IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

In re THE DIRECTV GROUP, INC. SHAREHOLDER LITIGATION	))))	Consolidated C.A. No. 4581-VCP

VERIFIED CONSOLIDATED CLASS ACTION COMPLAINT

Plaintiffs Key West Police & Fire Pension Fund, The City of Roseville Employees' Retirement System, New Orleans Employees' Retirement System, Erste-Sparinvest Kapitalanlagegesellschaft m.b.H. and Michael Milani, through their counsel, bring the following shareholder class action on behalf of themselves and all other public shareholders of The DIRECTV Group, Inc. ("DTV" or "Old DTV"), other than Defendants and their affiliates, arising out of unfair and abusive proposed Related Transactions splitting-off certain assets of Liberty Media Corporation (the "Split-Off") for their acquisition by Old DTV (the "Transaction"), (together, the "Related Transactions"). Plaintiffs allege the following upon information and belief, except for allegations pertaining to them, which are based upon personal knowledge, as follows:

SUMMARY OF THE ACTION

1. The Transaction is a blatant attempt by John C. Malone ("Malone"), the Chairman of both Liberty Media Corporation ("Liberty Media" or "Liberty") and DTV, (54% owned by Liberty Media), to abuse his fiduciary position by extracting hundreds of millions of dollars in unwarranted personal benefits from DTV and its minority shareholders (the "DTV Minority") while actually *increasing* his personal voting power over the new DTV entity ("New DTV"). Among other things, Malone is forcing DTV to provide him with super-voting stock that increases his personal voting position in the new entity relative to his prior voting position, while freeing him of numerous voting and transfer restrictions that suppressed the value of his

prior stake in Liberty Media. The DTV Minority gets absolutely nothing in exchange for these personal Malone benefits, other than Malone agreeing not to use his Chairman position to block the deal or to affirmatively harm the DTV Minority.

2. Malone was able to extract these benefits by abusing his power as Chairman of both companies to serve his personal desires rather than his fiduciary obligations. As explained herein, the DTV Minority gets absolutely nothing in exchange for these personal benefits to Malone, other than Malone's agreeing not to use his position as Chairman to either block the deal or affirmatively harm the DTV Minority.

3. Because Liberty Media is a majority shareholder of DTV, the Transaction is subject to entire fairness review. The Transaction also is subject to entire fairness review because Malone is Chairman on both-sides of the Transaction, with significant voting power, and is extracting personal benefits as a result of his ability to abuse his decision-making power. Malone and Liberty cannot satisfy this standard because first, Malone's abusive conduct has forced the other DTV directors to throw up their hands and concede the futility of arms-length bargaining, and second, the disclosures related to these transactions obscure, rather than elucidate, the true nature of the Related Transactions.

4. Besides extracting benefits for himself that a mere 30% shareholder or a Chairman acting in a loyal manner would never demand, much less obtain, Malone also is requiring DTV to transfer an unwarranted $605 million premium to the shareholders of Liberty Media. No premium was justified here because Liberty Media's voting power – and control over DTV – actually increased from 48% before the Transaction to 64% after the Transaction. Further, the current Liberty Media stake in DTV is an albatross because of its depressing effect on Liberty Media's market valuations. All things being equal, Liberty Media has little reason not to just spin off its DTV shares to its shareholders. As a result of the transactions described

herein, however, Liberty Media is achieving the same result, but not until it first puts its DTV stock, some unwanted assets, and $2 billion in debt into an entity created just for this transaction, and then merges that entity with Old DTV. The real economic result of the deal is simply to add overvalued assets plus debt equal to nearly twice the value of those assets to DTV's balance sheet. And for this favor, the DTV Minority is supposed to pay a premium to the former Liberty Media shareholders.

5. Although the structure of the Related Transactions is complex, its economics are simple: (1) the Split-Off through which Liberty dividends out its shares of DTV (which represent 54% of DTV's total shares outstanding) and certain Liberty Assets to Liberty shareholders, and (2) the Transaction in which DTV exchanges those shares and assets for shares in a successor entity "DTV" plus DTV's assumption of $2 billion of Liberty debt. The multi-step structure of the Related Transactions conceals an abusive transaction aimed at advancing Malone's personal interests by imposing on DTV shareholders an unwarranted $605 million premium to Liberty shareholders, $2 billion in Liberty debt, and overvalued Liberty assets, while continuing to subject DTV to Malone's control through a harmful supervoting dual-class stock structure.

6. The terms of the Agreement are entirely unfair for the following specific reasons:

- ***Dual-Class Share Structure —*** Malone will receive the personal benefit of 15:1 supervoting shares that provide him with disproportionate and increased DTV voting power, harm DTV's value by imposing a dual-class structure, and give Malone ability to extract a substantial premium in a subsequent transaction;

- ***Lifting of Restrictions on Malone's DTV Ownership*** — Malone will be freed from certain standstill and controller limitations in DTV's charter, enabling him to acquire full majority ownership after 1 year;

- ***Imposes $2 Billion in Liabilities on DTV —*** DTV will be saddled with $2 billion of debt which Liberty incurred solely to purchase additional DTV shares and extract a higher premium and other benefits in ongoing negotiations with DTV, and which Liberty cannot otherwise maintain;

- ***Dilution of DTV Minority* —** The Voting Rights of DTV Minority Shareholders will be diluted from 52% pre-Transaction to 36% post-Transaction, well below their proportionate economic stake;

- ***Unjustified Premium* —** The DTV Minority will pay an unjustified premium of $605 million to Malone and other LEI shareholders, even though Malone will exert increased personal power over DTV as Chairman with 26% of DTV voting power;

- ***Forced Acquisition of Overvalued Assets* —** DTV will pay too high a price for disfavored LEI assets, which were cherry-picked by Malone, and transferred to DTV in the Transaction; and

- ***Onerous Deal Protections* —** The Transaction is subject to onerous deal protection measures - including a no-solicitation provision, $450 million termination fee, and force-the-vote provision - effectively precluding any alternative transaction.

7. In addition to unfair terms, the process through which Defendant Malone achieved the Transaction was unfair. To this end, DTV's special committee (and its financial advisors at Morgan Stanley) did not consider the relative fairness of the Related Transactions to the DTV Minority as compared with Liberty or Malone. Further, the DTV board of directors delegated responsibilities for negotiating the Transaction to Defendant Carey, whose long-term loyalty to the DTV Minority became suspect or non-existent in March and April 2009 due to a new job opening at his former employer, News Corporation.

8. Finally, New DTV's S-4 Registration Statement ("Registration Statement") is misleading because it fails to disclose in a full and fair way, these structural problems with the Transaction and other significant and material facts.

9. The effect of the Related Transactions is to harm the DTV Minority by depriving them of their pro-rata share of the pre-existing enterprise value of DTV, while keeping DTV subject to Malone's disproportionate voting power and rule as Chairman. Thus, the Related Transactions cannot conceivably pass the test of entire fairness. Malone and the other directors of DTV breached their respective fiduciary duties by negotiating and approving the Transaction on terms and through a process that is manifestly unfair to the DTV Minority. Through this Verified

Consolidated Class Action Complaint, Plaintiffs seek to enjoin the Transaction prior to its implementation and, should the Transaction proceed, obtain damages owed to the DTV Minority.

PARTIES

10. Plaintiff Key West Police & Fire Pension Fund, a public pension fund organized for the benefit of the active and retired police and firefighter employees of Key West, Florida, is and has been at all relevant times a shareholder of DTV.

11. Plaintiff The City of Roseville Employees' Retirement System, a public pension fund organized for the benefit of the active and retired employees of the City of Roseville, Michigan, is and has been at all relevant times a shareholder of DTV.

12. Plaintiff New Orleans Employees' Retirement System, a public pension fund organized for the benefit of the active and retired employees of the City of New Orleans, Louisiana, is and has been at all relevant times a shareholder of DTV.

13. Plaintiff Erste-Sparinvest Kapitalanlagegesellschaft m.b.H., an investment manager based in Vienna, Austria with assets under management of more than €20 billion, is and has been at all relevant times a shareholder of DTV.

14. Plaintiff Michael Milani, a resident of California, is and has been at all relevant times a shareholder of DTV.

15. Defendant DTV is incorporated under the laws of the State of Delaware and maintains its principal place of business at 2230 East Imperial Highway, El Segundo, California.

16. Defendant Liberty Media is incorporated under the laws of the State of Delaware and maintains its principal place of business at 12300 Liberty Boulevard, Englewood, Colorado.

17. Defendant LEI, is incorporated under the laws of the State of Delaware and maintains its principal place of business at 12300 Liberty Boulevard, Englewood, Colorado.

18. Defendant John C. Malone has been Chairman of DTV since Liberty Media first acquired an interest in DTV, in early 2008. Malone is a director and is also the Chairman of the Board of Directors (the "Board") of Liberty Media. Malone was designated by Liberty Media to be a member of the DTV Board. Malone controls and dominates Liberty Media and DTV by virtue of his ownership of a 34.4% voting interest in Liberty Media, and his position as Chairman of both Liberty Media and DTV.

19. Defendant Gregory B. Maffei ("Maffei") has been a director of DTV since 2008. Maffei is a director and is the President and CEO of Liberty Media. Maffei was designated by Liberty Media to be a member of the DTV Board.

20. Defendant Mark D. Carleton ("Carleton") has been a director of DTV since 2008. Carleton is a director and is the Senior Vice President of Liberty Media. Carleton was designated by Liberty Media to be a member of the DTV Board.

21. Defendant Neil R. Austrian ("Austrian") has been a director of DTV since 2003. Austrian is Chairman of DTV's Nominating and Corporate Governance Committee and a member of DTV's Compensation and Audit Committees.

22. Defendant Ralph F. Boyd Jr. ("Boyd") has been a director of DTV since 2003. Boyd is Chairman of DTV's Audit Committee and is a member of DTV's Nominating and Corporate Governance Committee.

23. Defendant Chase Carey ("Carey") has been a director of DTV since December 2003. Carey has also been President and Chief Executive Officer of DTV since December 2003. Carey's total compensation from DTV in 2008, 2007 and 2006 was $12,999,596, $13,930,826, and $12,470,904, respectively.

24. Defendant Charles R. Lee ("Lee") has been a director of DTV since 2003. Lee is Chairman of DTV's Compensation Committee and is a member of DTV's Nominating and Corporate Governance Committee.

25. Defendant Peter A. Lund ("Lund") has been a director of DTV since 2000. Lund is a member of DTV's Compensation and Audit Committees.

26. Defendant Nancy S. Newcomb ("Newcomb") has been a director of DTV since 2006. Newcomb is a member of DTV's Nominating and Corporate Governance Committee.

27. Defendant Haim Saban ("Saban") has been a director of DTV since 2004. Saban is a member of DTV's Compensation Committee.

28. The defendants identified in paragraphs 17 through 26 are referred to herein collectively as the "Director Defendants." Each of the Director Defendants was a member of the DTV Board at all pertinent times and participated in the decisions and conduct challenged herein. As DTV's directors, the Director Defendants owe unremitting fiduciary duties to DTV's stockholders, including the duties of loyalty, due care, good faith and complete candor.

29. Defendants Malone, Liberty Media, Maffei and Carleton are referred to herein collectively as the "Malone Defendants." The Malone Defendants control DTV and as such owe fiduciary duties to the minority stockholders of DTV. In self-dealing transactions, such as the Transaction, the Malone Defendants are obligated to conduct themselves in a manner that is entirely fair to the DTV Minority.

I. BACKGROUND

A. The History and Early Ownership of DTV

30. DTV provides digital television entertainment in the United States and Latin America. The Company acquires, promotes, sells, and distributes digital entertainment programming via satellite to resident and commercial subscribers. DTV generated EBITDA of

$5.0 billion in 2008 on revenues of nearly $19.7 billion. Its market capitalization is approximately $24.8 billion (as of May 1, 2009).

31. From 1984 until December 2003, DTV or its predecessor ("GM Hughes Electronic Corporation"), was a wholly-owned subsidiary of General Motors Corporation ("General Motors") that traded on the New York Stock Exchange as a tracking stock.

32. In December 2003, Rupert Murdoch's News Corporation ("News Corp.") acquired all shares of DTV common stock then owned by General Motors, which at that time represented 34% of DTV's outstanding shares. Three years later, in December 2006, Liberty Media entered into a definitive agreement with News Corp. to exchange all shares Liberty Media then held in News Corp. (approximately a 16% stake) for News Corp.'s now 41% interest in DTV, along with three regional sports networks, and cash (collectively these assets – the 41% DTV interest, the three regional sports networks, and cash - are hereinafter referred to as "Greenlady Assets."). Largely due to delays in regulatory approvals from the U.S Federal Communications Commission ("FCC"), the Liberty Media/News Corp. transaction did not close until February 2008. When the FCC finally approved the transaction, it was on the condition that DTV divest DTV Puerto Rico ("DTVPR") or that Malone eliminate his "attributable interest" in, or *de facto* control of, DTV.

33. In connection with its acquisition of DTV stock and other Greenlady Assets from News Corp., Liberty Media and DTV entered into a letter agreement (the "Letter Agreement"), confirming that Liberty Media was subject to Sections 5 and 6 of Article V of DTV's Certificate of Incorporation. Such provisions generally limit any person, together with such person's affiliates, from owning greater than 50% of DTV's outstanding stock, and require that a majority of DTV's Board be comprised of independent directors. The Letter Agreement also permitted

Liberty Media to designate three of DTV's ten directors. Liberty Media designated Defendants Malone, Maffei, and Carleton to the DTV board.

B. Liberty Increases its DTV Stake After DTV Approaches Malone About Potential Transaction

34. In early March 2008, shortly after the Liberty/News Transaction closed, DTV's Carey approached Liberty Media's Malone and Maffei to discuss potential strategic alternatives and transactions for DTV. These discussions included a possible combination of DTV and Liberty.

35. While contemplating a combination between DTV and Liberty, Malone and Liberty in April 2008 financed a rapid purchase 78.3 million additional shares of DTV with a significant loan of $2 billion (hereinafter "Greenlady Debt"). This purchase of just under 8% of DTV shares increased Liberty Media's ownership interest in DTV to approximately 48% of the Company's outstanding shares. Because this acquisition was completed specifically in the context of discussions regarding a combination of DTV and Liberty, the acquisition undoubtedly was structured to increase Liberty's ability to influence any such combination.

36. Malone and Liberty obtained the $2 billion Greenlady Debt using a credit facility with Bank of America, N.A., which is secured by 170 million DTV shares and a cashless collar transaction on another 110 million shares of DTV stock. The Transaction involved in this litigation calls for DTV to assume the $2 billion Greenlady Debt. In other words, the Transaction is designed to cause DTV to assume the liability that Liberty incurred and never paid in order to acquire the controlling position for which it now claims entitlement to a premium payment.

37. Malone and Liberty, upon information and belief, never intended to repay the Greenlady Debt. Rather, they intended to use it to artificially inflate Liberty's purported stake in DTV in order to extract a larger premium and increase Malone's personal benefits from a strategic transaction with DTV. Malone's and Liberty's strategy was to induce DTV to pay off

the Greenlady Debt in an ultimate transaction with Liberty. The Transaction involved here allows Malone and Liberty to achieve that objective.

38. When DTV learned of Liberty Media's increasing of its stake to 48%, it determined that it needed to restrain Liberty Media's stake so DTV could proceed with a pre-existing plan to buy back DTV shares without causing Liberty Media to obtain a majority stake in DTV.

39. Accordingly, DTV required Liberty Media to enter into an agreement with Liberty Media to cap Liberty Media's voting power at 47.888% ("Standstill Agreement"). Although the Standstill Agreement did not limit the equity stake Liberty Media could take in the Company, it did require that shares owned by Liberty Media in excess of the cap be voted in the same manner as the shares owned by DTV's shareholders other than Liberty Media.

40. After signing the Standstill Agreement with Liberty, DTV proceeded with a share buyback program. As a result of the buybacks, Liberty Media's equity interest in DTV increased to 54.4%, while its voting stake remains capped at 47.888%.

C. Liberty Media's Business and Capital Structure

41. Liberty Media owns interests in a broad range of electronic retailing, media communications and entertainment businesses. Ownership of Liberty Media is divided among three "tracking stocks" whose performance is tied to three corresponding groups of Liberty Media properties. Liberty Media's DTV stock holdings – valued at $13.48 billion as of May 4, 2009 – are included within the Liberty Media Entertainment Group (the "Entertainment Group"), and constitute virtually all of the Entertainment Group's assets. The following media content companies comprise the balance of the Entertainment Group's assets: Starz Entertainment, LLC, FUN Technologies, Inc., Game Show Network, LLC, WildBlue Communications, Inc., Liberty Media Sports Holdings LLC, and PicksPal, Inc. In other words, save for a limited basket of

assets, an investment in the Entertainment Group tracking stock is the functional equivalent of an investment in a majority stake of DTV (with limitations on control and transfer rights).

42. As with the two other Liberty Media properties, the Entertainment Group's tracking stock is divided into two classes. Holders of Class "A" shares (assigned the NASDAQ ticker symbol LMDIA) receive one vote per share. Holders of Class "B" shares (assigned NASDAQ ticker symbol LMDIB but not publicly traded) receive ten votes per shares, but the shares are otherwise economically equivalent to the Entertainment Group's class "A" shares. Defendant Malone owns 92.8 % of the Entertainment Group's class B shares.

43. Liberty Media (including its three constituent groups) is governed by a single Board. On matters of general corporate interest, all tracking stocks vote together as a single class. On matters specific to a group's interests, only the applicable tracking stock classes vote.

D. Malone's Ownership and Control of the Entertainment Group and DTV

44. Defendant Malone's holdings of the Entertainment Group's stock as of March 31, 2009 were as follows:

Class	Shares	% of Class
LMDIA	3,422,000	0.6%
LMDIB	24,463,000	92.8%

45. Through his ownership of LMDIA and LMDIB shares, Malone holds approximately 30% of the voting power in the Entertainment Group. Thus, Malone has a 30% voting interest (with a far smaller economic interest) in Entertainment's 54% economic interest and 48% voting interest in DTV. If the various ownership structures are collapsed, Malone effectively holds approximately 15% to 17% of DTV's voting power and approximately 3% of its economic interest.

46. Malone's large voting interest, role as Chairman and his active involvement in Liberty Media's business and affairs, however, allows him to wield significant power over the affairs of Liberty Media. Malone's significant power over Liberty Media and his active involvement in DTV's business and affairs also give him significant power over DTV.

E. The Proposed Split-Off of the Entertainment Group's Assets into LEI

47. In September 2008, Liberty Media announced its intention to split off a majority of the assets and liabilities of the Entertainment Group (the "Split-Off"), consisting of all of its holdings of DTV shares, as well as full or partial stakes in several of the companies owned by the Entertainment Group, including various Greenlady Assets acquired from News Corp. in 2008 (all interests to be included in the Split-Off collectively the "Selected Assets"), and roughly $2 billion in Greenlady Debt.

48. As Liberty Media President and CEO Maffei said at the time, "[w]e believe converting the Liberty Entertainment tracking stock to an asset-backed security will create a stronger currency and allow greater flexibility to pursue our strategic objectives."

49. To complete the Split-Off, Liberty Media will transfer Selected Assets to "LEI," a Liberty Media subsidiary formed solely for the purposes of accomplishing the Split-Off. Entertainment Group shareholders will receive interests in LEI's Series A and Series B common stock proportionate to their interests in LMDIA and LMDIB, respectively. Entertainment Group stockholders will also continue to hold proportionate interests in the remaining Entertainment Group assets retained by Liberty Media.

50. Consistent with Malone's current interest in the Entertainment Group, Malone will own less than 1% of LEI's Series A stock and 93% of LEI's Series B stock, affording him 32.7% of the voting power in LEI following the Split-Off.

51. The net effect of the Split-Off is to transfer the 54% stake of DTV stock from Liberty Media to LEI. Malone had approximately a 30% stake in Liberty Media, and he would continue to have about a 30% stake in LEI. The Split-Off would otherwise be a non-event for DTV. In theory, LEI's strategic imperatives, *i.e.*, the way it would exert its influence over DTV, might differ from Liberty Media's own strategic imperatives, since LEI is more of a "pure play" investment in DTV and would not be driven by concerns for Liberty Media's other business lines. However, with Malone remaining in the boardroom of LEI, even that possibility may be tenuous.

F. DTV and Liberty Negotiations in 2009

52. On March 5, 2009, Chase Carey, on behalf of DTV, initiated discussions with DTV Chairman Malone, but wearing his Liberty Media hat, regarding a possible combination of the companies. In initial discussions, DTV insisted on a single-class structure, which would have required Malone to forfeit his high-vote position and chairmanship on the DTV Board.

53. Over the course of the next several weeks, the parties negotiated and exchanged term sheets. By the middle of April, Malone had agreed to accept an additional 7.2 million New DTV shares in exchange for his support and elimination of his high-vote shares and chairmanship. Besides the obvious benefit of reducing Malone's influence over DTV as a large shareholder of Liberty Media, this reduction in Malone's voting power was also significant to DTV because the FCC-mandated divestiture of DTV Puerto Rico would no longer be required if Malone's interest fell below 5%. DTV had been unable to sell DTVPR on acceptable terms and had transferred control of the business to an independent trust.

54. Seeking to wring more value out of the deal, including more personal benefits for Malone, Malone and Liberty abruptly called off the deal on April 17, 2009. A few days later, on April 20, 2009, Malone proposed to DTV that if he received sufficient high-vote New DTV shares to give him 24% voting power, instead of the extra 7.2 million one-vote shares, and

retained the chairmanship, he would support the deal. Of course, giving Malone super-voting shares – indeed, 15 to 1 voting shares as compared with the 10 to 1 shares he held at Liberty media – while also keeping him in power as Chairman undermined the entire purpose of the deal from the DTV Minority's perspective. Less than two weeks later, DTV and Liberty reached a final deal.

G. The Proposed DTV Purchase of LEI Assets

55. On May 4, 2009, Liberty Media and DTV announced their agreement to enter into the Transaction. Pursuant to the Agreement, after Liberty Media completes the Split-Off, LEI and DTV will combine under a new parent company named "DIRECTV" ("New DTV").

56. Announcement of the Transaction – although not its specific terms – had been expected, and the Split-Off and Transaction are being pitched to investors as parts of a single, integrated series of transactions (the "Related Transactions"). The Agreement describes the Transaction and Split-Off as "being undertaken pursuant to a single, integrated plan . . . ." As explained elsewhere, however, when there was a question whether DTV's negotiators would accede to Malone's demands for personal side payments and structural benefits, Malone had no problem separating the transactions and threatening to complete the Split-Off and then, presumably, using his position as Chairman of LEI to harm the DTV Minority.

57. Pursuant to the Transaction, New DTV's assets and liabilities will consist of Old DTV's assets, together with the Selected Assets contributed by Entertainment Group (through its LEI Split Off) along with $2 billion Greenlady Debt. Put another way, the only economic effect at the corporate level of the merger of Old DTV and LEI is to add some assets that Liberty Media did not want and a far greater amount of debt to New DTV.

58. Specifically, the Entertainment Group is providing New DTV with the following assets and/or liabilities: (i) approximately 54% of the common stock of Old DTV, (ii) Liberty

Sports Holdings, which owns three regional sports networks, (iii) a 65% interest in Game Show Network which in turn owns 100% of FUN Technologies, ULC, (iv) approximately $30 million in cash, and (v) approximately $2 billion in debt. In exchange for their shares, the DTV Minority will receive, on a 1:1 basis, New DTV Class A shares. LEI Series A and B shares would be converted into New DTV Class A and B shares on a basis that would absorb a reduction in the shares outstanding of approximately 30.4 million (roughly 3.0%). Following the Transaction, an estimated 990 million New DTV shares will be outstanding.

59. As a result of the Transaction, the economic stake of the former-LEI shareholders will be fractionally reduced (from approximately 54.4% in Old DTV to approximately 53% in New DTV), with a corresponding increase in economic ownership (from 45.6% to 47%) granted to the DTV Minority. But the DTV Minority's voting power is being reduced from 52% now to 36% post-Transaction. Further, as discussed below, new liabilities and other detriments imposed on the DTV Minority dramatically outweigh a marginal increase in relative economic power.

60. In addition to the foregoing, the Merger Agreement contemplates that Defendant Malone will remain as Chairman of New DTV. Likewise, except for Defendant Carey, the other current DTV executive officers and Defendant Directors, including Liberty Media representatives, are expected to remain executive officers and directors of New DTV. In other words, whatever ability Malone had to exploit his position as Chairman of Liberty Media to take action not in the interests of DTV shareholders will remain in effect following the transactions.

61. The DTV Minority learned on June 3, 2009 that notwithstanding the fact that he was under contract until December 2010, Defendant Carey is resigning from DTV at the end of June to replace Peter Chernin at News Corp. Carey will serve as Rupert Murdoch's second-in-command. Mr. Carey's departure so soon after the Transaction both calls into doubt his dedication to DTV as he negotiated the Transaction and illustrates how the Transaction has

62. As detailed below, the Transaction is structured in numerous respects to benefit Defendant Malone personally and other LEI stockholders, to the detriment of the DTV Minority. Most importantly, the DTV Minority is essentially given the choice between continuing to have Malone as the holder of a 16% effective voting stake and Chairman of its controlling shareholder, or having Malone as the holder of a 24% actual voting stake and its immediate Chairman. Given the outsized benefits provided to LEI shareholders, and Malone personally, it simply cannot be said that the Transaction is entirely fair to the DTV Minority.

H. The Transaction Anticipates a Sale of New DTV

63. Since its announcement, a number of analysts and media reports have expressed the belief that the Transaction is structured to help facilitate the sale of New DTV to a third party at some point in the future. For example, on May 5, 2009, the *Wall Street Journal* reported in an article titled *Deal Prelude? Malone Shifts Some Assets to DirecTV* that the Transaction was "a move that simplifies DirecTV's ownership and sets the stage for future deals." Defendant Maffei, Liberty Media CEO, confirmed these reports in an interview with the Associated Press, which quoted him in a May 8, 2009 article titled *Liberty Media CEO Says DirecTV Sale 'Possible'* as stating that a sale "would have been very hard to accomplish," with DTV's pre-Transaction ownership structure but that the Transaction would create a simpler structure under which a sale "becomes possible." The Associated Press article also cited AT&T Inc. as a likely acquirer.

I. Media Reports and Analysts Question the Fairness of the Transaction to the DTV Minority

64. Multiple media reports and analysts evaluating the Transaction have questioned its fairness to the DTV Minority. On May 5, 2009, *The New York Times* observed that "Liberty

Media shareholders are getting a modest premium in the $13 billion deal, which is unusual since they are also getting a majority stake. And DirecTV is ending up with some assets that Liberty Media's current owners don't think are too valuable." *The New York Times* also noted that the Transaction "appears to profit Mr. Malone the most" because "Liberty Media shareholders will end up with 52 percent of the new company, leaving current DirecTV shareholders with a minority." The article also notes that "***Mr. Malone will increase his effective voting stake in DirecTV to 24 percent, from 17 percent***." (emphasis added).

65. Similarly, a May 4, 2009 *Multichannel* article about the Related Transactions noted that Credit Suisse Analyst Spencer Wang reported that the "surprising part of the deal" was "the size of John Malone's voting power post-Transaction." Mr. Wang also expressed that he "would have expected Malone's voting stake in the new entity to be in the range of 15-17%." Christopher Marangi of Gabelli & Company has also reported that the "[m]ost surprising [aspect of the Transaction] was the fact that John Malone will retain his super-voting rights." Marangi's article goes on to say, "Malone is actually receiving a greater voting stake – 15 votes per share or 24% voting stake – than a straight conversion of his 10 vote LMDIA stock would indicate."

66. *The Daily Deal* on May 5, 2009 also commented that Jefferies & Co. special situations strategist Andy Baker observed that Malone would unfairly benefit from the Transaction "[DTV] shareholders probably thought they would give Malone outsized control or a premium, but probably not both." Similarly, Thomas Eagan, an analyst at Collins Stewart, concluded that "[a]t current prices, it's a better deal for Liberty Media than it is for DirecTV."

II. THE PROPOSED TRANSACTION IS NOT ENTIRELY FAIR TO MINORITY SHAREHOLDERS

A. THE PROPOSED TRANSACTION IS NOT ECONOMICALLY FAIR TO MINORITY SHAREHOLDERS

1. The Transaction Provides Distinct and Unwarranted Personal Benefits to Malone at the Expense of Other DTV Shareholders

67. The unfairness of the Transaction is particularly evident in light of the distinct and unwarranted personal benefits that Malone will obtain through the Transaction.

68. *First*, under the terms of the Transaction, Malone will obtain voting power disproportionate and superior to other DTV shareholders, extracted entirely at the expense of the DTV Minority. As noted above, analysts at Credit Suisse and Gabelli & Company have described this as the "most surprising part" of the Related Transactions.

69. Specifically, the Agreement provides that while all other DTV shareholders (including former LMDIB/LEI Series B shareholders) would receive New DTV Class A shares with one vote per share, Malone, his wife, and associated trusts would receive New DTV Class B shares, with 15 votes per share (the "Supervoting Shares").

70. At present, DTV has only one class of shares. Malone will obtain Supervoting Shares providing him with 15 votes per share at the expense of the the DTV minority. The only basis for this substantial ***increase*** in Malone's voting influence is that Malone wanted it.

71. Malone's current supervoting rights are provided at the expense of the DTV Minority by imposing on them the trading discount experienced by companies with a dual-class voting structure, which presently does not exist at DTV.

72. There is no legal justification for Malone imposing on the DTV Minority the supervoting benefits he enjoyed within Liberty Media through his ownership of LMDIB and LEI Series B shares. In addition, the voting power of the Supervoting Shares of 15 votes per share far exceeds that of the LMDIB and LEI Series B shares owned by him in the predecessor entities,

which provide him with ten votes per share -- resulting in an overall enhancement to Malone's voting power of *nearly 50%*.

73. The effect of granting Malone the Supervoting Shares would be to confer on him 26% voting power, far in excess of his approximately 3% economic interest in New DTV, and far in excess of his effective 16-17% voting position in DTV through his 30% stake in Liberty Media.

74. The 15:1 Supervoting Shares will confer a significant economic benefit on Malone upon any sale of those shares. For example, during negotiation of the Transaction, DTV offered Malone an additional $160 million in stock (over and above the exchange rate for Liberty and DTV shares) in exchange for his high-voting shares in Liberty, which voted at a rate of 10:1. Accordingly, DTV's own negotiating position suggests that Malone's 15:1 voting shares in DTV would draw a premium of approximately $240 million should they be sold.

75. Malone's gain in voting power through the Transaction would result directly from the DTV Minority's sacrifice of a substantial portion of its franchise. The corresponding effect on the DTV Minority is to depress its voting power from the 52% interest it currently enjoys (as a result of the Standstill Agreement), to only about 36% – far below either its current voting power or the 47% vote it would have in proportion to its economic interest (net of the share buyback effected through the Transaction).

76. As acknowledged by DTV's own CEO, Defendant Carey, the voting benefits demanded and received by Malone under the Transaction are detrimental to the DTV Minority, and in fact, it is "inappropriate to pay a premium to all holders of LEI common stock if shares of high vote stock were issued." Malone's demand for and the DTV Directors' granting of those voting benefits violate Malone's and the DTV Directors' respective fiduciary duties to the DTV Minority.

77. *Second*, the Transaction will strip away standstill and controlling shareholder limitations in DTV's certificate of incorporation, enabling Malone to acquire full majority ownership of DTV free of the existing protections for the DTV Minority at the expiration of the one-year standstill provided in the Malone Agreement.

78. Specifically, as explained in the Registration Statement, the DTV certificate of incorporation was amended at the time News Corp. acquired DTV from General Motors Corp., in 2004. Such amendments included, *inter alia:*

> various requirements that were intended to assure that News Corporation would not be able to unilaterally dictate the composition of the board of directors nor the terms of related party transactions and would not be able to increase its ownership to 50% or more of the common stock without approval of the independent directors of DIRECTV or without offering to purchase the shares of common stock it did not beneficially own . . . .

79. The foregoing restrictions (the "Minority Protections") are set forth in Sections 5 and 6 of Article V of DTV's certificate of incorporation, which provide that the above-described protections applied to News Corp. and to its successors.

80. Accordingly, Malone is presently barred from acquiring and exercising plenary control over DTV, and any purchaser of Malone's interest (or Liberty Media's) would be similarly barred from exercising the full array of controller rights that would exist in the absence of the Minority Protections. By executing the Transaction, however, Malone will acquire a direct stake in DTV, with nearly-equal voting power to his interest in the Liberty Entertainment group, that is exempt from the Minority Protections.

81. *Third*, the Transaction will substantially insulate Malone, as DTV's controller, from the threat of a third party seeking to acquire DTV, by adopting a variety of anti-takeover charter and bylaw amendments (the "Entrenchment Amendments").

82. The amendments adopted at the time of the News Corp. purchase in 2004 included a provision opting out of Delaware's business combination statute, Section 203 of the Delaware General Corporation Law ("Section 203"). The certificate of incorporation of New DTV, by contrast, eliminates the Section 203 waiver, imposing Section 203 on would-be acquirers of New DTV *other than Malone*, who will be grandfathered and not subject to its provisions.

83. The Entrenchment Amendments also impede shareholder action in significant respects. First, the existing right to proceed by written consent in DTV's certificate of incorporation would be withdrawn, and New DTV's certificate of incorporation would prohibit shareholder action by written consent. Second, the present ability of a DTV shareholder to call a special meeting will be withdrawn, and New DTV's governing documents would limit the right to call a special meeting to New DTV's Board.

84. The preclusive effect of the Entrenchment Amendments on any attempted acquisition not agreed to by Malone is exacerbated by the classification of the DTV Board, a governance structure preserved in New DTV.

85. Malone has obtained each of these substantial benefits in the Transaction without providing any substantial benefit in exchange. Accordingly, these benefits render the Transaction unfair to DTV's minority.

2. The Transaction Foists $2 Billion of Unneeded Debt on DTV That Liberty Borrowed Solely to Extract a Higher Premium and Which It Could Not Otherwise Pay Back

86. The Transaction is also unfair to the DTV Minority because it provides a special benefit to Malone and Liberty Media by foisting onto DTV the $2 billion Greenlady Debt that Liberty incurred in April 2008. As discussed above, this was a ploy undertaken by Malone and Liberty after DTV approached Malone about a transaction in order to increase DTV holdings and

extract a larger premium from DTV in a subsequent transaction. Liberty had no intention of paying off the Greenlady Debt, and indeed, would not have been able to pay it off without selling DTV stock. It is plain that Liberty could not maintain this $2 billion debt from the fact that the Transaction provides for DirectTV to give Liberty a $650 million credit facility to service the $2 billion debt *even before* the Transaction gets full approval and closes. By assuming this debt from Liberty, DTV is effectively financing Liberty's gambit (and the premium and consideration Liberty obtained in exchange for it) while obtaining nothing for DTV shareholders in return.

87. As reflected in DTV's S-4 discussing the Transaction (at iv), Liberty accrued the $2 billion of indebtedness through an "incremental acquisition of [DTV] shares on April 2008."

88. In March 2008, DTV's Carey approached Liberty's Malone and Maffei to begin discussions of potential strategic transactions and alternatives for DTV, including a possible combination of those two firms.

89. Recognizing that a DTV transaction was imminent, Malone and Liberty decided to extract a higher premium from DTV by borrowing $2 billion from Bank of America to purchase 78.3 million DTV shares, thus increasing Liberty's DTV holdings from 40% to 48%. The Bank of America $2 billion debt is secured by a 170 million DTV shares held by Liberty and a cashless collar transaction.

90. However, as negotiations dragged on through the end of 2008 and beginning of 2009, it became apparent that Liberty would have trouble maintaining that $2 billion debt. This left Liberty at risk of having to sell back up to 8% of DTV stock, and reduce its DTV stake, which by April 2009 had swelled to 54% of stock and 48% of DTV voting control, to 46% economic and voting control, in order to service its debt obligations.

91. In fact, Liberty acknowledged in an April 24, 2009 Proxy that "[t]here are no assurances that LEI will have access to sufficient cash to service its [$2 billion] debt obligation[],

absent borrowings against or sales of its unencumbered DirecTV shares of other assets." (April 24, 2009 Liberty Proxy at 25.) In other words, there was a distinct chance that Liberty would reduce its DTV stake for its own business reasons, and there was no need for DTV to agree to lock in Liberty's position by assuming the debt.

92. Similarly, DTV acknowledged that "there are no assurances that LEI" – the Liberty entity to be spun-off in before the Transaction – "will have access to sufficient cash to service or refinance its [$2 billion] debt obligations, absent borrowings against or sales of its unencumbered DIRECTV shares or other assets." (DTV June 3, 2009 S-4 at 29.) Seeing Liberty Media dispose of even 8% of its DTV shares, either by selling them back to DTV or in margin call to Bank of America, would constitute a benefit to DTV.

93. Indeed, it is clear that Liberty would not be able to hold onto the 8% of DTV shares (and thus leverage it for a larger premium and greater amount of DTV shares) without DTV assuming the $2 billion Greenlady Debt because Liberty needs DTV to provide Liberty with a $650 million credit facility to service its debt *even before the Transaction closes*. In connection with the Transaction, on May 3, 2009, DTV entered into a $650 million Credit Agreement with Greenlady Corp. ("Greenlady"), a wholly owned subsidiary of LEI, formed for the purpose of receiving and holding certain assets and liabilities attributed to Liberty Media (the "Credit Agreement"). Upon the occurrence of the Split-Off and until the effective date of the Transaction, Greenlady will hold the $2 billion debt to be assumed by New DTV.

94. As Defendant Carey confirmed during May 4 Call:

> The 650 [million] credit facility is to pay down the $2 billion, so it's not incremental. There, essentially, that the first couple tranches of the $2 billion credit facility, I think, are due, you know, the end of this year and the beginning of next year. And, so, you know, within the time frame that's allotted to get this [Transaction] approved, there's potential that some of that $2 billion starts to come due.

95. Accordingly, by assuming Liberty's $2 billion debt even before the Transaction closes, DTV has provided two significant benefits to Liberty at the expense of DTV shareholders. First, it has enabled Liberty shareholders to end up with 53% of the shares of DTV instead of as low as 46%, by permitting Liberty. First, DTV has permitted Liberty to hold onto up to 8% of DTV stock (78.3 million shares) that it might otherwise have had to sell before completing the Transaction. Such a sale would have resulted in Liberty having a roughly 45-46% economic interest in DTV through the exchange of shares in the Transaction. This would have meant that DTV would have needed to provide only 46% of DTV to Liberty shareholders in exchange for their Old DTV shares – a significantly lower economic interest in DTV than the 53% Liberty shareholders are now receiving.

96. Second, DTV is going out-of-pocket at below market rates to finance Liberty's own spending, with zero benefit flowing to DTV as a result of this bridge loan. In other circumstances where one merger party was desperate for immediate cash – like Bear Stearns in its emergency sale to JP Morgan – the party providing the funding received exceptional benefits and protections. Here, because Malone wanted to use DTV to finance Liberty's overspending, the bridge loan was provided at below market rates. Malone got what he wanted without regard for the DTV Minority. DTV should not be paying Liberty a "premium" while at the same time financing the debt that enabled Liberty to seek such a premium in the first place.

97. Strikingly, Defendants provided these substantial benefits to Liberty's shareholders without obtaining any substantial value in exchange for DTV's minority. Accordingly, DTV's agreement to assume $2 billion of Liberty's debt in the Transaction was unfair and discriminatory to DTV's shareholders.

3. **The Transaction Pays Malone and LEI Shareholders an Unwarranted Premium from DTV**

98. Throughout its Registration Statement, DTV incorrectly asserts that it has provided Liberty with a premium of 5% of the value of Liberty's shares of DTV in exchange for purportedly releasing DTV from Liberty's "control." This premium will be approximately $605 million, consisting of 5% of Liberty's 548.7 million DTV shares (27.5 million) at the Transactions reference price of $22 per share. But this claimed release of control is illusory. Because of the Standstill Agreement, Liberty was a majority shareholder but did not exercise majority voting control, because its voting interest was limited to 48%. More importantly, DTV should not pay Liberty's shareholders any premium because the Transaction will leave New DTV subject to increased outsized voting power from Malone than Old DTV was before the Transaction.

99. In addition, the premium involved here is not the 5% premium publicly reported to the DTV Minority. Rather, the premium actually reflects an improper 38% of the value of the actual assets exchanged in the Transaction. Further, since the economic substance of the Transaction here is DTV's purchase of Liberty assets – and not an acquisition – a premium is not justified.

100. Prior to the Transaction, Mr. Malone exercised significant power over DTV by virtue of his role as Chairman of Liberty and DTV. According to Liberty's April 24, 2009 Proxy Statement, Mr. Malone controlled 30.2% of the voting power of Liberty Entertainment. (April 24, 2009 Liberty Proxy at 23-24.) As Liberty recognized in its April 2009 Proxy, by virtue of his 30.2% voting power and role as Chairman, "Mr. Malone may be deemed to control" Liberty. (*Id.* at 24.)

101. By virtue of his 30.2% voting power and Chairmanship of Liberty, Mr. Malone was able to exercise significant power over Liberty's 48% voting stake in DTV. Malone's

significant Liberty Media stake, in addition to his position as DTV Chairman, enabled Malone to wield significant power over DTV.

102. The Transaction will leave DTV subject to increasing voting power from Malone, because – as DTV's Registration Statement indicates – after the Transaction, Malone will be DTV's Chairman and control 26% of DTV's voting power. Thus, the Transaction will merely move Malone from a Chairman's 30.2% controlling share in Liberty's 48% stake in DTV (which is in substance a 16-17% voting stake in the old DTV) to a Chairman's 26% controlling share of the *entire* DTV entity.

103. In attempting to sell the Transaction to shareholders as a way to dilute the control over the company that pre-existed the Related Transactions, the Defendants have ignored that it is only Malone's position as Chairman of Liberty Media that permits him to exercise 48% voting control over DTV. There is no reason to pay him for giving up that control – first because he is remaining as Chairman, and second because he has no right to abuse his power as Chairman to extract value as a "payoff" for giving up that opportunity to abuse. Thus the Defendants have incorrectly represented that control over DTV is being reduced from 48% to 26%. The 48% refers to the total voting power of all Liberty shareholders, which the Transaction actually will *increase* to 64%. Instead, the actual source of the control to which DTV was subject was Mr. Malone's Chairmanship and 30.2% stake in Liberty tantamount to a 16-17% stake in DTV, which the Transaction will actually enhance by providing Malone with 26% of DTV as DTV's Chairman.

104. Indeed, Defendant Carey's original response to Malone's offer made this point clear: "[I]t would be inappropriate to pay a premium to all holder of LEI common stock if shares of high vote stock [giving Malone outsized voting control] were issued in the transaction." (DTV S-4 at 52.)

105. Because Mr. Malone will exercise virtually the same control over DTV after the Transaction as he did before, there is no reason for DTV shareholders to pay any premium to Liberty shareholders, much less to give peculiar side benefits to Malone.

106. In addition, the $605 million premium that the Transaction proposes to be paid to Liberty shareholders is significantly unfair because in economic reality the only change to DTV's economic position is the addition of the assets DTV is acquiring through the Transaction. In effect, DTV is paying a 38% premium for the assets it is acquiring, rather than a 5% premium for a merger of two entities. As explained above, DTV will provide Liberty shareholders with an equivalent amount of DTV stock for their DTV shares, so the only economic transaction actually occurring through the Transaction is DTV assuming $2 billion of Liberty debt and $175 million in stock option obligations in exchange for Liberty cable assets purportedly valued at $870 million, $30 million in cash and 30.4 million DTV shares, which at today's share price cost $692 million.

107. That means DTV paid $2.18 billion for $1.57 billion in assets. Accordingly, the $605 million premium is actually 38% over the purported fair market value of the assets DTV is purchasing through the Transaction. The $2.18 billion price DTV paid, subtracting out the value of the DTV shares owned by Liberty Media that would be retired in the transaction – valued at $692 million using today's DTV share price – results in a net purchase price of $1.488 billion. This represents a 38% premium over their fair market value.

108. The public position that this transaction represents a 5% premium uses the wrong denominator; the total value of the DTV shares held by Liberty. But it is incorrect to use that denominator because DTV is not purchasing those shares at all. They are simply being converted into New DTV shares and given to the Liberty Entertainment Group shareholders who had an indirect interest in those shares from the outset. The correct size of the premium at 38%

demonstrates the significance of the unfairness of this unwarranted premium on the DTV minority shareholders.

109. The $605 million premium the Transaction requires to be paid to Liberty shareholders is thus unfair and discriminatory to DTV's minority shareholders. This significant premium is both unwarranted because Malone will increase his voting power over DTV to 26% as Chairman compared to his voting power before the Transaction, and because a premium of 38% of the assets exchanged in the Transaction is patently invalid.

4. <u>The Transaction Overvalues the Non-DTV Assets of LEI</u>

110. The Transaction provides an even greater benefit for Malone and worse detriment for the DTV Minority than reflected in the Registration Statement because it significantly overvalues the Selected Assets.

111. According to the Registration Statement, Defendants ultimately agreed to value the Selected Assets for approximately $870 million. This represents an increase of fully $70 million from the DTV Board's "initial assessment" of $800 million in February 2009.

112. The valuation ultimately assented to by the DTV Board is significantly higher than the consensus valuation assigned by independent equity analysts. According to Morgan Stanley, the average asset valuation estimate for the Selected Assets "based on publicly-available 2009 Wall Street equity research estimates (from Morgan Stanley, Collins Stewart, Merrill Lynch/Bank of America, Wunderlich Securities, Gabelli and Barclays Capital)" was $823 million – roughly $50 million below the amount negotiated.

113. Morgan Stanley's own analysis of the Selected Assets is also highly suspect. With respect to the regional sports networks – which represent over 70% of the total value of the Selected Assets – Morgan Stanley relied at least in part on a comparable transaction analysis that relied on precedent transactions involving cable networks and sports cable networks extending

back fully *fifteen years* – to August 1994. In light of the diminished prospects for cable resulting from the advent of the internet, and the proliferation of alternate service providers – notably satellite providers such as DTV and telcos – the multiples of such companies have declined significantly. Morgan Stanley failed, however, to distinguish between recent deals and historical ones.

5. The Transaction Provides Significant Tax Benefits of Disproportionate Value to Malone

114. The Related Transactions have been structured, as is common for deals involving Malone, to avoid taxation. Indeed, as observed by *The Deal* magazine in a May 15, 2009 article titled *The Glorious Dream Continues*, "It can be difficult to tell which is the guiding principle, tax efficiency or strategic vision, in Malone's calculus."

115. An analyst at Jefferies & Co. also pointedly observed that the Related Transactions were designed to accomplish specific tax objectives of Malone. In the *The Deal* article referenced above, the analyst stated that through the Split-Off and Asset Acquisition, "Liberty gets rid of the tax liability it incurred with its old News Corp. stake" and "[t]his is what they've been trying to do for a decade."

116. While the Transaction would thus provide a special benefit to Malone and Liberty Media, public shareholders of DTV derived no proportional benefit and suffer the detriments associated with a complex, highly-structured, tax-driven transaction.

B. THE STRUCTURE OF THE PROPOSED TRANSACTION IS NOT ENTIRELY FAIR TO DTV'S MINORITY SHAREHOLDERS

1. The Transaction Improperly Dilutes the Current DTV Minority's Voting Rights from 52-36% Without Fair Compensation, and Eliminates Their Ability to Control the Majority Vote

117. The unfairness of the Transaction with respect to the voting power of the DTV Minority is also acute.

118. As explained above, under the terms of the Transaction, Malone will obtain voting power disproportionate and superior to other DTV shareholders, extracted entirely at the expense of the DTV Minority.

119. Specifically, the Agreement provides that while all other DTV shareholders (including former LMDIB/LEI Series B shareholders) would receive New DTV Class A shares with one vote per share, Malone, his wife, and associated trusts would receive New DTV Class B shares, with 15 votes per share (the "Supervoting Shares").

120. The effect of granting Malone the Supervoting Shares would be to confer on him 26% voting power, far in excess of his approximately 3% economic interest in New DTV.

121. The corresponding effect on the DTV Minority is to depress its voting power from the 52.112% interest it currently enjoys (as a result of the Standstill Agreement), to less than 36% – far below either its current vote or the 47% vote it would have in proportion to its economic interest (net of the share buyback effected through the Transaction).

122. Malone's gain in voting power through the Transaction only results from the DTV Minority's sacrifice of a substantial portion of its franchise.

123. At present, DTV has only one class of shares, and Malone's current supervoting rights are provided entirely at the expense of other Liberty Media stockholders, whose indirect voting power in DTV is severely diluted by Malone's LMDIB shares.

124. By contrast, Malone's new and enhanced supervoting rights in New DTV, were the Transaction to be consummated, would be provided entirely through sacrifice by the DTV Minority. Indeed, the voting power of Liberty Media stockholders other than Malone would also increase at the expense of the DTV Minority, from approximately 33% to 38%.

125. As further discussed below, Malone's Supervoting Shares also harm the DTV Minority by imposing on it the trading discount experienced by companies with a dual-class voting structure.

126. There is no legal justification for Malone imposing on the DTV Minority the supervoting benefits he enjoyed within Liberty Media through his ownership of LMDIB and LEI Series B shares. In addition, the voting power of the Supervoting Shares far exceeds that of the LMDIB and LEI Series B shares owned by him in the predecessor entities.

127. The LMDIB shares Malone currently holds confer ten votes per share. By contrast, the Class B shares Malone proposes to receive through the Transaction provide 15 votes per share – resulting in an overall enhancement to Malone's voting power of *nearly 50%*.

128. As acknowledged by DTV's own CEO, Defendant Carey, the voting benefits demanded by Malone and received by him under the Agreement are detrimental to the DTV Minority. Malone's extraction of this improper personal benefit violates his fiduciary duties to the DTV Minority.

2. The Supervoting Rights Demanded by Malone Impose a Dual-Share Trading Discount on New DTV

129. Malone's Supervoting Shares, to be obtained through the Transaction, would convert DTV from a straightforward, single-class voting structure, to a dual-class structure, thereby impairing the value of the Class's shares by imposing the discount typically applied to companies with such structures.

130. The circumstances under which Malone was granted the Supervoting Shares, and the dual-class voting structure burden they would impose on New DTV, were acknowledged by Defendant Carey on the May 4 Call. Carey stated that DTV viewed the dual-class structure as undesirable, but that it was necessary to complete the deal:

> As we noted earlier, we did agree to provide Jon Malone the high vote stock to conclude this deal. While ***we would prefer a single vote structure*** we feel this agreement achieves our core objectives. (Emphasis added.)

131. Responding to an analyst request later in the May 4 Call to "provide more color on the decision to effectively allow [Malone] super voting share in the combined company to essentially increase," Carey explained:

> I think you know again would we end up saying a single-vote structure is the cleanest thing? You know yes. I think we always said this is about value at vote.
>
> We think this voting construct, and again, I wont repeat the things I went through, really achieves you know what we needed to and wanted to achieve. It really does achieve the alignment, the flexibility and the control that we think you know is important for us so I think as in any deal it's a series of tradeoffs and as you go through it clearly you know the math, it leads you to one place.

132. Indeed, when Malone first asked for supervoting shares in addition to the 5% premium to Liberty shareholders, Defendant Carey appropriately responded that "it would be inappropriate to pay a premium to all holders of LEI common stock if shares of high vote stock were issued."

133. By design, dual-class stock structures allow certain shareholders to exercise voting power in excess of their financial stake by providing them with a class of shares, generally not publicly-traded, that have a voting power equal to a multiple, typically ten times, the voting power of the publicly-traded class of shares.

134. Economists have overwhelmingly concluded that a dual-class voting structure impairs a company's market value. Dual-class voting structures exacerbate agency and entrenchment problems, distorting investment decisions, stifling the market for corporate control, and retarding a company's growth.

135. Typically, a dual-stock structure is created by a company's founders (or controlling family members), in order to retain control while accessing the public equity markets. Under these circumstances, purchasers of the publicly-traded common stock have acquired their shares with full notice of the dual-class structure and have the ability to price its dilutive effect into their share purchases.

136. Here, by contrast, adoption of a dual-class voting structure pursuant to the Transaction would impair the value of the DTV Minority's existing holdings, without any concomitant benefit.

137. In addition, by adopting a dual-class stock structure that confers substantial supervoting rights on Malone, the Transaction allows him to retain the control he possessed prior to the Transaction (and impose corresponding agency and entrenchment costs), while also greatly diluting the voting power of the DTV Minority.

138. With outsized control over New DTV and reduced accountability under the dual-class stock structure, Malone effectively will be able to dictate the terms of any future strategic transaction and demand, as he did in previous litigation discussed below, a premium for his Supervoting Shares.

139. It is manifestly not "entirely fair" for the DTV Minority to adopt a dual-class stock structure that will (i) reduce their voting power; (ii) reduce the value of their shares; (iii) cede control of New DTV to Malone; and (iv) position Malone to receive a premium in any future transaction, especially after paying him an unjustified premium through the Transaction.

140. Malone's Supervoting Shares and his position as Chairman of New DTV would confer on him effective control of New DTV, enabling him to derive the benefits of control from related-party transactions with Liberty Media (which totaled over $300 million in 2008) and allowing him to structure any third-party sale to his own advantage. The Supervoting Shares, if

issued, would also provide Malone a basis in a subsequent third-party sale to *claim a premium over other New DTV shareholders.*

141. The prospect of Malone demanding additional consideration for the Supervoting Shares has substantial precedent: he executed the same maneuver on substantially identical facts earlier in this decade, resulting in litigation before this Court in *In re Tele-Communications, Inc. Shareholders Litigation*, C.A. No. 16470 (the "TCI Litigation").

142. Exactly as in the present matter, the TCI Litigation involved a sale to a third party – AT&T Inc. – of assets belonging to Malone that were owned under a tracking stock structure with two classes of shares in which Malone held supervoting "B" shares. As reported in a decision by Chancellor Chandler denying summary judgment dated December 21, 2005, *available at* 2005 WL 3642727:

> The record is clear that Malone insisted from the outset that, in order to obtain his consent and approval for the transaction, the ["B" shares] would have to receive a premium of ten percent over the consideration received by the [publicly-held "A" shares].

143. Later in the decision, Chancellor Chandler held that the structure of the deal at issue was sufficiently troubling to require entire fairness review and he denied summary judgment on the issue of fairness, as well as certain disclosure violations.

144. Malone's refusal to permit a deal with DTV on fair terms and his insistence to Carey that Malone would abandon negotiations and take unilateral action regarding the Split-Off without regard to the impact on the DTV Minority show that this leopard has not changed his spots.

3. **Under the Transaction, Malone Would Transfer Low-Value Assets to New DTV While Retaining Higher-Potential Assets in Liberty Media**

145. The Transaction is also unfair to the DTV Minority by burdening it with particular Entertainment Group assets selected by Malone while allowing him to cherry-pick and selectively retain ownership and control of other Entertainment Group assets.

146. Specifically, the Selected Assets transferred to New DTV through the Transaction will consist of (i) Liberty Sports Holdings, which owns three regional sports networks, and (ii) a 65% interest in Game Show Network, which in turn owns FUN Technologies, ULC. The Entertainment Group assets retained by Liberty Media (the "Retained Assets") consist of (i) a 100% interest in Starz Entertainment LLC ("Starz"), (ii) 37% of WildBlue Communications, Inc., and (iii) PicksPal, Inc., (iv) Fanball.com, and (v) cash and cash equivalents in the net amount of approximately $654 million.

147. Reflecting the self-dealing nature of the allocation between the Retained and Selected Assets, Starz – the most substantial of the retained assets – is widely recognized as a particularly valuable asset. In a March 25, 2009 article, *Variety* described Starz as "a solid performer" for which "[r]evenues are up, subscriptions are growing, and original programming is multiplying." In addition, of particular value in the present economic environment, *Variety* noted that "[a]s a premium pay cable channel, Starz hasn't been as susceptible to the volatility of the ad market that has plagued commercial television. The subscription channels don't have to retrench when ads pull away from their programs." *Variety* also noted that Starz's creation of original programming is integral to Liberty Media's broader strategy of content creation and distribution.

148. The Split-Off also permitted Malone to improve Liberty Media's liquidity by retaining the $654 million in Liberty Entertainment cash.

149. The disclosures provided by Defendants offer no rationale for why the DTV Board chose to acquire certain Entertainment Group assets while allowing Liberty Media to retain others. Indeed, the only comment in the Registration Statement on the issue is the elliptical notation that "there were significant disparities between [DTV CEO] Carey and [Defendants] Malone and Maffei with regard to valuation issues (including with respect to the valuation of STARZ Entertainment) . . . ." The absence of any other detail suggests that the DTV board was willing to accept whatever assets Malone offered them.

150. Malone, however, through his control and insider knowledge of the Entertainment Group, was well-positioned to further his own interests to the detriment of the DTV Minority by selectively transferring to New DTV the Entertainment Group assets with the least potential, while retaining the Entertainment Group assets that have the best opportunities for growth. The DTV Board had no comparable knowledge of the Entertainment Group assets.

151. In addition, the Registration Statement contains no suggestion that the DTV Board made any effort to assess the strategic fit of the Selected Assets – it merely acceded to Malone's desire to offload certain assets that he deemed undesirable.

5. <u>The Agreement Contains Onerous Deal Protections</u>

152. The Agreement contains an array of deal protections that effectively precludes any alternative transaction.

153. First, the Agreement prevents the DTV Board from soliciting alternative bids for DTV, depressing the opportunities for competing proposals.

154. Second, the Agreement includes a breakup fee of $450 million – a significant disincentive to any competing transaction.

155. Third, the Agreement contains a force-the-vote provision, which purports to allow directors to alter their position in the face of a superior bid, without actually withdrawing

the bid from shareholder consideration, notwithstanding the inherently coercive nature of a controlling-shareholder-sponsored Transaction proposal.

156. Finally, Liberty Media, New DTV, DTV, LEI and affiliated entities have entered into a Voting, Standstill, Non-Competition and Non-Solicitation Agreement dated as of May 3, 2009 that requires Liberty Media to vote its DTV common stock in favor of the Transaction and against any alternative DTV takeover proposal or other agreement that could reasonably be expected to prevent, prohibit or materially delay the consummation of the Transaction.

157. Collectively, the foregoing provisions effectively foreclose any possibility of other transactions competing with the Transaction..

C. THE TRANSACTION RESULTED FROM UNFAIR DEALING

1. DTV's Board Has Not Even Purported to Offer any Analysis That the Proposed Transaction Is Entirely Fair to DTV Minority Shareholders

158. The DTV Board failed to exercise due care and loyalty in reviewing the Transaction by approving it without determining the reasonableness of the allocation of benefits between the DTV Minority and Malone.

159. According to the Registration Statement, the Special Committee "unanimously determined that the Agreement, the other related Agreements and the transactions contemplated thereby were advisable and in the best interests of DIRECTV and its stockholders (other than Liberty, LEI, Mr. Malone and their respective affiliates) and recommended the Agreement, the other related Agreements and the transactions contemplated thereby for approval by the entire board of directors of DIRECTV." Registration Statement at 55-56. The Special Committee did not examine the relative impacts of the Transaction on current DTV shareholders and LEI or Liberty shareholders, including Malone, as it was required to do.

160. Morgan Stanley, the DTV Board's financial advisor, expressly stated in its fairness opinion that:

> You have not asked us to express an opinion regarding, and our opinion does not address, the relative fairness of the consideration to be received by the holders of DIRECTV Common Stock (other than Liberty, Splitco, Dr. Malone or any of their respective Affiliates) as compared with the consideration to be received by Liberty, Splitco, Dr. Malone, any of their respective Affiliates or the holders of Splitco common stock in the Transactions.

161. The Registration Statement elsewhere confirms in several places that "Morgan Stanley's opinion did not address the relative fairness of the consideration" as between the DTV Minority and Defendants and their affiliates.

162. In addition to obtaining no opinion of relative fairness from their financial advisor, the Registration Statement provides no indication that the Special Committee or DTV Board made any other effort to evaluate the relative fairness of the consideration received by Malone or his affiliates and the DTV Minority.

163. An examination of the fairness of the differential treatment afforded certain DTV shareholders under the Transaction is mandatory and a critical part of the Special Committee's duties and obligations. Its failure to examine the relative fairness of the Transaction to DTV's minority shareholders as compared to the shareholders of LEI, the DTV majority shareholder, renders the Transaction procedurally unfair.

2. Carey's Involvement in the Negotiations As He Sought A New Position At News Corp. Compromised His Independence

164. The process that culminated in the Proposed Transaction is patently unfair and harmful to the interests of DTV's minority shareholders. The Board created the Liberty Transaction Special Committee (the "Special Committee" or the "Committee") to seek the best result available for the DTV minority shareholders. The Board named Chase Carey, CEO of DTV, to the Special Committee and largely delegated Transaction negotiations to him. During or

after February 2009, Carey's interests were no longer aligned with the DTV shareholders as he considered leaving DTV for News Corporation ("News Corp."), rendering the negotiation process unfair.

165. In February 2009, Peter Chernin, President and CEO of News Corporation ("News Corp"), announced his resignation from News Corp upon expiration of his contract in June 2009. Almost immediately Carey — in light of 15 years of service at News Corp and close ties to Rupert Murdoch, its Chairman and CEO — was rumored to be Chernin's likely successor: Carey "may fill Chernin's spot, Merrill Lynch analyst Jessica Reif Cohen suggested to *The Australian*." (snfblog.com, "New Corp President to Depart," February 24, 2009).

166. Although Carey reportedly downplayed the rumors weeks later in March 2009, "'I'm focused on moving DirecTV forward and enjoying what I'm doing with DirecTV,'" (Deadline Hollywood Daily, "Carey In Talks with News Corp," May 31, 2009), many believed it was not a question of *if* Carey was going to return to News Corp, but simply a matter of *when*. Undoubtedly, much of this speculation was fueled by Murdoch's continued praise of his friend and former lieutenant since his departure from News Corp in 2003, as well as Carey's perceived status as a company insider:

> I've had the pleasure of working with Chase for almost 20 years and admire and respect him, both as a business leader and personally. . . . He has demonstrated superb leadership and sharp business acumen in a wide variety of businesses throughout his career and has contributed significantly to both DIRECTV and News Corporation.

(The DirecTV Group, Inc., Company Press Release, "DirecTV Announced New Employment Agreement with Chase Carey," Aug., 9, 2007).

167. Other rumors specifically linked Carey to the News Corp opening. As *TheWrap* noted in May 2009, "Murdoch ha[d] been courting Carey practically since Chernin informed him that he would not stay on beyond his contract early this year." Additionally, as reported at

Variety.com as recently as June 2009, Murdoch had made no secret of his close ties to Carey, "Chase [Carey] has been one of my closest advisers and friends for years." Others noted, "[t]hough Carey has been at DirecTV since 2003, Murdoch considers him a News Corp. Insider." (*TheWrap*, "Carey to Replace Chernin as Murdoch's No. 2." May 31, 2009) (last visited June 16, 2009).

168. Nonetheless, on May 31, 2009, less than a month after the Related Transactions was announced, sources reported that "Chase Carey, the CEO of DirecTV, is being tapped to become the second in command at News Corp. . . . 'The deal is essentially done between him and News Corp.'" (*TheWrap*, "Carey to Replace Chernin as Murdoch's No. 2." May 31, 2009) (last visited June 16, 2009). A few days later on June 3, News Corp announced "the appointment of Chase Carey to Deputy Chairman, President and Chief Operating Officer, effective July 1," despite an employment agreement with DTV (expiring December 2010) and a reported "non-poaching" agreement between News Corp and Liberty (pursuant to 2006 agreement).

169. In light of the foregoing, the Special Committee compromised its independence by allowing Carey to continue negotiations at a time when his personal interests were not aligned with those of DTV's minority shareholders. This explains Carey's sudden about-face described in the Registration Statement. Early in the Transaction negotiations Carey was a tough negotiator, rebuffing Malone's demands and seeking a better deal for DTV's minority shareholders. Suddenly in April 2009, Carey reversed course and acceded to Malone's demands, basically without opposition. Soon thereafter, the deal was finalized, and Malone received much of what he was after all along while DTV's minority shareholders received little in return.

170. In sum, by allowing Carey to continue to lead negotiations at a time he also possessed personal interest that were unaligned with DTV's minority shareholders, the Special Committee breached its fiduciary duties of loyalty, good faith and due care.

D. DEFENDANTS HAVE ISSUED MISLEADING DISCLOSURES ABOUT KEY ELEMENTS OF THE TRANSACTION

1. Materially Inaccurate Disclosures Relating To Approval by Majority Of The Minority Shareholders

171. The Registration Statement contains numerous false and misleading statements regarding the "Majority of the Minority" provision of the Agreement. Although these provisions state that, in connection with the Transaction, minority shareholders of DTV, voting separately as a group, will be entitled to vote on the transaction, these provisions do not adequately inform those shareholders that the Board of DTV may elect to "waive" the requirement for any such vote and may proceed with closing the Transaction regardless of whether the transaction is supported by a majority of the minority of DTV shareholders. These provisions also fail to disclose whether the DTV board intends to close the proposed Transaction even if it fails to receive the support of the majority of the minority of DTV shareholders.

172. The cover letter to DTV stockholders that precedes the Registration Statement states:

> *The following stockholder approvals are also being sought in connection with the Transactions: (a) the affirmative vote of the holders of record, as of the record date for the DIRECTV special meeting, voting together as a separate class, of a majority of the outstanding shares of DIRECTV common stock, excluding all shares of DIRECTV common stock owned by subsidiaries of Liberty or beneficially owned by Mr. Malone, certain affiliated persons of Mr. Malone or any director or officer of Liberty, in favor of (i) the adoption of the Agreement and (ii) the approval of the Malone Agreement….*

(Emphasis supplied).

173. At page "v" of the "Q&A" section, the Registration Statement states:

> **Q. What stockholder approvals are needed for DIRECTV?**
>
> A. . . . . *In addition, the board of directors of DIRECTV is seeking the affirmative vote of the holders of record, as of the record date for the DIRECTV special meeting, voting together as a separate class, of a majority of the outstanding shares of DIRECTV common stock, excluding all shares of DIRECTV common stock owned by subsidiaries of Liberty or beneficially owned*

> *by Mr. Malone, certain affiliated persons of Mr. Malone or any director or officer of Liberty, in favor of (i) the adoption of the Agreement and (ii) the approval of the Malone Agreement*.

(Emphasis supplied).

174. At page "v" of the "Q&A" section, the Registration Statement further states:

> **Q. Why is the board of directors of DIRECTV seeking the adoption of the Agreement and the approval of the Malone Agreement by disinterested holders of DIRECTV common stock?**
>
> A. [It] . . . is not required by either the terms of DIRECTV's amended and restated certificate of incorporation or by Delaware law. *DIRECTV has decided, however, that it is appropriate to seek such adoption and approval to ensure that the disinterested holders of DIRECTV common stock have the power to determine whether the various transactions contemplated by the Agreement and the Malone Agreement are acceptable to them.*

175. The disclosures set forth above in Paragraphs 172 through 174 are materially misleading because they fail to inform DTV shareholders that the Board of Directors of DTV retained the right to *waive* any requirement to obtain the approval of the majority of the minority of DTV shareholders with respect to the proposed transaction. The "power" of "disinterested holders of DIRECTV common stock … to determine whether the various transactions contemplated by the Agreement and the Malone Agreement are acceptable to them," therefore, is completely illusory. Further, because approval by a majority of the minority of DTV shareholders is not required and may be waived under the terms of the Agreement, the paragraphs quoted above are highly misleading, because they are specifically designed to lull DTV's public investors into a false sense of security that the transaction is not inherently coercive, even though it undoubtedly is.

176. The disclosures set forth above in Paragraphs 172 through 174 also are materially misleading because they omit important disclosures regarding whether the DTV Board intends to go forward with the proposed transactions in the event that the transactions are not approved by a

majority of the "disinterested holders of DIRECTV common stock." If the DTV Board presently intends to go forward with the transaction regardless of how the vote of the minority comes out, the DTV Board should clearly disclose this intent.

2. Materially Inaccurate Disclosures Relating To The Value Of The Premium DTV Shareholders Are Being Forced To Pay

177. The "Q&A" section of the Registration Statement states:

> **Q. How does the value of the LEI assets relate to the exchange ratio?**
>
> A. . . . . During their negotiations, Liberty and DIRECTV agreed that, for purposes of determining the number of shares of Holdings common stock to be issued in the LEI Transaction to former LEI stockholders, the exchange ratio would be based on a 5% premium attributed to the number of shares of DIRECTV common stock owned by Liberty. As a result, for purposes of determining the exchange ratio, LEI was effectively treated as holding approximately 576.2 million shares of DIRECTV common stock (rather than its actual holdings of approximately 548.7 million shares of DIRECTV common stock).

178. The disclosures in the foregoing paragraph are materially false and misleading because the premium to LEI "asset value" is 5.6%, not 5%. The falsity of this statement is demonstrated by a later acknowledgment at page 67 of the Registration Statement, which states:

> Morgan Stanley calculated a net asset value for LEI of $10,799 million based on the above. Morgan Stanley noted that adding the agreed premium of $604 million (5.0% on Liberty Entertainment's 549 million DIRECTV shares at the agreed $22.00 DIRECTV transaction reference share price) to the $10,799 million net asset value it calculated as set forth above resulted in a net acquisition value for LEI of $11,403 million. This implied a premium to net asset value of 5.6%.

179. Moreover, the Defendants' representation that the premium is "5%" is false and misleading because the real premium paid is much higher. As explained above, because the Transaction entails DTV's purchase of Liberty assets, and is not simply a stock acquisition, the premium should be calculated by reference to the value of the assets exchanged. Thus, the $605 million premium paid by DTV is actually 38% of the value of the assets DTV is acquiring in the

Transaction, which consists of the purportedly $870 million in Liberty assets and roughly $670 million in DTV shares it is redeeming.

3. Materially Inaccurate Disclosures Relating To The Dual Structure Of DTV Common Stock

180. The "Q&A" section of the Registration Statement states:

> Q. Why are there two classes of common stock of Holdings?
>
> A. . . . In order to induce the Malones to execute the Malone Agreement in which they agreed to vote their shares in favor of the Transactions and to certain restrictions on their shares, DIRECTV agreed to create a high/low vote structure similar to that of the LEI common stock. As a result, immediately prior to the Transactions, the Malones will exchange all of their shares of LEI Series B common stock, representing [92%] of the outstanding shares of LEI Series B common stock, for shares of Holdings Class B common stock (carrying 15 votes per share, having certain limited consent rights and being subject to certain other restrictions) at the LEI exchange ratio.

181. The disclosure in the foregoing paragraph is materially false and misleading because it fails to disclose that the "high vote" stock will have a value per share that is materially higher than every other share of DTV. Indeed, the entire Registration Statement is silent on the incremental value Malone is to receive with respect to this "high vote" stock and Morgan Stanley did not analyze it.

182. Disclosures regarding the incremental value of the "high vote" stock that will be Malone and his family will exclusively hold are material because the DTV board has represented that the proposed transactions contemplated by the Agreements are designed to "simplify" the ownership structure of DTV and to make the Company a more attractive partner in transactions with third parties in the future. Thus, by creating a single class of stock with enhanced voting power that is being granted exclusively to Malone and his family, the transactions are designed to ensure that, in any future transaction, Malone *et al.* will receive an enhanced premium on their equity holdings that will not be available to any other shareholder of DTV.

4. Materially Inaccurate Disclosures Relating To The Benefit Of The Transaction To DTV Stockholders

183. The "Q&A" section of the Registration Statement states:

> A. DIRECTV believes that substantial benefits to its stockholders can be obtained as a result of the Transactions, including:
>
> • the transactions eliminate the existing approximate 54% concentration of ownership (and approximate 48% concentration of voting power) by Liberty of DIRECTV common stock which will provide greater operating and governance independence to Holdings and will also eliminate the risk that Liberty could transfer control of DIRECTV without the DIRECTV public stockholders obtaining any control premium….

184. The disclosure in the foregoing paragraph is materially false and misleading because: (a) it fails to disclose that in the aggregate, LEI shareholders will increase their voting interest from 48% to 63%; and (b) it states that the risk that DTV public shareholders may not receive a control premium is eliminated, but fails to state that DTV shareholders are paying (rather than receiving) a control premium in connection with the Challenged Transactions.

5. Materially Inaccurate Disclosures Relating To The Morgan Stanley Fairness Opinion

185. The Registration Statement (at p. 7) states:

> In connection with the transactions contemplated by the Agreement, the special committee of the board of directors of DIRECTV received a written opinion from Morgan Stanley & Co. Incorporated ("Morgan Stanley"), its financial advisor, as to the fairness, from a financial point of view taking into account the transactions contemplated by the Agreement (including the exhibits thereto) and the other Agreements referred to in the Agreement (collectively referred to as the "transactions"), of the DIRECTV exchange ratio pursuant to, and as defined in, the Agreement to the holders of DIRECTV common stock (other than Liberty, LEI, Mr. Malone or any of their respective affiliates). . . . Morgan Stanley was not asked to express an opinion regarding, and Morgan Stanley's opinion did not address, the relative fairness of the consideration to be received by the holders of DIRECTV common stock (other than Liberty, LEI, Mr. Malone or any of their respective affiliates) as compared with the consideration to be received by Liberty, LEI, Mr. Malone, any of their respective affiliates or the holders of LEI common stock in the transactions. . . .

186. The disclosure in the foregoing paragraph is materially misleading because it fails to disclose that pursuant to the entire fairness standard, LEI and Malone, as controlling shareholders, were obliged to address the relative fairness of the consideration to be received by DTV shareholders (other than Liberty, LEI , Malone and their affiliates) as compared to that to be received by Liberty, LEI, Malone, their affiliates and holders of LEI common stock.

187. Because "Morgan Stanley was not asked to express an opinion regarding, and Morgan Stanley's opinion did not address, the relative fairness of the consideration to be received by the holders of DTV common stock (other than Liberty, LEI, Mr. Malone or any of their respective affiliates) as compared with the consideration to be received by Liberty, LEI, Mr. Malone, any of their respective affiliates or the holders of LEI common stock in the transactions," the disclosure above omits crucial information regarding whether the DTV Board made any independent evaluation as to the entire fairness of the proposed transaction, and specifically the relative fairness to minority DTV shareholders *vis-à-vis* LEI and the Malones in the proposed transaction, if so what information they relied upon in making such an evaluation, and what the results of any such evaluation may have been and the reasons therefore.

188. The Registration Statement (at p. 56) states:

> At a meeting held on May 3, 2009, the Liberty Transaction Special Committee recommended approval of, and the board of directors approved, the Agreement and the transactions contemplated thereby, including the transactions contemplated by the Malone Agreement and the recommendation that DIRECTV stockholders vote to adopt the Agreement. In reaching its conclusion to make its recommendation to the board of directors, the Liberty Transaction Special Committee, after consultation with its financial and legal advisors and DIRECTV management, considered the following factors:
>
> • Morgan Stanley's oral opinion on May 3, 2009, subsequently confirmed in writing as of the same date, to the Liberty Transaction Special Committee that, as of the date of such opinion, and based upon and subject to various considerations, assumptions and limitations set forth in the opinion, taking into account the transactions, the DIRECTV exchange ratio pursuant to, and as defined in the Agreement was fair from a financial point of view to the holders of DIRECTV

> common stock (other than Liberty, LEI, Mr. Malone or any of their respective affiliates)….

189. The disclosure in the foregoing paragraph is materially false and misleading because: (a) it fails to state whether and to what extent, if at all, the Liberty Transaction Special Committee considered the comparative benefits to be received by DTV and Liberty shareholders and whether, in light of such comparison, the transaction is fair to DTV shareholders; and (b) fails to explain why Morgan Stanley was not asked to opine on this question.

190. The Registration Statement (at p. 56) states that the Special Committee also considered:

> that the transactions eliminate the existing approximate 54% concentration of ownership by Liberty of DIRECTV common stock which will provide greater operating and governance independence to Holdings and will also eliminate the risk that Liberty could transfer control of DIRECTV without the DIRECTV public stockholders obtaining any control premium….

191. The disclosure in the foregoing paragraph is materially false and misleading because it fails to state what, if anything, the Liberty Transaction Special Committee considered regarding the likelihood such risk would materialize and what, if any, analysis Morgan Stanley was asked to do, or did, to assess such risk.

6. <u>Materially Inaccurate Disclosures Relating To The Malone Agreement</u>

192. The Registration Statement (at p. 9) states:

> [P]ursuant to the Malone Agreement, the Malones have agreed, subject to the terms and conditions thereof, among other things:
>
> - to vote their shares of Liberty Entertainment common stock in favor of the Split-Off and the LEI Transaction;
>
> - to limit their voting rights, only with respect to their shares of Holdings Class B common stock, to 24% of the total voting power of Holdings common stock (with any voting power attributable to such shares in excess of 24% to be voted on a pro rata basis in the same manner as the votes of the non-Malone stockholders of Holdings)….

193. The disclosure in the foregoing paragraph is materially misleading because it fails to disclose that, based on the holdings of Malone and his family in Liberty Entertainment and DTV under the current state of affairs, the Malones have beneficial interests in approximately 16-17% of the outstanding stock of DTV. Thus, the proposed transactions do not "limit" Malone's voting rights to 24%, but *increase* their voting control to that level.

194. The Registration Statement states:

> Following the Transactions, and pursuant to the Malone Agreement, Mr. Malone, his wife and certain trusts for the benefit of their children will own shares of Holdings common stock, which will represent approximately 24% of the total voting power of the outstanding shares of Holdings common stock immediately after the Transactions and after giving effect to the restrictions set forth in the Malone Agreement. . . . Mr. Malone's rights to vote his Holdings shares, however, are subject to the 24% voting cap on the Malones' shares of Holdings Class B common stock under the Malone Agreement.

195. The disclosure in the foregoing paragraph is materially false and misleading because Malone's total voting stake after giving effect to the transaction is 26%, not 24%. The falsity of this statement is demonstrated by a later acknowledgment in a table at page 74 of the Registration Statement, which makes clear that Malone's voting power will be increased to 25.97%.

7. <u>Materially Inaccurate Disclosures Relating To Third Party Consents</u>

196. The Registration Statement (at p. 51) states (emphasis added):

> On March 23, 2009, DIRECTV management delivered a revised term sheet to Liberty management based on their ongoing discussions and the due diligence review**.** The revised term sheet provided, among other things, that the additional consideration of $160 million to Mr. Malone would be made in the form of Holdings common stock (approximately 7.2 million additional shares of Holdings common stock), **that obtaining the consent of third parties pursuant to certain significant third party contracts would be a closing condition to the Transactions** and that the outstanding equity awards issued by Liberty to its employees and directors would vest and be exercisable for their remaining terms…

> On March 26, 2009, Liberty management sent a revised term sheet back to DIRECTV. Liberty's revised term sheet provided for, among other things, an aggregate of 518.3 million shares of Holdings common stock to be issued to LEI stockholders (subject to certain adjustments), **the removal of the closing condition of obtaining certain third-party consents,** the addition of a majority of the minority stockholder approval condition for Liberty, the removal of certain pre-closing covenants regarding the working capital of each of the LEI businesses.

197. The disclosure in the foregoing paragraph is materially false and misleading because it omits any discussion of: (a) the identity of the third parties whose consent was required; (b) whether such third parties have any connection to Liberty, the Malones or any Liberty directors or officers; (c) the nature and terms of the "significant" third party contracts at issue; and (d) why and how the closing condition of obtaining these third-party consents was removed and whether the Liberty Transaction Special Committee ascribed value to obviation of the need to obtain such consents in deciding to negotiate definitive documentation relating to the Challenged Transactions and, if so, how much.

8. Materially Inaccurate Disclosures Relating To The Programming Agreements Negotiated Between DTV and Liberty At The Same Time As The Challenged Transactions

198. The Registration Statement (at p. 54) states that at the April 28, 2009 Special Committee Meeting:

> DIRECTV management…summarized, and discussed with the Liberty Transaction Special Committee, the terms of programming agreements which were being negotiated by DIRECTV management with management of Liberty or its subsidiaries. Although these agreements were being negotiated in the ordinary course to replace existing month-to-month agreements then in effect, management of each of DIRECTV and Liberty believed it was in the best interests of each company to complete and fully document these agreements at this time. Following this discussion, the Liberty Transaction Special Committee authorized DIRECTV management to continue negotiating definitive documents with Liberty in light of the revised proposed transaction terms.

199. The disclosure in the foregoing paragraph is materially misleading because it fails to provide any meaningful discussion of the terms of the programming agreements and, more specifically since such agreements were negotiated as part of the discussions surrounding the Challenged Transactions, whether there were any material changes in such agreements that provided financial or other benefits to Liberty, its subsidiaries or affiliates or the Malones and, if so, the extent and nature of such benefits.

9. Materially Inaccurate Disclosures Relating To Indemnity

200. The Registration Statement (at p. 54) states that at the April 28, 2009 Special Committee Meeting:

> Mr. Hunter then discussed a proposal by Liberty to have Holdings indemnify the directors and officers of LEI and Liberty for all Liberty Entertainment and/or LEI stockholder claims related to the approval of the transactions, if the Transactions occurred. A discussion then ensued among the members of the Liberty Transaction Special Committee and the representatives of management, Simpson Thacher, Richards Layton and Weil Gotshal regarding such an indemnity.

201. The disclosure in the foregoing paragraph is materially misleading because it fails to disclose any of the reasons considered by the Liberty Transaction Special Committee as to why Holdings should be required to indemnify, among others, LEI, Liberty and the Malones for shareholder claims relating to approval of the Challenged Transactions.

10. Materially Inaccurate Disclosures Relating To Tax Considerations

202. The Registration Statement (at p. 28) states (emphasis added):

> ***Holdings may determine to forgo certain transactions in order to avoid the risk of incurring significant tax-related liabilities.***
>
> In the Tax Sharing Agreement, Holdings will covenant that following the Transactions it will not take any action, or fail to take any action, which action or failure to act is inconsistent with the Split-Off or the News/Liberty Transaction qualifying for tax-free treatment under Sections 355 and 368(a)(1)(D) of the Code. . . . As a result, Holdings might determine to forgo certain transactions that

> might have otherwise been advantageous in order to preserve the tax-free treatment of the Split-Off and the News/Liberty Transaction. . . . **Holdings might determine to forgo certain transactions, including share repurchases, stock issuances, asset dispositions or other strategic transactions for some period of time following the Transactions so as not to run afoul of the 50-percent limitation.** . . . **In addition, Holdings' potential indemnity obligation under the Tax Sharing Agreement might discourage, delay or prevent a change of control transaction for some period of time following the Split-Off.**

203. The disclosure in the foregoing paragraph is materially misleading because it fails to state the length of time Holdings will, must or is likely to refrain from such transactions, including a change of control transaction which could prevent or significantly delay shareholders' receipt of a control premium.

11. Materially Inaccurate Disclosures Relating To DTV $650 Million Loan to Greenlady

204. The Q&A section of the Registration Statement (at p. x) states:

> **Q. Why is DIRECTV loaning up to $650 million to Greenlady?**
>
> A. DIRECTV is loaning up to $650 million to Greenlady, a wholly owned subsidiary of LEI, following the Split-Off, to refinance amounts advanced under existing credit arrangements between Liberty and Greenlady and to fund Greenlady's ongoing obligations pursuant to a Credit Agreement dated as of April 9, 2008, between Bank of America, N.A. and Greenlady II, LLC, which is a wholly-owned subsidiary of Greenlady, and certain equity collar transactions.

205. The disclosure in the foregoing paragraph is materially false and misleading because it does not answer the question concerning why *DTV* (as opposed to a third party unconnected to the Challenged Transactions) is loaning Greenlady up to $650 million or whether the terms of the loan are more favorable to Greenlady than could have been obtained from third parties in the lending community and, if more favorable, why DTV is providing a below-market loan to Greenlady in connection with the challenged transactions.

206. Furthermore, the disclosure is materially false and misleading, because it fails to disclose that DTV essentially is assuming debt incurred by Malone and Liberty for the purpose of

financing Liberty's purchase of additional shares of DTV, which Liberty acquired so that it could justify extracting a higher premium in a strategic transaction with DTV.

CLASS ACTION ALLEGATIONS

207. Plaintiffs bring this action on their own behalves and as a class action, pursuant to Rule 23 of the Rules of the Court of Chancery, on behalf of all holders of DTV common stockholders who are being and will be harmed by Defendants' actions described herein (the "Class"). Excluded from the Class are Defendants and any person, firm, trust, corporation or other entity related to or affiliated with any Defendant.

208. This action is properly maintainable as a class action.

209. The Class is so numerous that joinder of all members is impracticable. As of May 4, 2009, DTV had over one billion shares of common stock outstanding. Of these shares, approximately 459 million are held by the unaffiliated public shareholders comprising the Class.

210. There are questions of law and fact which are common to the Class and which predominate over questions affecting any individual Class member. The common questions include the following:

- Whether the Malone Defendants have breached their fiduciary duties as controlling stockholders and affiliates thereof, including the duty of loyalty and the obligation to act in a manner and on terms that are entirely fair toward Plaintiffs and other members of the Class in connection with the Transaction;
- Whether the Director Defendants have breached their fiduciary duties, including the duties of loyalty and due care, to Plaintiffs and other members of the Class in connection with the Transaction; and
- Whether Plaintiffs and the other members of the Class will be damaged irreparably by the wrongful conduct alleged herein.

211. Plaintiffs are committed to prosecuting this action and have retained competent counsel experienced in litigation of this nature. Plaintiffs' claims are typical of the claims of the other members of the Class and Plaintiffs have the same interests as the other members of the Class. Accordingly, Plaintiffs will fairly and adequately represent the Class.

212. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class and establish incompatible standards of conduct for the party opposing the Class.

213. Defendants have acted and are about to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief with respect to the Class as a whole.

CLAIMS FOR RELIEF

COUNT I

BREACH OF FIDUCIARY DUTY
(Against the Director Defendants – Malone, Austrian, Boyd, Carey, Carleton, Lee, Lund, Maffei, Newcomb and Saban)

214. Plaintiffs repeat and reallege each allegation set forth above.

215. The Director Defendants are directors of DTV and, as such, owe all of DTV's public shareholders the highest obligations of due care, loyalty, good faith and candor.

216. The Director Defendants have violated their fiduciary duties to Plaintiffs and the Class by imposing the Transaction on terms that are not entirely fair and through a process that also was not fair and which confers on the Malone Defendants special benefits and imposes on the DTV Minority special burdens.

217. Unless enjoined by this Court, the Director Defendants will continue to breach their fiduciary duties to Plaintiffs and the Class, and may consummate the Transaction, resulting in irreparable harm to Plaintiffs and the Class.

218. Plaintiffs and the other members of the Class have no adequate remedy at law.

COUNT II

BREACH OF FIDUCIARY DUTY
(Against the Malone Defendants –Malone, Liberty Media, Maffei and Carleton)

219. Plaintiffs repeat and reallege each allegation set forth above.

220. Liberty Media and Malone, as controlling stockholders, and Maffei and Carleton as officers and directors of Liberty Media, owe the highest obligations of due care, loyalty, good faith and candor to the public stockholders of DTV.

221. The Malone Defendants have violated their fiduciary duties owed to the Class by imposing the Transaction on terms that are not entirely fair and though a process that also was not fair and which confers on the Malone Defendants special benefits and imposes on the DTV Minority special burdens.

222. Unless enjoined by this Court, the Defendants will continue to breach their fiduciary duties to Plaintiffs and the Class, and may consummate the Transaction, resulting in irreparable harm to Plaintiffs and the Class.

223. Plaintiffs and the other members of the Class have no adequate remedy at law.

WHEREFORE, Plaintiffs pray for judgment, as follows:

A. determining that this action may proceed as a class action and that Plaintiffs are proper class representatives, and appointing Plaintiffs' counsel as Class Counsel;

B. declaring that the Transaction is not entirely fair and is in breach of the fiduciary duties of the Defendants;

C. enjoining Defendants, temporarily and permanently, from taking any steps necessary to accomplish or implement the Transaction;

D. if the Transaction is consummated prior to the entry of final judgment, rescinding the Transaction and/or awarding rescissory and/or compensatory damages to the Class;

E. requiring Defendants to fully disclose all material information regarding the Transaction;

F. requiring Defendants to conduct a fair process to evaluate DTV's value and investigate any available value-maximizing strategic alternatives to the Transaction, including maintaining the status quo;

G. directing that Defendants account to Plaintiffs and the Class for all profits and any special benefits obtained by Defendants as a result of their unlawful conduct;

H. awarding Plaintiffs and the Class pre- and post-judgment interest at the statutory rate;

I. awarding Plaintiffs their costs and disbursements in this action, including a reasonable allowance for the fees and expenses of Plaintiffs' attorneys and experts; and

[Continued on following page]

J. granting such other and further relief as the Court deems appropriate.

Dated: June 19, 2009

GRANT & EISENHOFER P.A.

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