

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ACTIVISION TV, INC.,

Plaintiff,

v.

PINNACLE BANCORP, INC.,

and

**JON BRUNING, Attorney General of
Nebraska (in his official capacity);
DAVID D. COOKSON, Chief Deputy
Attorney General of Nebraska (in his
official capacity); DAVID A. LOPEZ,
Assistant Attorney General of
Nebraska (in his official capacity),**

Defendants.

Case No. 8:13CV00215

**DEFENDANTS' MOTION TO STAY
PROCEEDINGS PENDING APPEAL**

Defendants Bruning, Cookson, and Lopez ("State Defendants") respectfully move this Court pursuant to Fed. R. Civ. P. 7(b) for entry of an order staying the proceedings until ten (10) days after the Eighth Circuit issues a ruling resolving State Defendants' appeal of this Court's grant of preliminary injunctive relief. In support, State Defendants state as follows:

1. On September 19, 2013, the Court conducted a hearing on Plaintiff's Motion for a Preliminary Injunction, Filing 8, filed on August 19, 2013.
2. On September 26, 2013, Filing 38, and September 30, 2013, Filing 41, the Court entered its orders granting Plaintiff's motion for preliminary injunction and overruling Defendants' objections to Plaintiff's evidence.
3. On October 15, 2013, State Defendants filed a Notice of Appeal, Filing 65, in which the State Defendants appealed this Court's orders granting Plaintiff's Motion for Preliminary

Injunction and overruling Defendants' objections to Plaintiff's evidence to the United States Court of Appeals for the Eighth Circuit.

4. "[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936).

5. A federal district court "has broad discretion to stay proceedings as an incident to its power to control its own docket." *Clinton v. Jones*, 520 U.S. 681, 706 (1997). *Accord Sierra Club v. United States Army Corps. of Eng'rs*, 446 F.3d 808, 816 (8th Cir. 2006).

6. State Defendants' pending Motion to Dismiss and upcoming responses to MPHJ's Motion to Intervene and Motion for Preliminary Injunction raise the legal issues that are likely to be addressed by the Eighth Circuit in adjudicating State Defendants' appeal of this Court's grant of a preliminary injunction.

7. Judicial efficiency counsels strongly in favor of staying this Court's proceedings pending appeal. Absent an order of this Court staying further proceedings all parties will be required to concurrently litigate this matter in both courts.

8. Such a concurrent litigation process is unnecessarily duplicative and costly and is not designed "to secure the just, speedy, and inexpensive determination of every action and proceeding." Fed. R. Civ. P. 1.

WHEREFORE, State Defendants respectfully request the Court enter an order staying the proceedings until ten (10) days after the Eighth Circuit issues a ruling resolving State Defendants' appeal of this Court's grant of preliminary injunctive relief.

Submitted this 23rd day of October, 2013.

**JON BRUNING, DAVID D. COOKSON,
DAVID A. LOPEZ, Defendants.**

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Attorneys for Defendants Jon Bruning,
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CERTIFICATE OF SERVICE

I hereby certify that on October 23, 2013, I electronically filed the foregoing document with the Clerk of the United States District Court for the District of Nebraska, using the CM/ECF system, causing notice of such filing to be served upon all parties' counsel of record.

By: s/ Ryan S. Post
Assistant Attorney General