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

Counsel to Debtors and Debtors in Possession

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

STATEMENT OF LIGHTSQUARED REGARDING MOTION OF AD HOC SECURED GROUP OF LIGHTSQUARED LP LENDERS FOR ENTRY OF AN ORDER GRANTING LEAVE, STANDING, AND AUTHORITY TO COMMENCE, PROSECUTE, AND/OR SETTLE CERTAIN CLAIMS OF LIGHTSQUARED'S ESTATES

LightSquared Inc. and certain of its affiliates, as debtors and debtors in possession (collectively, "LightSquared") in the above-captioned chapter 11 cases (the "Chapter 11 Cases"), file this statement (the "Statement") regarding the motion (the "Standing Motion") of the Ad Hoc Secured Group of LightSquared LP Lenders (the "Ad Hoc Secured Group") for entry of an order, pursuant to section 105(a) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the "Bankruptcy Code"), granting the Ad Hoc Secured Group leave, standing, and

[1] 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.

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authority to commence, by filing and serving a complaint substantially in the form attached to the Standing Motion as Exhibit B (the "Proposed Complaint"), prosecute, and/or settle certain claims (the "Claims") on behalf of the estates of LightSquared against each non-debtor party to the Prepetition Inc. Credit Agreement[2] [Docket No. 323]. In support of the Statement, LightSquared respectfully states as follows:

DISCUSSION

1. LightSquared files this Statement to (a) preserve its inherent right to settle the Claims on behalf of the LightSquared estates in the event the Standing Motion is approved and standing is conferred on the Ad Hoc Secured Group to prosecute the Claims and (b) express its concerns surrounding the use of valuable resources of the estates to prosecute the Proposed Complaint at this stage of these Chapter 11 Cases.

(i) Preservation of Rights to Settle Claims

2. In connection with its final cash collateral order [Docket No. 136] (the "Final Cash Collateral Order") and the final order, approving the debtor-in-possession financing agreement entered into between One Dot Six Corp. and certain of its affiliates as guarantors [Docket No. 224] (the "DIP Order" and, together with the Final Cash Collateral Order, the "Financing Orders"), LightSquared stipulated as to the validity, perfection, enforceability, and extent of ***any*** Prepetition Obligations (i.e., both Prepetition LP Obligations and Prepetition Inc. Obligations) and Prepetition Liens (i.e., both Prepetition LP Liens and Prepetition Inc. Liens). (See Final Cash Collateral Order, ¶ E; DIP Order ¶ E.) Moreover, LightSquared agreed to:

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Declaration of Marc R. Montagner, Chief Financial Officer and Interim Co-Chief Operating Officer of LightSquared Inc., (A) in Support of First Day Pleadings and (B) Pursuant to Rule 1007-2 of Local Bankruptcy Rules for United States Bankruptcy Court for Southern District of New York [Docket No. 3] or the Standing Motion, as applicable.

> forever and irrevocably (i) release, discharge, waive, and acquit (x) the Prepetition Agents and the Prepetition Lenders … (collectively, the "Released Parties"), of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness, and obligations existing as of the Petition Date, including, without limitation, any so-called "lender liability" or equitable subordination claims or defenses, with respect to or relating to the Prepetition Obligations, the Prepetition Liens, or the Prepetition Facilities, as applicable, any and all claims and causes of action arising under the Bankruptcy Code, and any and all claims regarding the validity, priority, perfection, or avoidability of the liens or secured claims of (x) the Prepetition Inc. Agent and the Prepetition Inc. Lenders and/or (y) the Prepetition LP Agent and the Prepetition LP Lenders and (ii) waive any and all defenses (including, without limitation, offsets and counterclaims of any nature or kind) as to the validity, perfection, priority, enforceability, and nonavoidability of the applicable Prepetition Obligations and the applicable Prepetition Liens.

(See Final Cash Collateral Order ¶ 13; DIP Order ¶ 32 (containing similar language).)

3. As is often the case in large and complex chapter 11 cases, these stipulations and releases were given by LightSquared to both the Prepetition LP Lenders and the Prepetition Inc. Lenders in the Financing Orders to settle contentious negotiations surrounding LightSquared's use of the Prepetition LP Lenders' cash collateral and the provision of adequate protection to the Prepetition Inc. Lenders. LightSquared's failure to prosecute the Claims thus does not stem, as the Ad Hoc Secured Group spuriously suggests, from the fact that the claims involve allegations "against the debtor's principals themselves who refuse to litigate out of self-interest" (see Standing Motion ¶ 26 (internal citations an quotations omitted)),[3] but rather, because it is barred from doing so under the Financing Orders. See Adelphia Commc'ns Corp. v. Bank of America, N.A. (In re

[3] Moreover, LightSquared 's acquiescence in the Financing Orders to the Ad Hoc Secured Group's request that it be permitted to bring the Standing Motion on shortened notice and without making "demand" on LightSquared prior to doing so was borne out of LightSquared's desire to not waste valuable estate resources and not, as the Ad Hoc Secured Group again incorrectly contends, in recognition of "the Debtors' inherent conflict." (Standing Motion ¶ 26.) In this regard, it is important to note that neither the Final Cash Collateral Order nor the DIP Order, as the Ad Hoc Secured Group states, "expressly [permit] the Ad Hoc Secured Group to investigate potential claims against the Prepetition Inc. Lenders" (see Standing Motion ¶ 26), as each provides that "[n]othing in this Final Order vests or confers on the Committee or any other party standing or authority to bring, assert, commence, continue, prosecute, or litigate any cause of action belonging to the Debtors or their estates, including, without limitation, the Claims and Defenses with respect to the Prepetition Inc. Facility, the Prepetition Inc. Liens, or the Prepetition Inc. Obligations." (Final Cash Collateral Order ¶ 12(e); DIP Order ¶ 31(c).)

Adelphia Commc'ns Corp.), 330 B.R. 364, 373 (Bankr. S.D.N.Y. 2005) ("Debtors sometimes lack the inclination, or the means, to bring actions that should be prosecuted. . . . They sometimes have a practical need to avoid confrontation with entities like their secured lenders, because they need those entities' continuing cooperation – as, for example, in connection with exit financing. And they sometimes are limited by DIP financing orders that foreclose or impair their ability to bring claims against certain entities (such as prepetition secured lenders), so that such claims must be brought by creditors or not at all."); see also id. at 384 ("it was necessary and typical for the Debtors to accede to such a provision, and for the Court to approve it. Provisions of that character are common in DIP financing orders in chapter 11 cases (at least where prepetition lenders are asked to make concessions to permit the postpetition financing)."). Accordingly, the avoidance waivers by LightSquared under the Financing Orders do not evidence an improper motive. Official Comm. of Equity Sec. Holders v. Adelphia Commc'ns Corp. (In re Adelphia Commc'ns Corp.), 544 F.3d 420, 425 (2d Cir. 2008) (agreeing with bankruptcy court's finding that waiving of avoidance claims in a DIP financing agreement does not evidence improper motive on the part of debtors failing to pursue claims).

4. It is well-established in the Second Circuit that, notwithstanding (a) a debtor's waiver of rights to pursue certain claims to obtain the consensual use of cash collateral or DIP financing and (b) the conferral of derivative standing on a party in interest to prosecute estate causes of action, a debtor retains the right to settle such estate causes of action. See In re Adelphia Commc'ns Corp., 544 F.3d at 424-25, 427; Smart World Techs., LLC v. Juno Online Servs. (In re Smart World Techs., LLC), 423 F.3d 166, 173-74 (2d Cir. 2005); Official Comm. of Equity Sec. Holders v. Adelphia Commc'ns Corp. (In re Adelphia Commc'ns Corp.), 371 B.R. 660, 671

(S.D.N.Y. 2007). Indeed, as the United States District Court for the Southern District of New York aptly summarized:

> Smart World directs that in the absence of STN standing, a committee lacks the authority to settle litigation on behalf of a debtor-in-possession without the latter's consent. But nowhere does Smart World suggest that the inverse is true – that where derivative standing *does* exist, a debtor-in-possession is irreversibly stripped of its authority to settle that litigation absent the consent of the standing committee. Smart World did not hold that a committee's derivative standing forever trumps the rights of a debtor-in-possession, so that the latter may never gain control of that litigation. Rather, Smart World confirms repeatedly that it is the fundamental responsibility of the debtor-in-possession to manage the estate.

In re Adelphia Commc'ns Corp., 371 B.R. at 670 (emphasis in original); see also In re Adelphia Commc'ns Corp., 544 F.3d at 424 (holding that while scope of derivative standing had been expanded, Second Circuit's "precedent did not undermine either the debtor's central role in handling the estate's legal affairs or the court's responsibility to monitor for abuses by the parties."); In re Smart World Techs., LLC, 423 F.3d at 175 (holding that it remains "the debtor's duty to wisely manage the estate's legal claims," and this duty "is implicit in the debtor's role as the estate's only fiduciary."). Accordingly, it is clear that "a debtor-in-possession may assert control over an adversary proceeding notwithstanding a committee's derivative standing, where that standing was granted for reasons other than debtor misconduct." In re Adelphia Commc'ns Corp., 371 B.R. at 671.

5. Given the foregoing, LightSquared hereby preserves all of its rights to settle the Claims on behalf of the LightSquared estates (subject to Court approval, of course) and respectfully requests that, to the extent an order approving the Standing Motion is entered, the order should so provide.

(ii) Need To Protect Estate Resources at this Stage of Chapter 11 Cases

6. LightSquared respectfully submits that, if the Court is inclined to grant the

Standing Motion at ***this*** stage of the Chapter 11 Cases, any further attendant discovery be narrowly tailored so as to appropriately focus the issues to be addressed and thereby preserve the funds available to LightSquared's estates for the management and effective prosecution of the Chapter 11 Cases. Alternatively, the Court should consider deferring the litigation relating to the Proposed Complaint for now so as to (a) preserve cash on hand for the actual restructuring of LightSquared's businesses as well as (b) enable parties in interest to determine, closer to the conclusion of these Chapter 11 Cases, whether litigating the Proposed Complaint would, in fact, alter any recoveries and thus be an effective and productive use of estate resources.

7. The Ad Hoc Secured Group has been conducting discovery, either on an informal or formal basis, with respect to the Prepetition Inc. Credit Facility from the inception of these Chapter 11 Cases. Indeed, as early as May 18, 2012, counsel of the Ad Hoc Secured Group informally sought documentation related to the Prepetition Inc. Credit Facility from counsel to LightSquared. Such informal discovery was subsequently supplemented by (a) the filing of the Ad Hoc Secured Group's motion, pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), for entry of an order authorizing and compelling discovery from Harbinger Capital Partners LLC ("Harbinger") and its affiliates (the "Rule 2004 Motion") [Docket No. 247] and (b) informal discovery requests (as narrowed by agreement of the parties, the "Informal Discovery Requests") to LightSquared and the Prepetition Inc. Lenders on the same topics for which they sought discovery from Harbinger pursuant to the Rule 2004 Motion.

8. LightSquared is obligated, on a go-forward basis, to continue to pay all expenses incurred in connection with the Standing Motion and the Proposed Complaint.[4] Indeed, LightSquared has already incurred significant cost with respect to the discovery propounded and

[4] Pursuant to each of the Financing Orders, LightSquared must pay the monthly fees of the professionals of both the Ad Hoc Secured Group (as part of the Adequate Protection Payments (as defined in the Final Cash Collateral Order)) and the Prepetition Inc. Lenders.

pursued under the Rule 2004 Motion and the Informal Discovery Requests. LightSquared believes it has already incurred in excess of $1 million (exclusive of the likely substantial fees incurred by Harbinger in connection with the Rule 2004 Motion[5]) solely related to discovery issues for time billed ***through August 31, 2012*** by counsel to (a) the Ad Hoc Secured Group, (b) the Prepetition Inc. Lenders, and (c) LightSquared.[6]

9. Under such circumstances, the Federal Rules of Civil Procedure themselves mandate that discovery must be narrowly tailored. Indeed, Federal Rule of Civil Procedure 26(b)(2)(C) provides that:

> On motion or on its own, the court must limit the frequency or extent of discovery otherwise allowed by these rules or by local rule if it determines that:
>
> (i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;
>
> (ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or
>
> (iii) the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.

Fed. R. Civ. P. 26(b)(2)(C). A considerable amount of estate resources has already been diverted to propound, prosecute, and defend discovery in furtherance of a litigation that, at this stage of the

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[5] Pursuant to the Prepetition Inc. Credit Agreement, Harbinger has asserted that LightSquared owes indemnification obligations to Harbinger for expenses that Harbinger incurs in connection with responding to discovery.

[6] Given that the timekeeping summaries provided by counsel to the Ad Hoc Secured Group and the Prepetition Inc. Lenders in most instances contained lumped time entries, which had to be distilled to account for the amount of time expended for discovery-related tasks, LightSquared believes that an extremely conservative estimate of the amount billed by the professionals for the Ad Hoc Secured Group is $530,000 (15% of all amounts billed) and the Prepetition Inc. Lenders is $230,000 (25% of all amounts billed) in connection with the propounded discovery through August 31, 2012. LightSquared estimates that it has incurred approximately $140,000 in discovery-related fees. These numbers ***do not*** include discovery-related fees and expenses for September and the first half of October 2012.

Chapter 11 Cases, is likely premature and not the best use of estate resources. Indeed, the significant burden such litigation will continue to have on these estates – whose resources should be focused on restructuring LightSquared's business – drastically outweighs the unlikely benefit of pursuing an extensive discovery at this time.

WHEREFORE, for the reasons set forth above, LightSquared respectfully requests that, in the event the Court is inclined to grant the Ad Hoc Secured Group's Standing Motion at this time, the Court (a) preserve all rights of LightSquared to settle the Claims, (b) either (i) narrowly tailor any further discovery to minimize the additional costs incurred by the estates or (ii) postpone the litigation relating to the Proposed Complaint to the end of the Chapter 11 Cases when it will be more easily determinable whether such litigation benefits the estates, and (c) award such other and further relief as the Court may deem just and proper.

New York, New York
Dated: October 17, 2012

/s/ Matthew S. Barr

Matthew S. Barr
Alan J. Stone
Karen Gartenberg
MILBANK, TWEED, HADLEY & M^{C}CLOY LLP
1 Chase Manhattan Plaza
New York, NY 10005-1413
(212) 530-5000

Counsel to Debtors and Debtors in Possession