

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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*Application of* )  
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**NEWS CORPORATION AND** )  
**THE DIRECTV GROUP, INC.** )  
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Transferors, )  
 )  
and )  
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**LIBERTY MEDIA CORPORATION** )  
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Transferee, )  
 )  
For Authority to Transfer Control. )  
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MB Docket No. 07-\_\_\_\_

**CONSOLIDATED APPLICATION FOR  
AUTHORITY TO TRANSFER CONTROL**

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## SUMMARY

News Corporation ("News Corp."), The DIRECTV Group, Inc. ("DTV") and Liberty Media Corporation ("Liberty Media") seek Commission approval for the transfer of *de facto* control over various authorizations held by DTV and its subsidiaries (collectively, "DIRECTV") from News Corp. to Liberty Media. As a result of this transaction, News Corp. will divest its ownership interest in DIRECTV and Liberty Media will divest its interest in News Corp. This will ameliorate or eliminate concerns previously identified by the Commission by reducing DIRECTV's vertical integration with "must have" broadcast and regional sports programming, while still enabling DIRECTV to draw upon Liberty Media's experience and expertise. Conversely, because Liberty Media agrees to abide by all of the applicable prophylactic conditions previously imposed upon News Corp. in connection with its acquisition of an interest in DTV, the transaction will not raise any public interest concerns.

\* \* \*

Pursuant to a Share Exchange Agreement, Liberty Media will swap its interest in News Corp. in return for News Corp.'s interest in DTV, three regional sports networks ("RSNs" serving Denver, Pittsburgh, and Seattle), and approximately \$550 million in cash. The proposed transaction will result in a number of specific and quantifiable public interest benefits. First, it will eliminate News Corp.'s interest in DIRECTV, and will de-link the media interests of Liberty Media and News Corp. Second, by transferring *de facto* control of DIRECTV from an entity with programming assets that include "must have" broadcast and RSN programming to an entity with far fewer such assets, the proposed transaction will decrease vertical media consolidation that previously has caused the Commission concern. Third, it will make Liberty Media's

experience and expertise in the areas of interactive television, broadband access, and interactive commerce more directly available to support DIRECTV's strategic initiatives.

At the same time, the proposed transaction will result in no public interest harms. It will not increase horizontal concentration. Unlike News Corp., Liberty Media does not own multiple broadcast stations and holds no attributable ownership interest in any broadcast television network. The proposed transaction will eliminate entirely several of the concerns expressed by the Commission when News Corp. invested in DIRECTV several years ago, and greatly reduce other such concerns. For example, the Commission expressed concern about the combination of News Corp.'s broadcast assets with the DIRECTV distribution platform, and imposed a mandatory arbitration condition on News Corp.'s broadcast programming to address that concern. The proposed transaction would eliminate DIRECTV's affiliation with News Corp.'s television stations, which should eliminate the Commission's concerns in this regard.

Likewise, the Commission expressed concern about the incentives created by the combination of News Corp.'s RSNs and DIRECTV's distribution assets. As with broadcast programming, the Commission imposed an RSN arbitration condition to address these concerns. But the proposed transaction would eliminate DIRECTV's affiliation with 12 of the 15 RSNs currently owned or controlled by News Corp. In each of these cases, the proposed transaction again should eliminate the Commission's concerns.

As for those areas where this transaction will not eliminate such concerns entirely – with respect to the three Fox RSNs that will be transferred to Liberty Media, access to Liberty Media's national cable programming, and carriage of unaffiliated programming – Liberty Media agrees to be bound by all of the relevant conditions established by the Commission for News

Corp. in connection with its acquisition of an interest in DIRECTV. The Commission found these safeguards sufficient to address any potential competition-related concerns arising from News Corp.'s interest in DIRECTV, and the same conclusion should apply even more forcefully for Liberty Media.

Accordingly, the proposed transaction will result in tangible public interest benefits and no cognizable harms. The parties therefore respectfully request that this Application be granted as expeditiously as possible.

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FOR AUTHORITY TO TRANSFER CONTROL**

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For Authority to Transfer Control.	)	
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**CONSOLIDATED APPLICATION FOR  
AUTHORITY TO TRANSFER CONTROL**

News Corporation ("News Corp."), The DIRECTV Group, Inc. ("DTV") and Liberty Media Corporation ("Liberty Media") respectfully submit this joint application for Commission approval of the transfer of *de facto* control over various space station, earth station, and terrestrial wireless authorizations held by DTV and its subsidiaries (collectively "DIRECTV") from News Corp. to Liberty Media. This transaction will decrease media consolidation by divesting News Corp.'s ownership interest in DIRECTV and separating Liberty Media from News Corp. It will thereby substantially reduce DIRECTV's vertical integration with video programming deemed by the Commission to be "must-have" for viewers and other distributors. Consumers will benefit from the experience and expertise that Liberty Media can bring to

DIRECTV to enhance its efforts to develop and deploy a variety of new services, including high definition (“HD”) television and interactive services.

On the other side of the ledger, this transaction presents no cognizable public interest harms. With the exception of an attenuated interest in a single cable system in Puerto Rico, Liberty Media is not affiliated with any multichannel video programming distribution (“MVPD”) system in the United States that would raise any horizontal merger issue with the addition of DIRECTV. While Liberty Media does have programming assets, they are far fewer in number and diversity than the holdings of News Corp. For example, because Liberty Media currently has no broadcast assets, the transaction will eliminate a primary public interest concern that had been expressed about DIRECTV’s existing ownership structure.<sup>1</sup> As for those areas where this transaction will not eliminate such concerns entirely – with respect to the three Fox RSNs that will be transferred to Liberty Media, for example – Liberty Media agrees to abide by all of the relevant conditions established by the Commission in the News Corp.-Hughes Order.<sup>2</sup> Accordingly, there are no competition-related concerns to offset the transaction’s clear public interest benefits.

#### **I. Introduction**

On December 22, 2006, Liberty Media and News Corp. entered into a Share Exchange Agreement pursuant to which Liberty Media will exchange its ownership interest in News Corp. for 100 percent of the capital stock of a subsidiary of News Corp. that will hold News Corp.’s

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<sup>1</sup> See *General Motors Corporation and Hughes Electronics Corporation, Transferors, and the New Corporation Limited, Transferee*, 19 FCC Rcd. 473 (2004), at ¶203 (“News Corp.-Hughes Order”).

<sup>2</sup> Specifically, only the following two program access conditions from Appendix F of the News-Hughes Order are *not* applicable: F.II, third bullet (because Liberty Media will no longer hold an interest in News, and because Liberty is otherwise covered by the conditions); and F.IV (because Liberty Media does not now own or control multiple broadcast television stations).

ownership interest in DTV, three RSNs<sup>3</sup> and \$550 million in cash. Upon completion of the transaction, Liberty Media will have a 38.4 percent interest in DTV. The parties expect that three persons designated by Liberty Media will be appointed to fill vacancies on DTV's 11 member board of directors that will be created by the resignation of three News Corp. appointees.<sup>4</sup> Although Liberty Media will not have a *de jure* controlling interest in DTV, the parties recognize that the Commission may deem Liberty Media to exercise *de facto* control over DTV based upon the Commission's analysis and conclusion in approving News Corp.'s acquisition of an interest in DTV.<sup>5</sup>

As the Commission analyzes and balances any potential public interest harms against the potential public interest benefits of the proposed transaction, the Applicants respectfully submit that the News Corp.-Hughes Order should serve as its fundamental point of reference. This Application demonstrates that the proposed transaction will address the Commission's prior competitive concerns regarding "must have" RSN and broadcast television programming, reduce DIRECTV's vertical integration, separate the media interests of News Corp. and Liberty Media, and support DIRECTV's efforts to deploy advanced video programming services and equipment to consumers.

To address and eliminate any concerns regarding program discrimination, carriage and access, including RSN programming, DIRECTV and Liberty Media propose to comply with conditions similar to each of the relevant conditions adopted in the News Corp.-Hughes Order:

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<sup>3</sup> The three RSNs are Fox Sports Net Northwest, LLC, Fox Sports Net Pittsburgh, LLC and Fox Sports Net Rocky Mountain, LLC (collectively, the "Fox RSNs"). The Fox RSNs do not hold any FCC licenses or authorizations and thus are not included in any of the applications filed in connection with this transaction.

<sup>4</sup> Overviews of the DTV ownership structure immediately pre-transaction and post-consummation are attached hereto as Exhibits 1 and 2, respectively.

<sup>5</sup> See News Corp.-Hughes Order at ¶14.

- Liberty Media agrees to abide by the conditions regarding access to RSN programming – including the provisions for commercial arbitration in case of a negotiating impasse – in accordance with the procedures set forth in Appendix F.III to the News Corp.-Hughes Order with respect to the three RSNs that it would acquire as part of the transaction.
- Neither Liberty Media nor DTV will discriminate against unaffiliated programming services in the selection, price, terms or conditions of carriage on the DIRECTV platform.
- Liberty Media will not offer any of its existing or future national and regional programming services on an exclusive basis to any MVPD in the United States and will continue to make such services available to all such MVPDs on a non-exclusive basis under nondiscriminatory terms and conditions.
- DTV will not enter into an exclusive distribution arrangement with any Affiliated Program Rights Holder.<sup>6</sup>
- DTV may continue to compete for programming that is lawfully offered on an exclusive basis by an unaffiliated program rights holder (*e.g.*, NFL Sunday Ticket).
- Neither Liberty Media nor DTV (including any entity over which either exercises control) shall unduly or improperly influence: (i) the decision of any Affiliated Program Rights Holder to sell programming to an unaffiliated MVPD; or (ii) the prices, terms and conditions of sale of programming by any Affiliated Program Rights Holder to an unaffiliated MVPD.

Each of these conditions will apply to Liberty and/or DTV for the period set forth in the analogous condition from the News Corp.-Hughes Order.<sup>7</sup> Consistent with the conditions

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<sup>6</sup> Consistent with the Commission's determination in the News Corp.-Hughes Order, an Affiliated Program Rights Holder would include: (i) a program rights holder in which Liberty Media or DTV holds a non-controlling attributable interest (as determined under the Commission's program access attribution rules); and (ii) a program rights holder in which an entity holding a non-controlling attributable interest in Liberty Media or DTV holds an attributable interest, provided that Liberty Media or DTV has actual knowledge of such entity's attributable interest in such program rights holder. *See* News Corp.-Hughes Order at Appendix F n.1.

<sup>7</sup> Thus, the first of these conditions will apply to Liberty Media for the term set forth for the corresponding conditions in the News Corp.-Hughes Order. The remainder will apply to Liberty Media and DTV for as long as the Commission deems Liberty Media to have an attributable interest in DTV and

currently applicable to News Corp., an MVPD could bring a program access complaint against Liberty Media or DTV under 47 C.F.R. §76.1003 for violation of this commitment.

This consolidated Application consists of a narrative description of the parties and the proposed transaction, a discussion of the public interest benefits, along with several exhibits containing the transaction's Share Exchange Agreement, completed FCC transfer application forms and other materials. Each FCC form application and its associated exhibits and filing fee have been filed separately in accordance with the Commission's rules. Following the closing of the transaction, the relevant Applicants will supplement all pending applications as required under the Commission's rules, (47 C.F.R. §1.65), to reflect DIRECTV's new ownership structure. To the extent that the Commission grants any pending applications, or any other applications for new facilities or renewal or modification of existing facilities, prior to the closing of the proposed transaction, the parties request a determination by the Commission that the grant of this Application includes consent to transfer control with respect to all such subsequently granted authorizations.

**A. Description of the Parties**

Information regarding DTV, News Corp., and Liberty Media, and their respective operations, is set forth below:

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the Commission's program access rules applicable to satellite cable programming vendors affiliated with cable operators are in effect, provided that: (1) if the program access rules are modified, this commitment shall be modified to conform to any revised rules adopted by the Commission, or (2) if they are embodied in a consent decree or other appropriate order issued by or agreement with the DOJ, FTC or FCC, for the term specified by such consent decree.

## 1. The DIRECTV Group, Inc.

DTV, a Delaware corporation publicly traded on the New York Stock Exchange, is a holding company for a number of subsidiaries through which it offers DIRECTV direct-to-home ("DTH") satellite service in the United States. DIRECTV launched the United States' first satellite in the direct broadcast satellite ("DBS") service in December 1993. In doing so, DIRECTV introduced competition to a market that had been served largely only by cable operators. Today, it is the nation's largest DTH satellite television services provider, operating nine geostationary satellites and serving nearly sixteen million subscribers. DIRECTV Enterprises, LLC, an indirect wholly-owned subsidiary of DTV, holds the vast majority of Commission licenses used to provide the DIRECTV service in the United States. A complete list of Commission licenses controlled by DTV is included in Exhibit 3.

DTV also indirectly holds an 86 percent interest in DIRECTV Latin America, LLC ("DTVLA"), which, along with its consolidated local operating companies, provides DTH satellite television service to over 1.7 million subscribers in 27 countries throughout Latin America and the Caribbean, including Puerto Rico.

DIRECTV believes it offers one of the most extensive collections of programming available through any MVPD. DIRECTV currently distributes to its subscribers more than 1,650 digital video and audio channels, including about 180 basic entertainment channels (including over 65 XM Radio music channels), 31 premium movie channels, about 35 regional and specialty sports networks, an aggregate of over 1,100 local broadcast channels, over 85 Spanish and other foreign language special interest channels, and over 45 pay-per-view movie and event choices. DIRECTV provides local-into-local service in 142 markets, covering approximately 94 percent of U.S. television households.

In addition, DIRECTV currently offers local HD channels in 49 television markets covering approximately 65 percent of U.S. television households, as well as ten national HD channels. This year, with the anticipated launch of two additional satellites, DIRECTV expects to have the capacity to offer local HD channels to nearly all U.S. television households, plus an additional 150 national HD channels.

## **2. News Corporation.**

News Corp., a Delaware corporation publicly traded on the New York Stock Exchange and Australian Stock Exchange, is a diversified international media and entertainment company with operations in the following industries: filmed entertainment; television; cable network programming; direct broadcast satellite television; magazines and inserts; newspapers; and book publishing. News Corp. conducts its activities principally in the United States, the United Kingdom, Australia, Asia, and the Pacific Basin. News Corp. is well known to the Commission, as its subsidiaries hold a number of broadcast and other licenses (apart from those controlled by DTV).

News Corp. holds its U.S. programming interests through Fox Entertainment Group, Inc. ("FEG"), a wholly-owned subsidiary. FEG is principally engaged in the development, production and worldwide distribution of feature films and television programs, television broadcasting and cable network programming, and its programming and distribution interests include:

- FOX Broadcasting Company, which programs the FOX Network with hits such as *American Idol*, *House*, and *The Simpsons*, and compelling sports programming such as NFL Football, Major League Baseball, and NASCAR;
- MyNetworkTV, a new broadcast entertainment network;

- Fox Television Stations and related subsidiaries (collectively, "FTS"), which together control 35 owned and operated broadcast stations throughout the country, including FOX affiliates in New York, Los Angeles, and Chicago;
- Fox Cable Networks, which operates cable programming networks, including FX, National Geographic Channel, Fox Movie Channel, Fuel, Speed Channel and 15 RSNs;
- Fox News Channel, the highest rated cable news channel; and
- Twentieth Century Fox Film, which is responsible for some of the top grossing movies of all time; and Twentieth Century Fox Television, which has created some of the most popular television programming.

FEG also holds through a subsidiary an approximately 38.4 percent interest in DTV, which is the subject of this Application.

### **3. Liberty Media Corporation.**

Liberty Media is a Delaware corporation holding ownership interests in video programming, electronic retailing, media, communications and entertainment businesses in the United States, Europe and Asia. Liberty Media's assets include ownership interests in QVC, Inc., Starz Entertainment, LLC, IAC/InterActive Corp., and Expedia, Inc. Liberty Media's outstanding capital stock is comprised of two tracking stocks, *i.e.* Liberty Interactive common stock and Liberty Capital common stock, that are intended to track and reflect the separate economic performance of Liberty Media's Interactive Group and Capital Group, respectively. Liberty Media's consolidated, wholly-owned subsidiaries include the following:

- QVC, Inc. ("QVC") - QVC and its subsidiaries market and sell a wide variety of consumer products in the U.S. and several foreign countries primarily by means of merchandise-focused television shopping programs on the QVC networks and, to a lesser extent, via the Internet through its domestic and international websites. QVC's shopping programs are telecast live 24 hours a day to 91 million homes in the U.S.

- Starz Entertainment, LLC (“SE”) – SE provides premium movie networks through a number of distribution technologies, including cable, DTH satellite, telephony and the Internet. SE’s service offerings include: (1) Starz, a first-run movie service that generally includes five channels branded under the Starz name, each of which exhibits movies targeted to a specific audience; and (2) Encore, which airs first-run and classic contemporary movies and includes six thematic multiplex channels branded with the Encore name. SE’s services also include various thematic video on demand offerings.

Liberty Media also has ownership interests in entities which are accounted for as equity affiliates or cost investments, including the following:

- Expedia, Inc. (“Expedia”) - Expedia is among the world’s leading travel services companies, making travel products and services available to leisure and corporate travelers in the United States and abroad through a diversified portfolio of brands, including Expedia, Hotels.com, Hotwire, Expedia Corporate Travel, Classic Custom Vacations and a range of other domestic and international brands and businesses.<sup>8</sup>
- WildBlue Communications, Inc. (“WildBlue”) - WildBlue delivers two-way broadband Internet access via satellite to homes and small businesses in rural markets underserved by terrestrial broadband alternatives. WildBlue provides coverage across the continental United States using a 26 inch mini-satellite dish equipped with both a transmitter and receiver for two-way satellite connectivity to the Internet.<sup>9</sup>
- IAC/InterActive Corp. (“IAC”) - IAC is multi-brand interactive commerce company transacting business worldwide via the Internet, television and the telephone. IAC consists of the following sectors, among others: (1) retailing, including HSN U.S., HSN International and Cornerstone Brands, Inc., (2) services, including Ticketmaster, Lending Tree and its affiliated

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<sup>8</sup> Liberty Media indirectly owns an approximate 20 percent equity interest which constitutes a 52 percent voting interest in Expedia. Liberty Media has entered into governance arrangements pursuant to which Mr. Barry Diller, Chairman of the Board and Senior Executive of Expedia, is currently entitled to vote, or direct the vote of, Liberty Media’s shares of Expedia, subject to certain limitations.

<sup>9</sup> Liberty Media holds an approximate 32 percent equity interest in WildBlue. See Liberty Media Corporation Form 10-K, filed Mar. 8, 2006, at I-10. See Liberty Media Corporation Form 10-K, filed Mar. 8, 2006, at I-11.

brands and businesses; and (3) media and advertising, including Ask Jeeves, Inc.<sup>10</sup>

- GSN, LLC ("GSN") - GSN owns and operates the GSN programming service, which is a video programming service dedicated to game-related programming and interactive game playing.<sup>11</sup>
- Crown Media United States, LLC ("Crown") - Crown owns and operates the Hallmark Channel, a general entertainment video programming network, and Hallmark Movie Channel.<sup>12</sup>

Liberty Media also holds *de minimis* and non-attributable ownership interests in CBS Corporation (1 percent), Time Warner Inc. (4 percent), and Viacom Inc. (1 percent).

In July 2005, Liberty Media completed the spin-off of Discovery Holding Company ("DHC"), which included Liberty Media's 50-percent interest in Discovery Communications, Inc. ("Discovery") and certain other assets, to Liberty Media's shareholders.<sup>13</sup> As a result of the spin-off, Liberty Media does not have any stock ownership, beneficial or otherwise, in DHC. However, Dr. John C. Malone, Liberty Media's Chairman, serves as Chairman of the Board, Director and Chief Executive Officer of DHC and owns shares of DHC's common stock representing approximately 27.6 percent of DHC's aggregate voting power and 4.9 percent of

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<sup>10</sup> Liberty Media owns an approximate 22 percent equity interest which constitutes a 54 percent voting interest in IAC. Liberty Media has entered into governance arrangements pursuant to which Mr. Barry Diller, Chairman of the Board and CEO of IAC, is currently entitled to vote, or direct the vote of, Liberty Media's shares of IAC, subject to certain limitations. Liberty Media Corporation Form 10-K, filed Mar. 8, 2006, at I-11 & I-12.

<sup>11</sup> Liberty Media owns a 50 percent interest in GSN, and a subsidiary of Sony Corporation holds the other 50 percent interest, with each having the right to designate half of the members of GSN's management committee. Liberty Media Corporation Form 10-K, filed Mar. 8, 2006, at I-11.

<sup>12</sup> Liberty Media owns an 11 percent interest in Crown.

<sup>13</sup> Discovery operates a number of well-known video programming networks, including the Discovery Channel, TLC, Animal Planet, Travel Channel, Discovery Health Channel, as well as the following emerging digital tier networks: The Science Channel, Discovery Kids, the Military Channel, Discovery Home, Discovery Times, Fit TV and Discovery HD Theater. See Discovery Holding Company Form 10-K, filed Mar. 23, 2006, at I-9.

DHC's equity. Four members of Liberty Media's board of directors, including Dr. Malone, also serve as directors on DHC's five-member board.

DHC owns 50 percent of Discovery. The remainder of Discovery is owned by a subsidiary of Cox Communications, Inc. (25 percent) and Advance/Newhouse Programming Partnership (25 percent).<sup>14</sup> Pursuant to a Stockholders' Agreement, transactions of significance, including the adoption of Discovery's annual business plan, must be approved by holders of 80 percent of its outstanding capital stock.<sup>15</sup> Thus, DHC (as well as each of Cox Communications and Advance/Newhouse) effectively has negative control of Discovery.

Liberty Global, Inc. ("Liberty Global") commenced operations in June 2005 as a result of the combination of Liberty Media International ("LMI") and UnitedGlobalCom. Liberty Media previously had completed the spin-off of LMI as an independent publicly-traded company. Liberty Global operates broadband communications networks in 19 countries primarily located in Europe, Japan, Chile and Australia. Liberty Global's operations also include significant media and programming businesses such as Jupiter TV in Japan and chellomedia in Europe.<sup>16</sup> In addition, Liberty Global owns Liberty Cablevision of Puerto Rico Ltd., a cable system serving approximately 119,000 subscribers in central Puerto Rico.<sup>17</sup> Liberty Media owns shares in Liberty Global representing less than 0.10 percent of its voting power and Liberty Global has no ownership interest in Liberty Media. However, Dr. Malone serves as Chairman of the Board of

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<sup>14</sup> Mr. John Hendricks, founder of Discovery, holds one non-transferable share of Discovery capital stock which is subject to an irrevocable proxy in favor of Advance/Newhouse, and therefore, is included in Advance/Newhouse's 25 percent interest. See Discovery Holding Company Form 10-K, filed Mar. 23, 2006, at I-10.

<sup>15</sup> See Discovery Holding Company Form 10-K, filed Mar. 23, 2006, at I-10.

<sup>16</sup> See Liberty Global, Inc. Form 10-K, filed Mar. 14, 2006, at I-1.

<sup>17</sup> See Liberty Global, Inc. Form 10-K, filed Mar. 14, 2006, at I-23.

Liberty Global and owns Liberty Global stock representing approximately 24.1 percent of its aggregate voting power and 3.8 percent of its outstanding equity. Four members of Liberty Media's board of directors (including Dr. Malone) also serve as directors of Liberty Global.

Liberty Media is legally and financially qualified to exercise *de facto* control over DTV. The Commission has reviewed Liberty Media's qualifications to control Commission licensees in connection with numerous applications filed by current and former subsidiaries of Liberty Media.

**B. Description of the Proposed Transaction**

**1. Share Exchange Agreement.**

Liberty Media and News Corp. have entered into a Share Exchange Agreement, which is annexed as Exhibit 4 to this Application, and other ancillary agreements pursuant to which Liberty Media will exchange (the "Exchange") its 16.3 percent equity stake in News Corp. for all of the capital stock of Greenlady Corp. ("Splitco"), a Delaware corporation and wholly-owned subsidiary of News Corp. Prior to the closing of the transaction, News Corp. will contribute to Splitco News Corp.'s 38.4 percent stake in DTV, News Corp.'s 100 percent interest in the three Fox RSNs, and \$550 million in cash, which cash amount is subject to adjustment based upon, among other things, the working capital of the RSNs as of the closing of the Exchange. Liberty Media will acquire the capital stock of Splitco through its indirect wholly-owned subsidiaries that currently hold Liberty Media's 16.3 percent equity stake in News Corp.<sup>18</sup> The Exchange is

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<sup>18</sup> See Exhibit 5 for a corporate organizational chart showing Liberty Media's ownership of the News Corp. shares. It is contemplated that each of the Liberty Media subsidiaries that hold shares of News Corp. common stock prior to the closing of the Exchange will acquire in the Exchange a pro-rata interest in Splitco based upon the number of shares of News Corp. common stock held by such subsidiary.

subject to several conditions, including approval of this Application and other regulatory approvals, a ruling from the Internal Revenue Service, and News Corp. stockholder approval.<sup>19</sup>

## **2. Resulting Ownership and Management Structure of DTV.**

As a result of the Exchange, Liberty Media, indirectly through its ownership of Splitco, will acquire from News Corp. beneficial ownership of 470.4 million shares of DTV common stock and News Corp. will acquire from Liberty Media 324.6 million shares of News Corp. Class A common stock and 188 million shares of News Corp. Class B common stock. The 470.4 million shares of DTV common stock subject to the Exchange represent approximately 38.4 percent of the outstanding shares of DTV common stock outstanding as of December 31, 2006, (based upon 1,226.5 million shares of DTV common stock issued and outstanding as of such date). Accordingly, as a result of the Exchange, Liberty Media, through its ownership of Splitco, will become the largest stockholder of DTV. In addition, Southern Eastern Asset Management, Inc., an Investment Advisor under the Investment Advisors Act of 1940, Legg Mason Capital Management, Inc., and U.S. Trust Corporation, as independent trustee of the General Motors Employee Benefit Plans, own shares of DTV common stock representing approximately 7.1 percent, 6.2 percent and 2.2% respectively, of the outstanding shares of DTV common stock as of November 3, 2006. The remaining shares of DTV common stock are widely held by public stockholders. After the Exchange, News Corp. will no longer hold any shares of DTV common stock or any other interest in DTV.

It is currently contemplated that Chase Carey will remain as President, Chief Executive Officer and member of the board of directors of DTV. In the Share Exchange Agreement between Liberty Media and News Corp., the parties agreed that, effective upon the closing of the

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<sup>19</sup> See Share Exchange Agreement, at Art. VII.

Exchange, Messrs. K. Rupert Murdoch, Peter F. Chernin and David F. DeVoe (collectively, the "Resigning Directors"), News Corp.'s representatives on the board of directors of DTV, will resign from such positions. Prior to such resignations, the Resigning Directors will propose to the Nominating/Corporate Governance Committee of the board of directors of DTV that Dr. Malone, Gregory B. Maffei, President and Chief Executive Officer of Liberty Media, and one other person designated by Liberty Media be appointed to fill the vacancies on the board of directors of DTV resulting from the resignations of the Resigning Directors. No other changes to the management, board of directors of DTV or any committees of the board of directors are contemplated as a result of the Exchange.

After the Exchange, the DTV board of directors will consist of 11 members, including seven independent directors.<sup>20</sup> The Audit Committee of the DTV board of directors will be unchanged and be comprised of independent directors. Consistent with DTV's bylaws and charter, the Audit Committee will, among its other functions, review and approve all related-party transactions in such amounts and related to such matters as determined by the Audit Committee's Related Party Transactions Policies and Procedures. Accordingly, because Liberty Media and its subsidiaries (including programmers such as Starz) would be considered related parties, any transaction they might enter into with DTV may be subject to review and approval by the Audit Committee.

No single shareholder will have a *de jure* controlling interest in DTV either through a majority interest in voting stock or majority representation on the board. Thus, voting control will rest with the public shareholders. However, by virtue of the fact that Liberty Media will indirectly control a 38.4 percent interest in DTV, and in light of its prior conclusion in the News

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<sup>20</sup> A list of DTV's current directors is included in Exhibit 6.

Corp.-Hughes Order, the Commission may deem Liberty Media to exercise *de facto* control over DTV under its totality of the circumstances test for purposes of the Communications Act. Accordingly, the parties presume such control for purposes of this Application.<sup>21</sup> News Corp. will no longer have an ownership interest in or control DTV in any respect.

## II. Standards Of Review

Under the Communications Act, the Commission must determine whether the proposed transfer of *de facto* control of DIRECTV's licenses from News Corp. to Liberty Media will serve the public interest, convenience and necessity.<sup>22</sup> The public interest standard requires a balancing of the proposed transaction's potential public interest harms and potential public interest benefits. The public interest analysis encompasses the broad aims of the Communications Act, which include preserving and enhancing competition in relevant markets, ensuring the availability to the public of a diversity of voices, and fostering the development and deployment of advanced services to the public.<sup>23</sup>

The public interest analysis requires the Commission to determine whether the transaction violates the Communications Act, other applicable statutes, and the Commission's rules. Under the Commission's balancing process, where the potential harms posed by a

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<sup>21</sup> Because the concept of "control" for purposes of the Commission's analysis may vary from the way that term is defined in other statutory and regulatory contexts, the parties' presumption for purposes of this Application should not be read as applicable to any other purpose, such as for securities law, accounting or tax purposes. *See, e.g., Committee for Full Value of Storer Communications v. FCC*, 101 FCC 2d 434, 442 (1985) ("The meaning of a statutory reference to 'control' will also vary from statute to statute depending upon the purpose of the statute, the context, and the legislative intent. We do not believe we are bound, therefore, by statutory and common law definitions of 'control' in securities law [when interpreting Section 310(d)] . . ."), *aff'd sub nom. Storer Communications, Inc. v. FCC*, 763 F.2d 436 (D.C. Cir. 1985); *Helvering v. Edison Bros. Stores, Inc.*, 133 F.2d 575, 579 (8th Cir. 1943) (a ruling by one administrative department of government concerning income accounting does not control that of another department made for an entirely different purpose under another act of Congress).

<sup>22</sup> *See* 47 U.S.C. §310(d).

<sup>23</sup> *See* News Corp.-Hughes Order at ¶16 (citations omitted).

transaction are great, the potential benefits must be great. Conversely, where the potential harms are small or nonexistent, the potential benefits need only be of a similar scale.<sup>24</sup> Finally, the “goal” of the Commission’s “license transfer application review process is to allow parties to realize the economic efficiencies associated with the transaction, while ensuring that any harms resulting from the license transfer are mitigated” and that the public receives a portion of the benefits from the transfer.<sup>25</sup> Accordingly, the proceeding does not provide an “opportunity to correct any and all perceived imbalances in the industry.”<sup>26</sup>

### **III. The Proposed Transaction Will Serve The Public Interest, Convenience And Necessity**

In contrast to many recent mergers which the Commission has reviewed, the proposed transaction does not implicate any aggregation, cross-ownership, or similar restrictions imposed by the Communications Act, any other applicable statute, or the Commission’s rules. Rather, consistent with the public interest requirements of the Communications Act, the proposed transaction will facilitate the separation of two diversified media companies, reduce concerns regarding access to “must have” RSN and broadcast programming, reduce vertical integration, and foster DIRECTV’s development and deployment of advanced services valued by subscribers.

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<sup>24</sup> See, e.g., *Applications for Consent to the Assignment and/or Transfer of Control of Licenses, Adelphia Communications Corporation, Assignors and Transferors, Comcast Corporation and Time Warner Inc., Assignees and Transferees*, 21 FCC Rcd 8203 (2006) (“Adelphia Approval Order”), at ¶23; *Applications for Consent to the Transfer of Control of Licenses from Comcast Corporation and AT&T Corp., Transferors, to AT&T Comcast Corporation, Transferee*, 17 FCC Rcd 23246 (2002), at ¶218 (observing that “in balancing the public interest harms and benefits, we employ a sliding scale approach” that “examine[s] the likelihood and magnitude of the potential public interest harms”).

<sup>25</sup> See News Corp.-Hughes Order at ¶131.

<sup>26</sup> See News Corp.-Hughes Order at ¶131.

**A. The Proposed Transaction Will Alleviate the Two Primary Competitive Concerns Cited by the Commission in the News Corp. - Hughes Order.**

**1. RSN Programming.**

The Commission has found that regional sports programming is particularly important to MVPD offerings.<sup>27</sup> Because the Commission has concluded that this programming is important to the competitive position of MVPDs, the Commission has in two recent proceedings – the News Corp.-Hughes proceeding and the Adelphia proceeding – imposed conditions to safeguard against potential use of that programming for anticompetitive purposes.<sup>28</sup> Specifically, because the Commission concluded that combining interests in RSN programming with MVPD assets could enhance an entity's incentive and ability to temporarily withhold or threaten to withhold access to RSN programming, it conditioned its approval of such vertical integration on the right of MVPDs to invoke commercial arbitration in case of an impasse in negotiating for RSN carriage.<sup>29</sup>

In this transaction, Liberty Media will control only three RSNs upon completion of the Exchange and will replace News Corp., which currently controls 15 RSNs, as the entity exercising *de facto* control over DIRECTV. Thus, for the large majority of News Corp.'s existing RSNs, the proposed transaction will eliminate RSN-related vertical integration concerns. However, in order to allay any lingering concerns, Liberty Media agrees to adopt the conditions

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<sup>27</sup> See, e.g., *Implementation of the Cable Television Consumer Protection and Completion Act of 1992*, 17 FCC Rcd 12124 (2002), at ¶32 (“Program Access Order”).

<sup>28</sup> See News Corp.-Hughes Order at ¶¶169-179; Adelphia Approval Order at ¶¶155-165.

<sup>29</sup> News Corp.-Hughes Order at ¶¶173-176; Adelphia Approval Order at ¶¶156-157.

mandated by the Commission in the News Corp.-Hughes Order regarding access to the RSN programming controlled by Liberty Media.<sup>30</sup>

## 2. Broadcast Programming

News Corp. occupies a prominent position in the broadcast television industry. FTS operates 35 full power television stations, including stations located in nine of the ten largest designated market areas. FOX Broadcasting Company (“FOX”) currently has 201 affiliated television stations, which reach approximately 98 percent of all U.S. television households.<sup>31</sup>

Similar to RSN programming, the Commission observed in the News Corp.-Hughes proceeding that “[l]ocal broadcast station programming is highly valued by consumers,”<sup>32</sup> and that the combination of broadcast and MVPD interests would “increase News Corp.’s post-transaction incentive and ability to temporarily withhold access to the signals of its television broadcast stations” in order to extract more compensation from competing MVPDs than it could reasonably expect to achieve absent the transaction.<sup>33</sup> To address this concern, the Commission conditioned its approval of such vertical integration on the right of MVPDs to invoke commercial arbitration in case of an impasse in retransmission consent negotiations.

In contrast to News Corp.’s extensive broadcast holdings, Liberty Media currently does not hold an attributable ownership interest in any broadcast television stations, other than the derivative interest through News Corp. in the FTS stations which Liberty Media would divest as part of the Exchange. Thus, the proposed transaction will eliminate DIRECTV’s vertical integration with News Corp.’s broadcast television stations.

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<sup>30</sup> See News Corp.-Hughes Order at ¶¶ 176, 178 & Appendix F, §III.

<sup>31</sup> See News Corporation Form 10-K, filed Aug. 23, 2006, at 5, 7.

<sup>32</sup> See News Corp.-Hughes Order at ¶201.

<sup>33</sup> News Corp.-Hughes Order at ¶209.