

Nelson Mullins

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Nelson Mullins Riley & Scarborough LLP
Attorneys and Counselors at Law
101 Constitution Avenue, NW / Suite 900 / Washington, DC 20001
Tel: 202.712.2800 Fax: 202.712.2835
www.nelsonmullins.com

Robert L. Hoegle
Tel: 202.712.2816
Fax: 202.712.2836
bob.hoegle@nelsonmullins.com

REDACTED - FOR PUBLIC INSPECTION
IN MB DOCKET NO. 07-18 before the Federal Communications Commission

October 23, 2007

Via Hand Delivery

Ms. Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

FILED/ACCEPTED

OCT 23 2007

Federal Communications Commission
Office of the Secretary

Re: Consolidated Application of News Corporation and the DIRECTV Group, Inc.,
Transferors, and Liberty Media Corporation, Transferee, for Authority to
Transfer Control, MB Docket No. 07-18

Dear Ms. Dortch:

This letter responds to the request of the Commission's transaction team on October 12, 2007 for additional information regarding the above-referenced application and updates certain information to reflect developments that have occurred since the application was filed on January 29, 2007. Because the letter and exhibits include confidential information subject to the Protective Orders in this proceeding, we are providing this redacted copy of the letter and exhibits for inclusion in the public file.

We have organized our summary of the requested information as follows:

- I. Description of pay television services in Puerto Rico and the franchise areas served by Liberty Cablevision of Puerto Rico, Ltd. ("LCPR");
- II. Explanation of ownership and corporate governance of Liberty Media Corporation ("Liberty Media"), Liberty Global, Inc. ("LGI") and LCPR;¹

¹ We understand that DIRECTV Group, Inc. ("DIRECTV") and DIRECTV of Puerto Rico, Ltd. ("DTVPR") are submitting information regarding the ownership and corporate governance of those entities.

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- III. Summary of Liberty Media's insulation proposal and discussion of relevant Commission precedent;
- IV. Update of information regarding Dr. Malone's ownership interests in Liberty Media, LGI and Discovery Holding Company ("DHC"); and
- V. Update of information in the Consolidated Application to reflect developments since the application was filed.

This summary presentation clearly demonstrates that, in the context of the proposed transaction and the Consolidated Application, the *de minimis* overlap between the operations of LCPR and DTVPR does not raise any competitive concerns, particularly in view of Liberty Media's insulation proposal, which is based upon long-standing Commission precedent.

I. Pay Television Services in Puerto Rico

A. *Background*

The applicants reported the *de minimis* horizontal overlap between the operations of LCPR and DTVPR in Puerto Rico in the Consolidated Application, at 24-25. LCPR operates 9 cable systems within 7 franchise areas in Puerto Rico. *See Liberty Cablevision of Puerto Rico, Ltd.*, 21 FCC Rcd. 11995 (2006) ("*LCPR Effective Competition Order*") at ¶1, n.2 (annexed as Exhibit 1). DTVPR and EchoStar (Dish Network) provide DBS service throughout Puerto Rico. *Id.* at ¶5.

Liberty Media does not hold any ownership interest in LCPR or LGI, the ultimate parent of LCPR. However, Dr. John C. Malone serves as Chairman of the Boards of Liberty Media and of LGI and is expected to serve on the Board of Directors of DIRECTV, the ultimate parent company of DTVPR. As set forth in Section IV, *infra*, he also holds approximately 5.2% of the equity of Liberty Media and 5.0% of the equity of LGI. Apparently, it has been suggested that Dr. Malone's positions as Chairman of LGI and as a prospective director of DIRECTV potentially could diminish competition between LCPR and DTVPR to the detriment of consumers in LCPR's franchise areas.

At the outset, Liberty Media notes that there is no statute or Commission rule prohibiting common ownership of a cable system and a DBS system serving the same geographic area. Likewise, there is no statute or rule prohibiting common directors in publicly-traded parent companies with subsidiaries operating such systems. Nevertheless, just as Liberty Media agreed in the Consolidated Application to accept the conditions placed upon News Corp. despite its much smaller media holdings, Liberty Media also proposed that Dr.

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Malone be insulated under established Commission precedent to eliminate any potential competitive concern over such overlap. *See* Consolidated Application at 24-25.

In any event, the facts developed in this proceeding regarding pay television service in Puerto Rico, Dr. Malone's position with LGI, and his prospective role as a director of DIRECTV, viewed objectively, make clear that there exists no opportunity or incentive to engage in conduct that would impair competition in Puerto Rico. The proposed insulation of Dr. Malone only reinforces that conclusion.

B. LCPR's Franchise Areas

The geographic area potentially affected by the positional interests of Dr. Malone lies entirely within Puerto Rico, which the Commission repeatedly has characterized as a unique television market. *See, e.g., Applications for Transfer of Control of WAPA-TV, San Juan, PR*, 22 FCC Rcd. 2176 (2007) (annexed as Exhibit 2). The Commission recognized in *WAPA-TV* the "unique" market structure and "weak economic conditions" in Puerto Rico, including the following: (a) "the gross national income per capita is only 30% of the U.S. average and the average wage earned by island residents is only 54% of that earned by mainland residents;" (b) the income differential between the U.S. and Puerto Rico "is even more dramatic" outside of San Juan; and (c) "the availability of over-the-air television signals is even more important in Puerto Rico than it is in the rest of the United States" because "cable subscription on Puerto Rico is limited to approximately 25% of TV households and only 20% of TV households subscribe to DBS." *Id.* at 2178.

Unlike the United States, where penetration of multi-channel video programming distributor ("MVPD") services is approximately 90% nationwide, less than half of all homes in the LCPR franchise areas subscribe to *any* MVPD service. *See* LCPR Request for Waiver, filed on Feb. 14, 2007 ("LCPR Integration Waiver Request") at 5-6 (annexed as Exhibit 3). The lower MVPD penetration rates in the LCPR franchise areas are due in large part to the fact that median household income in those areas is only approximately \$13,000 per year, less than one-third of the U.S. national median household income. *Id.* at 4.²

LCPR's franchise areas include approximately 528,000 households, but LCPR passes only approximately 337,000 (63.8%). *See* LGI.II.H 002239 (confidential document); LGI website, Puerto Rico "Key Facts" as of June 30, 2007 (<http://www.lgi.com/puerto.html>) ("LCPR Key Facts") (annexed as Exhibits 4 and 5). Thus, LCPR does not compete with DTVPR for nearly 200,000 homes within its franchise areas because LCPR does not pass those homes.

² Rampant theft of DBS services also continues to be a problem in Puerto Rico. *See, e.g., DTV-II.H-050034-37* (highly confidential document).

Within its service area, LCPR provides cable television, high-speed Internet services and/or digital telephone service to approximately 130,000 households, 94,000 of which subscribe to LCPR's digital cable service. See LCPR Key Facts. The extremely low penetration rate (27.89% of homes passed) reflects the severe economic conditions within LCPR's franchise areas. In fact, the Commission determined last year that LCPR faced effective competition in 5 of its 7 franchise areas because LCPR's penetration in those areas was less than 30%. *LCPR Effective Competition Order* at ¶3. In the remaining two franchise areas, the Commission determined that LCPR faced effective competition from both DTVPR and Dish Network. *Id.* at ¶¶5-6.

DTVPR provides DBS service to approximately 177,000 subscribers throughout Puerto Rico, and DIRECTV has informed us that DTVPR has approximately 73,000 subscribers in the LCPR franchise areas. Churn reports produced by LCPR indicate that only a small percentage of LCPR subscriber losses are attributable to competition from DBS operations. One report of LCPR "voluntary disconnects" for 2006 shows that only █% were attributable to a "better competitive offer," as compared to █% who dropped the LCPR service because they could not afford it. See LGI.II.H 002482 (confidential document) (annexed as Exhibit 6). Similarly, a poll conducted in early 2007 of former LCPR subscribers revealed that only █% had changed MVPD services to take advantage of a "better competitive offer," while █% cited "economic problems," or the inability to pay, as the reason for discontinuing LCPR service. See LGI.II.H 002500 (confidential document) (annexed as Exhibit 7).

The facts demonstrate that the LCPR franchise areas are unlike most areas in the United States in that the majority of households opt for over-the-air television service rather than subscription MVPD service because household income is inadequate to purchase MVPD service. When LCPR █. See LGI.II.H 018499-500; LGI.II.H 002269 (confidential documents) (annexed as Exhibits 8 and 9). In November 2006, LCPR reported that it had █ video subscribers, but the number of video subscribers had dropped to 94,000 by June 2007. Compare LGI.II.H 002239 (confidential document) with LCPR Key Facts. In short, the majority of households in the LCPR franchise areas cannot afford or otherwise do not subscribe to MVPD service of any kind. Consequently, there is little opportunity or incentive for LCPR and DTVPR to engage in concerted efforts to raise MVPD prices in Puerto Rico because those efforts will adversely affect subscribership levels and would serve only to benefit local broadcasters, upon which more than 50% of the viewers already rely, and EchoStar.

B. Minimal Revenues

Because of economic conditions and viewership patterns in Puerto Rico, attempts to raise prices and impair competition are not realistic alternatives. Moreover, even if feasible, the economic impact of such pricing could not reasonably be expected to affect the overall financial performance of the publicly-traded parent companies of LCPR and DTVPR because Puerto Rico revenues represent only a *de minimis* percentage of the overall revenues of the parent companies. LCPR's total revenues in 2006 were estimated to be \$[REDACTED]. See LGI.II.H 002279 (confidential document) (annexed as Exhibit 10). Its cable operations generated revenues of approximately \$[REDACTED] in 2006. *Id.*³ LGI's total revenues in 2006 were \$6,487,500,000. See LGI SEC Form 10-K, filed on March 1, 2007 at II-2. Thus, LCPR's overall revenues represented only approximately [REDACTED]% of LGI's total revenues in 2006, and its cable revenues represented only approximately [REDACTED]%.

DTVPR revenues throughout Puerto Rico in 2006 totaled \$[REDACTED], and revenues from subscribers in areas served by LCPR were only approximately \$[REDACTED].⁴ Total revenues of DIRECTV in 2006 were \$14,755,500,000. See DIRECTV SEC Form 10-K, filed on March 1, 2007 at 47. Thus, DTVPR accounted for less than [REDACTED]% of the total revenues of DIRECTV, and revenues derived from DTVPR subscribers in the LCPR franchise areas accounted for less than [REDACTED]% of DIRECTV's revenues in 2006. Those revenues would represent an even smaller percentage of Liberty Media's total revenues based on Liberty Media's proposed acquisition of approximately 40% of DIRECTV. Liberty Media's share of the revenues generated by DTVPR in the LCPR franchise areas in 2006 would have been approximately \$[REDACTED], or [REDACTED]% of Liberty Media's total revenues (\$8,613,000,000) for 2006. See Liberty Media SEC Form 10-K, filed on March 14, 2007 at II-61.

Because the revenues of LCPR and DTVPR from pay television in the LCPR franchise areas represent only a miniscule percentage of the overall revenues of LGI and DIRECTV, there would be no financial incentive for their Board members, including Dr. Malone, to engage in any type of anticompetitive conduct affecting this *de minimis* horizontal overlap.

II. Ownership and Corporate Governance

In addition to the unique nature of pay television in Puerto Rico and the insignificant percentage of overall revenues represented by Puerto Rico operations, the ownership and

³ Total estimated revenues of \$[REDACTED] minus revenues attributed to high-speed internet services (\$[REDACTED]), FCC-related surcharges (\$[REDACTED]) and telephony services (\$[REDACTED]).

⁴ This estimate of revenue attributable to DTVPR subscribers in LCPR franchise areas was calculated as follows: [REDACTED] subscribers in LCPR franchise areas divided by [REDACTED] total DTVPR subscribers equals [REDACTED]%. DTVPR revenues in 2006 totaled \$[REDACTED] of which [REDACTED]% is approximately \$[REDACTED].

corporate governance structures of the relevant companies do not present Liberty Media or Dr. Malone with either the incentive or the opportunity to engage in conduct adversely affecting competition in Puerto Rico.

Liberty Media does not hold any direct or indirect ownership interest in LCPR. LCPR is an indirect, wholly-owned subsidiary of LGI, a separate publicly-traded company. LCPR's immediate corporate parent is Liberty Programming Australia, Inc. ("LPAI"), which in turn is a wholly-owned subsidiary of Liberty Media International, Inc. ("International"), which in turn is wholly owned by LGI. See LCPR Ownership Chart (annexed as Exhibit 11); see also LCPR Application for Pro Forma Transfer of Control, File No. TC-0003119147, granted August 6, 2007 at Exhibit 1, Attachment C. Liberty Media holds no ownership interest in any of these companies. When the Consolidated Application was filed, Liberty Media owned shares of LGI stock representing less than 0.10% of the voting power of LGI. See Consolidated Application at 11. Liberty Media subsequently sold all of those shares. See *Liberty Media Response to Commission Requests for Information*, filed on July 10, 2007, at 9. Thus, to the extent that Liberty Media could divest itself of any direct or indirect ownership interest in LCPR and LGI, it has done so.

Liberty Media and its shareholders would derive no benefit from any conduct that seeks somehow to increase LCPR's revenues by diminishing competition in Puerto Rico. Consequently, there is no incentive for Liberty Media to attempt to use its minority ownership of DIRECTV to engage in conduct to benefit LCPR. Further, as Chairman of Liberty Media's Board, Dr. Malone has fiduciary obligations to Liberty Media's stockholders and must act in their interest.⁵ Similarly, neither LGI nor its stockholders would benefit from conduct designed to increase DTVPR's revenues through reduced competition in LCPR's franchise areas, and LGI would have no incentive to engage in such conduct. Again, as Chairman of LGI's Board, Dr. Malone has fiduciary obligations to LGI's stockholders and must act in their interest.

The corporate governance structures of the relevant entities do not provide a practical opportunity for Liberty Media or Dr. Malone to engage in conduct affecting competition between LCPR and DTVPR. No member of the Board of Directors of Liberty Media sits on the Board of LCPR.⁶ Neither Dr. Malone nor any other Liberty Media director will sit on the Boards of DTVPR or its immediate parent company, DIRECTV Latin America LLC

⁵ Under Delaware law, Dr. Malone, like all directors of a corporation, is required to act as a fiduciary for and in the best interests of all stockholders of that corporation. See, e.g., *Cede & Co. v. Technicolor, Inc.*, 634 A.2d 345, 360 (Del. 1993) ("directors are charged with an unyielding fiduciary duty to protect the interests of the corporation and to act in the best interests of its shareholders") (internal citations omitted).

⁶ The Board of Directors of LCPR consists of two members: Mauricio Ramos and John Babb. See LGI Responses to Commission Requests for Information at 3.

("DTVLA"). Although Dr. Malone serves as Chairman of Liberty Media and LGI and is expected to serve on the Board of DIRECTV, the composition of each of those Boards and the corporate governance requirements and procedures applicable to each of those companies effectively eliminate any opportunity for Liberty Media and/or Dr. Malone to affect competition among MVPDs in Puerto Rico.

A. *Liberty Media Corp.*

Liberty Media is a public company whose shares are traded on the Nasdaq Global Select Market ("Nasdaq"). Liberty Media is not a "controlled company" under Nasdaq rules because no single stockholder or group beneficially owns shares representing more than 50% of Liberty Media's outstanding voting power. Consequently, Nasdaq rules require that: (1) a majority of Liberty Media's eight-person Board be comprised of independent directors;⁷ (2) the compensation of its executive officers be determined by a majority of the independent directors or a compensation committee composed solely of independent directors; and (3) director nominees be selected, or recommended for the Board's selection, either by a majority of the independent directors or a nominating committee composed solely of independent directors. See Nasdaq Marketplace Rule 4350.

Consistent with these requirements, Liberty Media has established a Nominating and Corporate Governance Committee, whose members are Donne F. Fisher, Paul A. Gould, David E. Rapley, M. LaVoy Robison and Larry E. Romrell. Among other things, the committee identifies individuals qualified to become board members consistent with criteria established or approved by Liberty Media's Board of Directors. The individuals identified by the committee as prospective board members are subject to approval by the entire Board. The Nominating and Corporate Governance Committee also identifies director nominees for annual meetings, develops corporate governance guidelines applicable to Liberty Media, and oversees Liberty Media's Board and management. Generally, when an existing director is nominated for re-election, such director is approved for nomination by the Nominating and Corporate Governance Committee and that nomination is ratified by the entire Board.

Liberty Media's Board consists of the following eight members: Robert R. Bennett; Donne F. Fischer; Paul A. Gould; Gregory B. Maffei; Dr. John C. Malone; David E. Rapley; M. LaVoy Robison; and Larry E. Romrell. Dr. Malone serves as Chairman of Liberty

⁷ Nasdaq Marketplace Rule 4200(a)(15) defines "Independent Director" as "a person other than an executive officer or employee of the company or any other individual having a relationship which, in the opinion of the issuer's board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director...." The following five members of Liberty Media's Board qualify as independent directors under the rules and regulations of the Securities and Exchange Commission and the Nasdaq Global Select Market: Donne F. Fisher, Paul A. Gould, David E. Rapley, LaVoy Robison, and Larry E. Romrell.

Media's Board and is a Liberty Media stockholder,⁸ with 5.2% of the equity and 32.3% of the voting power.⁹ He also serves and has one vote on the three-person Executive Committee of Liberty Media. Gregory B. Maffei, President and Chief Executive Officer of Liberty Media and Paul A. Gould, an independent director, serve and each has one vote on the Executive Committee.¹⁰

B. Liberty Global, Inc.

LGI, a separate public company listed on Nasdaq, is the ultimate corporate parent of LCPR.¹¹ Like Liberty Media, LGI is not a "controlled company" under Nasdaq rules because no single stockholder or group beneficially owns shares representing more than 50% of its outstanding voting power. Again, Nasdaq rules require that: (1) a majority of LGI's Board be comprised of independent directors;¹² (2) the compensation of its executive officers be determined by a majority of the independent directors or a compensation committee composed solely of independent directors; and (3) director nominees be selected, or recommended for the Board's selection, either by a majority of the independent directors or a nominating committee composed solely of independent directors.

Consistent with these requirements, publicly available documents indicate that: (a) LGI's Board of Directors has established a Nominating and Corporate Governance Committee, whose members are John P. Cole, Jr., John W. Dick, Paul A. Gould, David E. Rapley, Larry E. Romrell, J.C. Sparkman and J. David Wargo; (b) that committee is responsible for, among other things, identifying and recommending persons as nominees to

⁸ Liberty Media has approximately 4,500 record common stockholders and 135,000 beneficial holders in street name.

⁹ All information regarding Liberty Media stockholdings is based upon ownership information reported in Liberty Media's SEC Form S-4, filed on September 7, 2007. The equity and voting percentages for Dr. Malone include options to acquire Liberty Media shares that are currently exercisable. If such options are excluded, Dr. Malone's equity percentage decreases to 4.7% and voting interest decreases to 30%. See Section IV, *infra*.

¹⁰ Mr. Maffei owns no LGI stock and Mr. Gould owns LGI shares equal to approximately 0.11% of LGI's outstanding equity.

¹¹ Prior to June 7, 2004, LGI's predecessor, Liberty Media International, Inc. ("LMI"), was a wholly-owned subsidiary of Liberty Media and held all of Liberty Media's interests in international cable distribution systems and certain programming assets. On June 7, 2004, Liberty Media distributed all of the outstanding shares of LMI to its stockholders on a pro-rata basis. As a result of this "spinoff," LMI became a separate publicly-traded company, with its stock listed and traded on Nasdaq. Approximately one year after it separated from Liberty Media, LMI merged with UnitedGlobalCom, Inc., forming LGI.

¹² According to publicly available documents, the following seven members of the LGI Board qualify as independent directors under the rules and regulations of the Securities and Exchange Commission and the Nasdaq Global Select Market: John P. Cole, Jr.; John W. Dick; Paul A. Gould; David E. Rapley; Larry E. Romrell; J.C. Sparkman; and J. David Wargo.

LGI's Board of Directors; and (c) when an existing director is nominated for re-election, such director is approved for nomination by the Nominating and Corporate Governance Committee, which then submits its recommendation to LGI's Board of Directors.

LGI's Board of Directors consists of the following ten members: Dr. John C. Malone; Michael T. Fries; John P. Cole, Jr.; John W. Dick; Paul A. Gould; David E. Rapley; Larry E. Romrell; Gene W. Schneider; J.C. Sparkman; and J. David Wargo. Three individuals who serve as independent directors on Liberty Media's Board of Directors -- Paul A. Gould, David E. Rapley, and Larry E. Romrell -- also serve as independent directors (along with four others) on LGI's Board. These individuals have trivial equity interests in Liberty Media and LGI, ranging from zero to 0.11%.¹³

Dr. Malone serves as Chairman of the Board of LGI and owns shares of its stock representing 5.0% of LGI's equity and 31.4% of its voting power.¹⁴ He also serves on the Executive Committee of LGI with Michael T. Fries, LGI's President and CEO.¹⁵ Dr. Malone and Mr. Fries have one vote each on LGI Executive Committee matters.

C. DIRECTV

DTVPR is a wholly-owned subsidiary of DTVLA, which in turn is wholly owned by DIRECTV, a publicly traded company. DIRECTV's Board of Directors currently consists of the following 11 members: Neil R. Austrian; Ralph F. Boyd, Jr.; Chase Carey; Peter Chernin; James M. Cornelius; David F. DeVoe; Charles R. Lee; Peter A. Lund; K. Rupert Murdoch; Nancy S. Newcomb; and Haim Saban. Upon consummation of the transaction, Messrs. Chernin, DeVoe and Murdoch will resign. Although there is no guarantee that they will be elected, DIRECTV has agreed to support the election of Dr. John C. Malone, Gregory B. Maffei and one other person to be named by Liberty Media to replace the three resigning directors.¹⁶ We understand that DIRECTV is providing separately additional information concerning corporate governance issues relating to DIRECTV and DTVPR.

¹³ The equity interests, expressed as a percentage of outstanding equity, held by each of the overlapping independent directors in Liberty Media and LGI are: Paul A. Gould (Liberty Media, 0.09%; LGI, 0.11%); David E. Rapley (Liberty Media, 0.00%; LGI, 0.01%); and Larry E. Romrell (Liberty Media, 0.01%; LGI, 0.01%).

¹⁴ Information regarding LGI stockholdings is based on figures provided in SEC Form SC TO-I, filed on August 10, 2007. The equity and voting percentages for Dr. Malone include options to acquire LGI shares that are currently exercisable. If such options are excluded, Dr. Malone's equity percentage decreases to 4.0% and his voting percentage decreases to 25.6% of LGI. See Section IV, *infra*.

¹⁵ To the best of Liberty Media's knowledge, Mr. Fries does not own any stock in Liberty Media or DIRECTV.

¹⁶ Letter Agreement between DIRECTV and Liberty Media re Directors, December 22, 2006. See LMC I.A. 0000213-216 (confidential document).

In short, Dr. Malone is one of 8 directors on the Board of Liberty Media; one of 10 directors on the Board of LGI; and is expected to be one of 11 directors on the Board of DIRECTV. The majority of each of those Boards, pursuant to Nasdaq and/or New York Stock Exchange rules, is comprised of independent directors. Even if Liberty Media or Dr. Malone had the incentive to attempt to interfere with competition between LCPR and DTVPR, neither would have the ability to do so. There would be no reason to believe that the independent directors of Liberty Media, LGI or DIRECTV would engage in, or approve of, such conduct.

III. Proposed Insulation of Dr. Malone

For the reasons set forth above, Liberty Media does not believe that Dr. Malone's presence on the Boards of LGI and DIRECTV raises a potential competitive issue for the operations of LCPR and DTVPR in Puerto Rico. Nonetheless, Liberty Media has proposed that Dr. Malone be insulated from certain competitive information and decisions regarding LCPR and DTVPR in order to address any conceivable competitive concern. Liberty Media included the following explanation of its insulation proposal in its response to the Commission's Information Request No. I.E.2:

Although no Commission rule prohibits cross-ownership of a cable system and a DBS system, Dr. Malone proposed to recuse himself from all decisions concerning LCPR or the operations of DTVLA in Puerto Rico in order to eliminate any potential issue arising from the de minimis horizontal overlap between DTVLA's operations in Puerto Rico and the cable system operated by LCPR. Consistent with well-established Commission precedent, such insulation would include the aggregation of financial data so that LCPR data or DTVLA data regarding Puerto Rico would not be separately displayed and that reports to Dr. Malone would be redacted to remove information regarding LCPR or DTVLA's operations in Puerto Rico. Matters subject to Dr. Malone's insulation would be discussed separately at all meetings and officers and employees of the affected entities would be informed periodically regarding Dr. Malone's recusal. *See, e.g., Telemundo Group, Inc.*, 10 FCC Rcd. 1104 (1994), at ¶ 25.

Liberty Media's insulation proposal is based upon, and incorporates the elements of, well-established Commission precedent.

Insulation of Dr. Malone is not required to avoid a violation of the Commission's ownership rules because consummation of the proposed transaction would not result in any such rule violation. However, even in situations where a proposed transaction would result in violations of statutory ownership restrictions or specific Commission ownership rules, the

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Commission has recognized that insulation is an appropriate remedy. For example, in *Viacom, Inc.*, 9 FCC Rcd. 1577 (1994), the Commission approved the insulation of a Viacom director in order to avoid a violation of the then-existing broadcast/cable cross-ownership rule in connection with Viacom's merger with Paramount. Frederic Salerno, a Viacom director, also served on the Board of Directors of Avnet, Inc., a publicly traded company, one of whose subsidiaries operated a single cable system within the Grade B contour of a Paramount television station.

Viacom argued that "because Avnet is a multi-faceted corporation" and Salerno's duties as a director of Avnet were unrelated "to the Avnet subsidiary-operated cable system," Salerno could avoid attribution of the cable system and the resultant violation of the broadcast/cable cross-ownership rule by recusing himself from all matters before the Avnet Board concerning the subsidiary's cable system. *Id.* at ¶10. The Commission agreed "that such limited recusal of a director of a parent corporation whose subsidiary is primarily engaged in a business distinct from its one and only cable system is appropriate." *Id.*

In *Craig O. McCaw*, 9 FCC Rcd. 5836 (1994), the Commission approved, in the context of AT&T's proposed acquisition of McCaw Cellular and its subsidiaries (including a controlling interest in LIN Broadcasting), the insulation of several AT&T directors who also sat on the Boards of Time Warner and CBS. Two AT&T directors sat on the Board of Time Warner, which operated cable systems within the Grade B contours of LIN Broadcasting television stations in 5 of the 8 LIN television markets in violation of then-existing statutory ownership restrictions and the broadcast/cable cross-ownership rule. In addition, two other AT&T directors sat on the Board of CBS, which owned television and radio stations such that the overlapping directors would have caused violations of the then-existing: (a) multiple television ownership rule (the "twelve station rule"); and (b) local ownership ("one-to-a-market") rule. *Id.* at ¶147.

AT&T argued that the overlapping directors should be relieved from attribution of the LIN television stations because AT&T was "a multi-faceted company, and its 52 percent ownership of LIN Broadcasting was "a very small part of the operations overseen by the AT&T directors." *Id.* at ¶148. The Commission agreed to relieve the overlapping directors from attribution of the LIN stations provided that: (a) in the "rare event" that a LIN-related matter came before the AT&T Board, those directors would not receive any of the LIN information and would not participate in the decisions; and (b) financial reports presented to the four overlapping directors would be "sufficiently aggregated so that LIN's financial performance will not be separately displayed." *Id.*

Finally, in *Telemundo Group, Inc.*, 10 FCC Rcd. 1104 (1994), the Commission determined that Marc Rowan: (a) held sufficient ownership and positional interests in two companies (Apollo Capital Management, Inc. and Lion Capital Management, Inc.) that had

invested in Telemundo to constitute an attributable interest in Telemundo; and (b) at the same time served as a director of New World Communications, the parent company of the licensees of 11 television stations, at least one of which had a service area overlapping a Telemundo station's service area in California. Absent insulation, Rowan's attributable interests in Telemundo and New World would have violated the national ("twelve station") and local multiple ownership ("duopoly") rules at the time. Telemundo proposed that Rowan would recuse himself from any discussion of Telemundo television issues and that "the financial reports for Apollo Capital and Lion Capital will be sufficiently aggregated so that Telemundo's performance figures are not separately displayed." *Id.* at ¶25.

The Commission acknowledged that it previously had "recognized director recusal from a multi-faceted corporation's television business as a predicate for relief from attribution." *Id.* at ¶26. It approved the proposed insulation of Rowan without determining whether Apollo or Lion constituted a "multi-faceted" company, concluding that "their apparently singular business as investment companies can be divided into discrete investment activities," thereby lending themselves to an insulation remedy. *Id.*

Unlike each of the above cases, there is no statute or rule prohibiting Dr. Malone from owning stock in LGI or from serving on the Boards of LGI and DIRECTV. No waiver of any Commission rule is required. Nonetheless, Liberty Media has proposed insulation to address any potential competitive questions arising from Dr. Malone's ownership of LGI stock or his service on the Boards of LGI and DIRECTV. Such insulation clearly would remove any competitive concern under this well-established and consistent Commission precedent. LGI is a multi-faceted company, with hundreds of subsidiaries providing broadband services in over 17 countries. LCPR represents a minute fraction of the operations overseen by the LGI Board members. It would be simple to insulate Dr. Malone from information and decisions regarding LCPR and to aggregate financial information sufficiently so that LCPR's financial performance would not be separately displayed. Moreover, the LGI Board includes an experienced communications attorney who can assist LGI in implementing such insulation measures.

Likewise, DIRECTV is a multi-faceted company providing DBS services throughout the United States and Latin America. DTVPR's operations in Puerto Rico represent less than [REDACTED] of DIRECTV's annual revenues, and DTVPR's operations within the LCPR franchise areas represent less than [REDACTED]. Again, it would be a simple matter to insulate Dr. Malone from competitive information about DTVPR operations, services and pricing. DTVPR's financial information can be aggregated into the operations of DTVLA so that it would not be separately reported to Dr. Malone.

IV. Ownership Interests of Dr. Malone

The Commission staff has requested updated information on Dr. Malone's ownership interests in Liberty Media, LGI and DHC, as reported in Schedule 3 to Liberty Media's response to the Commission's Information Request, filed on July 10, 2007.

A. *Liberty Media*

Based on information provided in Liberty Media's SEC Form S-4, filed on September 7, 2007, Dr. Malone holds shares in Liberty Interactive and Liberty Capital, the two tracking stocks that track separate groups of Liberty Media assets and businesses.¹⁷ The shares held by Dr. Malone in Liberty Interactive represent 5.21% of the outstanding shares of Liberty Interactive as of June 30, 2007. The shares held by Dr. Malone in Liberty Capital represent 5.18% of the outstanding shares of Liberty Capital as of June 30, 2007. Taken together, the shares held by Dr. Malone in Liberty Interactive and Liberty Capital represent 5.2% of the outstanding shares of Liberty Media common stock as of June 30, 2007.

The shares upon which the above ownership percentages were calculated include: (a) shares owned by Dr. Malone; (b) shares owned by his wife, Leslie Malone (as to which shares Dr. Malone has disclaimed beneficial ownership); (c) shares held in the Liberty Media 401(k) savings plan; (d) shares held by a trust with respect to which Dr. Malone is sole trustee; (e) restricted shares; and (f) shares that are subject to options which are exercisable as of, or within 60 days of, June 30, 2007 (and, with respect to certain options to purchase Series B shares, as to which Dr. Malone has the right to convert such options into options to purchase an equivalent number of Series A shares of the applicable group stock).

Based upon the number of shares outstanding as of June 30, 2007, adjusted for the assumed exercise of certain options by Dr. Malone, the percentage of each series of Liberty Interactive and Liberty Capital owned by Dr. Malone is as follows:

Liberty Interactive A (LINTA) -- 0.53%
Liberty Interactive B (LINTB) -- 90.50%
Overall Voting Power of Liberty Interactive -- 32.41%

Liberty Capital A (LCAPA) -- 0.56%
Liberty Capital B (LCAPB) -- 90.51%

¹⁷ Liberty Media has announced its intention to split Liberty Capital into Liberty Entertainment and New Liberty Capital tracking stocks contingent upon consummation of this transaction. Liberty Entertainment would track the DIRECTV, Starz Encore, Regional Sports Networks, FUN Technologies, GSN and WildBlue assets and businesses of Liberty Media.

Ms. Marlene H. Dortch

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Overall Voting Power of Liberty Capital -- 32.02%

Taken together, the shares represent 5.2% of the outstanding shares and 32.34% of the voting power of the outstanding shares of common stock of Liberty Media as of June 30, 2007. If Dr. Malone's exercisable options are excluded from these calculations, the percentages decrease to 4.7% of the outstanding shares and 30.0% of the voting power of the outstanding shares of common stock of Liberty Media as of June 30, 2007.

B. LGI

Based on information disclosed by LGI in SEC Form SC TO-I, filed on August 10, 2007, Dr. Malone holds shares in LGI (including Series A, Series B and Series C shares) representing 5.0% of the outstanding shares and 31.4% of the voting power of all outstanding shares of LGI as of August 1, 2007. The shares upon which the above ownership percentages were calculated include: (a) shares owned by Dr. Malone; (b) shares owned by his wife, Leslie Malone (as to which shares Dr. Malone has disclaimed beneficial ownership); (c) shares held in the Liberty Media 401(k) savings plan; (d) shares held by one or more trusts with respect to which Dr. Malone is sole trustee; (e) shares which are restricted, and none of which will vest within 60 days of August 1, 2007; (f) shares that are subject to options which were exercisable as of, or within 60 days of, August 1, 2007 (and, with respect to certain options to purchase Series B shares, as to which Dr. Malone has the right to convert such options into options to purchase an equivalent number of Series A shares); and (g) shares pledged to Bank of America in connection with a line of credit extended to Dr. Malone. If options are excluded from these calculations, the ownership and voting percentages decrease to 4.0% of the outstanding shares and 25.6% of the voting power of the outstanding shares of LGI.

C. DHC

The shares held by Dr. Malone in DHC (including Series A and Series B shares) represent 5.47% of all outstanding shares and 31.08% of the overall voting power of DHC as of July 31, 2007. The shares upon which the above ownership percentages were calculated include: (a) shares owned by Dr. Malone; (b) shares owned by his wife, Leslie Malone (as to which shares Dr. Malone has disclaimed beneficial ownership); (c) shares held by two trusts with respect to which Dr. Malone is the sole trustee; and (d) shares that are subject to options which were exercisable as of, or within 60 days of, July 31, 2007 (and, with respect to certain options to purchase Series B shares, as to which Dr. Malone has the right to convert such options into options to purchase an equivalent number of Series A shares).

Based on the number of shares outstanding as of July 31, 2007, the percentage of each series of DHC capital stock owned by Dr. Malone is as follows:

Series A (DISCA) -- 1.29%
Series B (DISCB) -- 92.24%¹⁸
Overall Voting Power of DHC -- 31.08%

V. Amendment to Pending Application

Liberty Media hereby amends the Consolidated Application to report the following developments since the application was filed on January 29, 2007.¹⁹

A. Broadcast Interests

The Consolidated Application stated at 2 and 18 that, unlike News Corp., Liberty Media held no ownership interest in any broadcast station or network. As reported by letter dated April 26, 2007, Liberty Media subsequently acquired the licensee of WFRV-TV in Green Bay-Appleton, Wisconsin and its satellite station, WJMN-TV in Marquette, Michigan. Liberty Media holds no other attributable broadcast interests except for its ownership interest in News Corp, which it is exchanging in this transaction. The April 26 letter also reported that Liberty Media "proposes to adopt each of the broadcast-related conditions imposed on News Corp. in the News Corp. Order" with respect to these stations.

B. Number of Shares and Percentage Being Acquired

The Consolidated Application reported at 3, 13 and 14 that Liberty Media would acquire a 38.4% interest in DIRECTV as a result of the proposed transaction. Because of share repurchases by DIRECTV during the interim, that percentage interest is now approximately 40.36% of DIRECTV, although the number of shares being acquired by Liberty Media has remained the same.

¹⁸ This ownership percentage does not include 54,805 shares of Series B stock purchased by Dr. Malone on September 28, 2007, which does not materially affect the overall equity and voting percentages reported here.

¹⁹ Liberty Media also amends the Consolidated Application to include the updated information concerning Dr. Malone's interests in Liberty Media, LGI and DHC, as set forth in Section IV above. That information amends the ownership information that appears at pages 10-11 (DHC), 12 (LGI) and 23 (Liberty Media) of the Consolidated Application.

C. *DIRECTV Latin America*

The Consolidated Application stated at 6 that DIRECTV owned 86% of DTVLA. DIRECTV reported in its February 2, 2007 letter that it had acquired the remaining 14% interest in DTVLA from Darlene Investments such that DIRECTV now owns 100% of DTVLA.

D. *DHC Interest in Discovery Communications*

The Consolidated Application stated at 11 that DHC owned 50% of Discovery Communications, Inc. ("DCI") and that Cox Communications, Inc. ("Cox") and Advance Newhouse Programming Partnership ("Advance/Newhouse") each owned 25 percent. As reported in DHC's response to the Commission's Information Request, filed on July 9, 2007, DHC's interest in DCI,²⁰ which is held indirectly through Discovery Communications Holding LLC ("Discovery LLC"), increased to 66% when Discovery LLC acquired Cox's 25% interest. As reported in an SEC Form 8(K) Report, filed by DHC on September 21, 2007, DHC and Advance/Newhouse are engaged in preliminary discussions concerning an exchange of Advance/Newhouse's interests in Discovery LLC for shares of DHC.

E. *Sale of Liberty Media Interest in LGI*

The Consolidated Application stated at 11, 23 and 25 that Liberty Media held a *de minimis* ownership interest in LGI, equal to approximately 0.10% of the outstanding equity in LGI. As reported in Liberty Media's response to the Commission's Information Request, at 20, n.1, Liberty Media sold that interest and no longer holds any ownership interest in LGI.

F. *Status of Sling Media*

Although not mentioned in the Consolidated Application, Liberty Media referred to its interest in Sling Media, Inc. in responding to the Commission's Information Request Nos. IV.A and B concerning certain anticipated public interest benefits from the proposed transaction. Liberty Media recently learned that EchoStar has agreed to purchase Sling Media. Consequently, Liberty Media does not expect to retain any ownership interest in that entity.

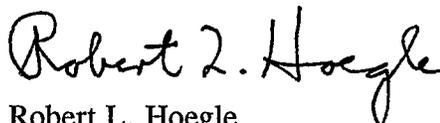
²⁰ On May 14, 2007, DCI converted from a corporation to a limited liability company and is now known as Discovery Communications LLC.

Conclusion

The minimal horizontal overlap between LCPR and DTVPR in franchise areas in Puerto Rico with unique demographic and viewing characteristics provides no realistic opportunity for manipulating MVPD competition to the detriment of consumers. Further, the totality of the revenues associated with such overlap, much less any incremental revenues achievable through such manipulation, are *de minimis* in the context of this transaction. Finally, the existing ownership and board structures of LGI and DIRECTV, coupled with Liberty Media's insulation proposal, effectively eliminate any potential concern, using a narrowly-tailored remedy which the Commission consistently has recognized to be reasonable and effective in well-established Commission precedent involving far more significant competitive concerns.

Liberty Media respectfully submits that the well-developed record in this proceeding and the undertakings which it made at the outset establish that grant of the Consolidated Application is in the public interest. If the Commission staff has any further questions concerning the proposed transaction or if the applicants can otherwise expedite the Commission's review and approval of the Consolidated Application, please contact us.

Respectfully submitted,



Robert L. Hoegle
Timothy J. Fitzgibbon
Nelson Mullins Riley & Scarborough LLP
Counsel for Liberty Media Corporation

RLH/TJF:kjk

Enclosures

cc: Rosemary Harold, Rosemary.Harold@fcc.gov (w/o encls.)
Sarah Whitesell, Sarah.Whitecell@fcc.gov (w/o encls.)
Tracy Waldon, Tracy.Waldon@fcc.gov (w/o encls.)
Royce Sherlock, Royce.Sherlock@fcc.gov (w/o encls.)
Mania Baghdadi, Mania.Baghdadi@fcc.gov (w/o encls.)
William Beckwith, William.Beckwith@fcc.gov (w/o encls.)
Jim Bird, Jim.Bird@fcc.gov (w/o encls.)
Marilyn Simon, Marilyn.Simon@fcc.gov (w/o encls.)

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of:)	
)	
Liberty Cablevision of Puerto Rico, Ltd.)	
)	CSR-7015-E, 7016-E, 7017-E, 7018-E,
Petition for Determination of Effective)	7019-E, 7020-E, 7021-E, 7022-E, 7023-E
Competition in Seven Local Franchise Areas in)	
the Commonwealth of Puerto Rico)	

MEMORANDUM OPINION AND ORDER

Adopted: October 26, 2006

Released: October 27, 2006

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. This Order considers a Petition for Special Relief ("Petition") that the cable operator Liberty Cablevision of Puerto Rico, Ltd. ("Liberty"), filed with the Commission pursuant to Sections 76.7, 76.905, and 76.907 of the Commission's rules.¹ The Petition seeks a determination that, in seven franchise areas in the Commonwealth of Puerto Rico,² Liberty is subject to effective competition pursuant to Section 623(a)(2) of the Communications Act of 1934, as amended ("Communications Act"),³ and is therefore exempt from cable rate regulation. No opposition to the Petition was filed. Finding that Liberty is subject to effective competition in the seven franchise areas, we grant the Petition.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,⁴ as that term is defined by Section 623(l)(1) of the Communications Act⁵

¹ 47 C.F.R. §§ 76.7, 76.905, 76.907. Liberty filed a Motion for Expedited Treatment of Petition for Special Relief ("Motion"). Because we are releasing this Memorandum Opinion and Order, we need not act on the Motion.

² In Exhibit 1 to its Petition, Liberty numbers the franchise areas 1 through 7 and lists the "Franchise ID" of each one and the communities it contains. They are as follows: #1, Franchise ID FC-27 (Aguas Buenas, Aibonito, Barranquitas, Cayey, Cidra, Comerio, Naranjito); #2, Franchise ID FC-38 (Dorado, Vega Alta, Vega Baja, Manati); #3, Franchise ID FC-39 (Hajardo, Luquillo, Ceiba, Rio Grande, Canovanas, Loiza, Naguabo); #4, Franchise ID FC-41 (Arecibo, Camuy, Hatillo, Barceloneta); #5, Franchise ID FC-59 (Caguas, Gurabo, San Lorenzo, Humacao, Juncos, Las Piedras, Yabucoa); #6, Franchise ID FC-74 (San Sebastian, Utuado, Lares); #7, Franchise ID FC-75 (Ciales, Florida, Corozal, Morovis, Orcovis). We assigned the Petition nine file numbers because the seven franchise areas in question encompass nine systems each of which has an FCC Physical System Identification Number.

³ 47 U.S.C. § 543(a)(2).

⁴ 47 C.F.R. § 76.906.

⁵ 47 U.S.C. § 543(l)(1).

and Section 76.905 of the Commission's rules.⁶ A cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that it does exist in its franchise area.⁷

II. DISCUSSION

A. Low Penetration Effective Competition

3. Section 623(I)(1)(A) of the Communications Act provides that a cable operator is subject to effective competition, and therefore exempt from cable rate regulation, if "fewer than 30 percent of the households in the franchise area subscribe to the cable service of a cable system."⁸ Liberty provided information showing that fewer than 30 percent of the households within the five franchise areas listed in Attachment A subscribe to its cable service. Based on this record, we conclude that Liberty has demonstrated the existence of low penetration effective competition under our rules in those five franchise areas.

B. Competing Provider Effective Competition

4. Section 623(I)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition in a franchise area if the area is (a) served by at least two unaffiliated multi-channel video programming distributors ("MVPDs") each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds 15 percent of the households in the franchise area.⁹

5. In its Petition, Liberty claims the presence of effective competition stems from the competing services provided by two direct broadcast satellite ("DBS") providers, DirecTV, Inc. and the DISH Network.¹⁰ Turning to the first prong of the competing provider test, DBS service is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in a franchise area are made reasonably aware that the service is available.¹¹ Liberty has also provided evidence that the DBS providers' service is available in Puerto Rico.¹² Moreover, the two DBS providers' subscriber growth reached approximately 26.1 million as of June 2005, comprising approximately 27.7 percent of all MVPD subscribers nationwide; DirecTV has become the second largest, and DISH the third largest, MVPD provider.¹³ With respect to the issue of program comparability, we find that the programming of the DBS providers satisfies the Commission's program

⁶ 47 C.F.R. § 76.905(b).

⁷ See 47 C.F.R. §§ 76.906, 76.907(b).

⁸ 47 U.S.C. § 543(I)(1)(A).

⁹ 47 U.S.C. § 543(I)(1)(B).

¹⁰ Petition at 6-9.

¹¹ *Mediacom Southeast, LLC*, DA 06-776 at ¶ 3 (rel. April 4, 2006).

¹² Petition, Exhibits 3 (evidence that signals from DISH Network's satellites reach Puerto Rico), 4 (evidence that DIRECTV's service reaches Puerto Rico), DIRECTV promotional material directed at Puerto Rico), 5 (DISH Network promotional material directed at Puerto Rico and lists of stores where DISH Network equipment is available).

¹³ *Twelfth Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, FCC 06-11 at ¶¶ 6, 13, 72-73 (rel. March 3, 2006).

comparability criterion because, in the four franchise areas in question, the DBS providers offer at least 12 channels of video programming, including at least one non-broadcast channel.¹⁴ We find that Liberty has demonstrated that the four franchise areas are served by at least two unaffiliated MVPDs, namely the two DBS providers, each of which offers comparable video programming to at least 50 percent of the households in the four franchise areas. Liberty has also demonstrated that the two DBS providers are physically able to offer MVPD service to subscribers in those areas, that there exist no regulatory, technical, or other impediments to households within the areas taking the services of the DBS providers, and that potential subscribers in the areas have been made reasonably aware of the MVPD services of DirecTV and DISH.¹⁵ Therefore, the first prong of the competing provider test is satisfied for each of the four franchise areas in question.

6. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Liberty states, and we have no cause to doubt, that it is the largest MVPD in the four franchise areas where it claims to be subject to competing provider effective competition.¹⁶ To make the numerical showing required by the second prong, Liberty furnished us with Effective Competition Tracking Reports from the Satellite Broadcasting and Communications Association.¹⁷ Based upon the DBS subscriber penetration levels as reflected in Attachment B, calculated using 2000 Census household data, we find that Liberty has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in the four franchise areas listed in Attachment B.¹⁸ Therefore, the second prong of the competing provider test is satisfied. Based on the foregoing, we conclude that Liberty has submitted sufficient evidence demonstrating that its cable systems serving the four franchise areas listed in Attachment B are subject to competing provider effective competition.

III. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that the Petition for Special Relief filed by Liberty Cablevision of Puerto Rico, Ltd., for a determination of effective competition in the franchise areas listed in Attachments A and B **ARE GRANTED**.

8. **IT IS FURTHER ORDERED** that the certifications to regulate basic cable service rates granted to any of the local franchising authorities overseeing Liberty in the franchise areas listed in Attachments A and B **ARE REVOKED**.

¹⁴ 47 C.F.R. § 76.905(g); Petition, Exhibit 7.

¹⁵ See citations to Petition and Exhibits in nn.12 & 14, *supra*.

¹⁶ Petition at 10.

¹⁷ *Id.* at 10 & Exhibit 6.

¹⁸ *Id.*, Exhibit 1 (asserting that over 15% of households subscribe to DBS service in all seven Liberty franchise areas in Puerto Rico).

9. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.¹⁹

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broecker
Deputy Chief, Policy Division, Media Bureau

¹⁹ 47 C.F.R. § 0.283.

Attachment A

Liberty Cablevision of Puerto Rico, Ltd.

Low Penetration Effective Competition

Franchise Area	Communities	Cable Subscribership	2000 Census Households*	Cable Subscribers*
#1, FC-27	Aguas Buenas Aibonito Barranquitas Cayey Cidra Comerio Naranjito	11.4%	70392	8050
#4, FC-41	Arecibo Camuy Hatillo Barceloneta	29.9%	65895	19730
#5, FC-59	Caguas Gurabo San Lorenzo Humacao Juncos Las Piedras Yabucoa	23.0%	126429	29079
#6, FC-74	San Sebastián Utua Lares	12.2%	37151	4539
#7, FC-75	Ciales Florida Corozal Morovis Orocovis	19.8%	37157	7368

Attachment B

Liberty Cablevision of Puerto Rico, Ltd.

Competing Provider Effective Competition

Franchise Area	Communities	CPR+	2000 Census Households*	DBS Subscribers*
#2, FC-38	Dorado Vega Alta Vega Baja Manati	21.6%	57805	12506
#3, FC-39	Fajardo Luquillo Ceiba Rio Grande Canovanas Loiza Naguabo	18.0%	73844	13328
#4, FC-41	Arecibo Camuy Hatillo Barceloneta	18.4%	65895	12156
#5, FC-59	Caguas Gurabo San Lorenzo Humacao Juncos Las Piedras Yabucoa	21.2%	126429	26797

* = See Cable Operator Petition

+ CPR = Percent DBS penetration

