warranty claims, offsets and other claims of Sellers arising out of the Acquired Assets ("Actions"), including, without limitation, any Avoidance Actions relating to the Acquired Assets or to Purchaser or any of Purchaser's Affiliates [defined to include Mr. Ergen, DISH, EchoStar, and their respective affiliates] [...]." Mr. Ergen had indeed "boxed everyone in."

CLAIMS FOR RELIEF

First Claim for Relief

(Declaratory Relief Against SPSO)

84. LightSquared repeats and realleges each and every allegation in paragraphs 1 through 83 above as if fully set forth herein.

See Exhibit F to the Notice of Filing By Ad Hoc LP Secured Group of Solicitation Version of First Amended Plan and Disclosure Statement [Docket No. 970].

- As alleged above, on October 10, 2010, LightSquared entered into the Credit Agreement. Section 10.04(b) of the Credit Agreement only authorizes an existing lender to "assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement." "Eligible Assignee" excludes "any Disqualified Company." A "Disqualified Company" is "any operating company which is a direct competitor of the Borrower [including DISH and EchoStar and] any known subsidiary thereof." In addition, section 10.04(b)(ii)(C) of the Credit Agreement requires every assignee of the LP Debt to execute and deliver to UBS an "Assignment and Assumption." In section 1.2(a) of the "Assignment and Assumption," the assignee represents and warrants that "it meets all requirements of an Eligible Assignee under the Credit Agreement." At all relevant times, LightSquared was an actual and intended beneficiary of each "Assignment and Assumption."
- 86. SPSO is a subsidiary of DISH and EchoStar. DISH and EchoStar controlled SPSO, among other reasons, because their Executive Chairman, Mr. Ergen, and DISH's Treasurer and EchoStar executive, Mr. Kiser, acting within the scope of their agency and for the benefit of DISH and EchoStar, directed the management and investment policies of SPSO, specifically, its purchase of interests in the LP Debt. Therefore, SPSO is not an "Eligible Assignee" and is in breach of section 10.04(b) of the Credit Agreement and section 1.2(a) of each "Assignment and Assumption" for all purchases it made.
- 87. Upon information and belief, defendants assert that they are Eligible
 Assignees. As such, a real case or controversy exists. This controversy is within the jurisdiction
 of this Court and warrants the issuance of a declaratory judgment.
- 88. By reason of the foregoing, LightSquared requests a declaration that SPSO is not an "Eligible Assignee" under the Credit Agreement and is therefore in breach of section

10.04(b) of the Credit Agreement and section 1.2(a) of each "Assignment and Assumption" for all purchases it made and such other and further relief as the Court may deem proper, including, but not limited to, an unwinding of the purchases and assignments.

Second Claim for Relief

(Breach of Contract Against SPSO)

- 89. LightSquared repeats and realleges each and every allegation in paragraphs 1 through 88 above as if fully set forth herein.
- 90. As alleged above, on October 10, 2010, LightSquared entered into the Credit Agreement.
- 91. Section 10.04(b) of the Credit Agreement only authorizes an existing lender to "assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement." "Eligible Assignee" excludes "any Disqualified Company." A "Disqualified Company" is "any operating company which is a direct competitor of the Borrower [including DISH and EchoStar and] any known subsidiary thereof." In addition, section 10.04(b)(ii)(C) of the Credit Agreement requires every assignee of the LP Debt to execute and deliver to UBS an "Assignment and Assumption." In section 1.2(a) of the "Assignment and Assumption," the assignee represents and warrants that "it meets all requirements of an Eligible Assignee under the Credit Agreement." At all relevant times, LightSquared was an actual and intended beneficiary of each "Assignment and Assumption."
- 92. SPSO is a subsidiary of DISH and EchoStar. DISH and EchoStar controlled SPSO, among other reasons, because their Executive Chairman, Mr. Ergen, and DISH's Treasurer and EchoStar executive, Mr. Kiser, acting within the scope of their agency and for the benefit of DISH and EchoStar, directed the management and investment policies of

SPSO, specifically, its purchase of interests in the LP Debt. Therefore, SPSO is not an "Eligible Assignee" and is in breach of section 10.04(b) of the Credit Agreement and section 1.2(a) of each "Assignment and Assumption" for all purchases it made.

93. By reason of the foregoing, LightSquared is entitled to damages to be determined at trial and such other and further relief as the Court may deem proper.

Third Claim for Relief

(Disallowance of Claim Under 11 U.S.C. § 502(b) Against SPSO)

- 94. LightSquared repeats and realleges each and every allegation in paragraphs 1 through 93 above as if fully set forth herein.
- 95. Under 11 U.S.C. § 502(b), the Court may disallow all or a portion of a creditor's claim where "such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured." 11 U.S.C. § 502(b).
- 96. As alleged above, section 10.04(b) of the Credit Agreement only authorizes an existing lender to "assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement." "Eligible Assignee" excludes "any Disqualified Company." A "Disqualified Company" is "any operating company which is a direct competitor of the Borrower [including DISH and EchoStar and] any known subsidiary thereof." In addition, section 10.04(b)(ii)(C) of the Credit Agreement requires every assignee of the LP Debt to execute and deliver to UBS an "Assignment and Assumption." In section 1.2(a) of the "Assignment and Assumption," the assignee represents and warrants that "it meets all requirements of an Eligible Assignee under the Credit Agreement." At all relevant times, LightSquared was an actual and intended beneficiary of each "Assignment and Assumption."

- 97. SPSO is a subsidiary of DISH and EchoStar. DISH and EchoStar controlled SPSO, among other reasons, because their Executive Chairman, Mr. Ergen, and DISH's Treasurer and EchoStar executive, Mr. Kiser, acting within the scope of their agency and for the benefit of DISH and EchoStar, directed the management and investment policies of SPSO, specifically, its purchase of interests in the LP Debt. Therefore, SPSO is not an "Eligible Assignee" and is in breach of section 10.04(b) of the Credit Agreement and section 1.2(a) of each "Assignment and Assumption" for all purchases it made.
- 98. By reason of the foregoing, LightSquared is entitled to judgment disallowing SPSO's claims against LightSquared under 11 U.S.C. § 502(b) and such other and further relief as the Court may deem proper.

Fourth Claim for Relief

(Equitable Disallowance Against SPSO)

- 99. LightSquared repeats and realleges each and every allegation in paragraphs 1 through 98 above as if fully set forth herein.
- 100. SPSO engaged in the following inequitable conduct, among others. *First*, SPSO improperly acquired the LP Debt in violation of the transfer restrictions in section 10.04(b) of the Credit Agreement by not being an "Eligible Assignee." *Second*, SPSO concealed the involvement of DISH and EchoStar in its purchases of the LP Debt. *Third*, it delayed closing its acquisitions of the LP Debt.
- 101. The confluence of SPSO's conduct caused LightSquared harm. As a subsidiary of DISH and EchoStar, SPSO was a direct competitor of LightSquared but had joined LightSquared's capital structure and held a sufficient stake to direct LightSquared's bankruptcy cases. LightSquared was unable to negotiate with its stakeholders to develop a plan of

reorganization during its exclusivity period. Moreover, LBAC's bid guaranteed that DISH and EchoStar would acquire LightSquared's spectrum at a price dictated by DISH because SPSO, through its holdings of the LP Debt, could vote to block any plan of reorganization that would not result in LBAC being the successful bidder for the assets.

- 102. Equitable disallowance of SPSO's claims against LightSquared's estates is consistent with the Bankruptcy Code and applicable law.
- 103. By reason of the foregoing, LightSquared is entitled to judgment equitably disallowing SPSO's claims in full, or, at a minimum, in part to the extent that SPSO would receive an unjust profit for its inequitable conduct and such other and further relief as the Court may deem proper.

Fifth Claim for Relief

(Tortious Interference with Contractual Relations Against SPSO, DISH, EchoStar, and Mr. Ergen)

- 104. LightSquared repeats and realleges each and every allegation in paragraphs 1 through 103 above as if fully set forth herein.
- 105. LightSquared and UBS, among others, are parties to the Credit Agreement, which is a valid and enforceable contract.
- 106. DISH, EchoStar, SPSO, and Mr. Ergen knew of the Credit Agreement and its key terms and conditions, including its provisions regarding who could and could not purchase the LP Debt.
- 107. Section 10.04(b) of the Credit Agreement only authorizes an existing lender to "assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement." "Eligible Assignee" excludes "any Disqualified Company." A

"Disqualified Company" is "any operating company which is a direct competitor of the Borrower [including DISH and EchoStar and] any known subsidiary thereof."

- 108. UBS's transfer of the LP Debt to SPSO despite the fact that SPSO was not an "Eligible Assignee" under the Credit Agreement breached section 10.04(b) of the Credit Agreement.
- breach section 10.04(b) of the Credit Agreement before SPSO itself became a party to that agreement. On September 6, 2012, Mr. Ergen, through his agents, caused SPSO to misrepresent in the "Assignment and Assumption" regarding SPSO's April 13, 2012 purchase of the LP Debt that "it meets all requirements of an Eligible Assignee under the Credit Agreement." As a result, UBS assigned its holdings of the LP Debt to a "Disqualified Company."
- 110. DISH, EchoStar, and Mr. Ergen also intentionally interfered with the Credit Agreement by controlling, directing, authorizing and executing the LP Debt trades that caused and resulted in the breach of the Credit Agreement, including section 10.04(b) thereof.
- 111. SPSO's, DISH's, EchoStar's, and Mr. Ergen's actions caused harm to LightSquared because they allowed a direct competitor of LightSquared to join LightSquared's capital structure in violation of the transfer restrictions of the Credit Agreement.
- 112. By reason of the foregoing, LightSquared is entitled to damages to be determined at trial and such other and further relief as the Court may deem proper.

DEMAND FOR JURY TRIAL

113. LightSquared demands a trial by jury on all issues and claims so triable.

PRAYER FOR RELIEF

114. WHEREFORE, LightSquared prays for judgment against SPSO, DISH,

EchoStar, and Mr. Ergen as follows:

- (a) disallowing SPSO's claims in full, or, at a minimum, in part to the extent that SPSO would receive an unjust profit for its inequitable conduct;
- (b) subordinating SPSO's claims to all claims except as to LightSquared's equity interest holders;
- (c) awarding compensatory damages in an amount to be proven at trial;
- (d) awarding punitive damages in an amount to be proven at trial;
- (e) awarding pre- and post- judgment interest at the applicable rates until such time as the judgment rendered in LightSquared's favor is paid in full;
- (f) awarding costs (including attorneys' fees and costs taxable and non-taxable under applicable law) incurred in bringing this adversary proceeding; and
- (g) awarding such other and further relief as this Court may deem proper.

New York, New York Dated: November 15, 2013

Respectfully submitted,

/s/ Alan J. Stone

Matthew S. Barr
Alan J. Stone
Andrew M. Leblanc
Karen Gartenberg
MILBANK, TWEED, HADLEY & M^CCLOY LLP
One Chase Manhattan Plaza
New York, NY 10005-1413
(212) 530-5000

Counsel to Plaintiff-Intervenors and Debtors and Debtors in Possession