

November 20, 2007

BY ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *In the Matter of Leased Commercial Access; Development of Competition
and Diversity in Video Programming Distribution and Carriage,*
MB Docket No. 07-42
EX PARTE

Dear Ms. Dortch:

On November 19, 2007, Mr. Turetsky of Dewey & LeBoeuf LLP, spoke with Michelle Carey of Chairman Martin's Office on behalf of HDNet LLC to discuss the Commission's programming carriage complaint rules, 47 C.F.R. §§ 76.1300 *et seq.*, in the above-captioned proceeding. The following is a summary of the points made and attached are the documents that were discussed.

HDNet LLC agrees with the commenters who state that the Commission's complaint procedures must be revised to allow unaffiliated video programming providers timely and effective recourse when multichannel video programming distributors ("MVPDs") discriminate or otherwise improperly refuse access to their systems. The availability of recourse that leads in a timely fashion to carriage on reasonable and nondiscriminatory terms and conditions should also serve to promote private negotiations and agreements that comply with the law.

For unaffiliated video programming providers to invest, innovate, compete effectively, and bring high quality and diverse programming to consumers, it is particularly important that the complaint rules be carefully structured to continue to protect them once they are on the system. Unaffiliated video programming providers need effective protections when confronted with discriminatory or other illegal conduct by an MVPD after they have obtained carriage. For these legal rights to have any practical meaning, an unaffiliated video programming provider must be able to obtain and complete an independent, thorough and fair review of any proposed adverse material action that it believes is discriminatory, retaliatory, anticompetitive, or otherwise illegal, *before* such action is implemented. During this process, which must include access to relevant information controlled by the MVPD, the status quo should remain in force and the unaffiliated video programming provider should remain on the system. In particular, before completion of such process, the unaffiliated video programming provider should not be

subjected to implementation of any discriminatory or otherwise impermissible adverse change of tier, package, channel position, etc.

If an unaffiliated video programming provider cannot be certain that it can obtain a full, fair and independent review that will be completed prior to the MVPD's implementation of the discriminatory or otherwise illegal action, it will simply find the rights and protections afforded by law illusory. Serious and irreparable injury occurs very quickly to an unaffiliated video programming provider if an MVPD is able to discriminate against it, such as by adversely changing its tier. If that adverse action is permitted to become effective prior to completion of a thorough and fair review, with access to all necessary information, the unaffiliated network will likely face the loss of viewers, advertisers, license or other revenue necessary to pay expenses and make investments, and programming content in favor of other networks that offer wider exposure, such as those affiliated with the integrated MVPD. The availability of a review after that occurs may at best be of limited value. Moreover, the ability of an MVPD to engage in such harmful discriminatory or retaliatory activity, coupled with uncertainty by an unaffiliated video programming provider as to whether it can obtain a full and thorough prior review, could enable the MVPD to extract concessions from an unaffiliated video programming provider based on the threat of conduct that is likely outside the law.

Finally, it is also critical that the complaint process provide a timely opportunity for a full, fair and independent review to protect unaffiliated programming providers from retaliation and discrimination affecting continued carriage as expiration of an existing carriage agreement approaches. Without such protection, the MVPD will possess so much effectively unchecked leverage that the statutory rights intended to be protected by a complaint process may be meaningless. An MVPD could retaliate by allowing the clock to run and harmful uncertainty about the unaffiliated video programming provider to mount, or even by allowing the arrangement to expire and then removing the unaffiliated video programming provider from the platform. Without the certain availability of a timely and comprehensive prior review, the price that an MVPD can inflict on an unaffiliated video programming provider for asserting its rights is high and the value from doing so will potentially be quite limited. Any effective or comprehensive scheme must, if matters get that far, allow the unaffiliated video programming provider to remain on the system during the pendency of all reviews, and be particularly sensitive to the potential for retaliation and discrimination at the end of a carriage agreement.

The attached documents, as discussed, illustrate some of the discrimination and harm to which an unaffiliated video programming provider may be exposed. Attachment 1 is a verified petition for a temporary restraining order and injunctions that HDNet LLC recently filed against DIRECTV in Texas state court for breach of their carriage contract. Attachment 2 is the sworn affidavit of Mark Cuban, co-founder of HDNet LLC, also filed in the Texas litigation, which discusses the injury to HDNet LLC. Attachment 3 is a copy of the Temporary Restraining Order that HDNet LLC successfully obtained. Attachment 4 is an *ex parte* submission that

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HDNet LLC submitted in the Liberty Media Corporation/DIRECTV merger proceeding, MB Docket No. 07-18. Finally, Attachment 5 is a recent article that describes how Liberty Media Corporation, which is seeking to control DIRECTV, is interested in buying independent video programming providers, sees them as doomed, and thinks that it will make a better owner of that programming because it is vertically integrated.

Respectfully submitted,

/s/ David S. Turetsky

David S. Turetsky
Dewey & LeBoeuf LLP
1101 New York Avenue NW, Suite 1100
Washington, DC 20005-4213
Counsel to HDNet LLC

/s/ Kathleen Wallman

Kathleen Wallman
Wallman Consulting, LLC
9332 Ramey Lane
Great Falls, VA 22066
Advisor to HDNet LLC

Enclosures

cc: Michelle Carey, FCC (via e-mail)

Attachment 1

HDNET LLC,

Plaintiff,

v.

DIRECTV GROUP, INC., DIRECTV
HOLDINGS LLC, DIRECTV
ENTERPRISES, LLC, and DIRECTV,
INC.,

Defendants.

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IN THE DISTRICT COURT OF

DALLAS COUNTY, TEXAS

101st JUDICIAL DISTRICT

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CLERK OF DISTRICT COURT
DALLAS COUNTY, TEXAS
DEPUTY
11-14-07 11:32

**FIRST AMENDED VERIFIED PETITION AND APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND TEMPORARY AND PERMANENT INJUNCTIONS**

TO THE HONORABLE JUDGE OF SAID COURT:

HDNet LLC (“HDNet”), plaintiff, files this First Amended Petition and Application for Temporary Restraining Order and Temporary and Permanent Injunctions against Defendants DIRECTV Group, Inc.; DIRECTV Holdings LLC; DIRECTV Enterprises, LLC, and DIRECTV, Inc. (collectively “DIRECTV” or “Defendants”), and for cause of action would respectfully show the Court as follows:

1. HDNet intends to conduct discovery pursuant to a Level 3 Discovery Control Plan as set forth in Texas Rule of Civil Procedure 190.

I.

INTRODUCTION

2. After using HDNet as the critical lynchpin to establish DIRECTV as the industry leader for high-definition broadcasting, DIRECTV is now embarking on an unlawful campaign to destroy HDNet and to usurp its position in the market. In gross violation of their contractual obligations, Defendants have decided to effectively kill HDNet’s viewership by moving the two HDNet networks from their current DIRECTV broadcast package – where the channels are

distributed to more than 2,000,000 households – to a newly created obscure and overpriced package that puts the HDNet channels well beyond the reach of the average television viewer. In its place, Defendants seek to feature their own programming and that of their favored partners, Liberty Media Corporation (“Liberty”) and entities controlled by Liberty’s Chairman, John C. Malone. The Court and jury should not allow such discriminatory and abusive behavior to continue. For Defendants’ actions, HDNet seeks emergency injunctive relief, actual and punitive damages, attorney’s fees, pre- and post-judgment interest, and costs.

II.

PARTIES, JURISDICTION, AND VENUE

3. Plaintiff HDNet is a Delaware corporation with its principal place of business in Dallas County, Texas.

4. Defendant DIRECTV Group, Inc. is a Delaware corporation with its principal place of business in New York. DIRECTV Group, Inc. may be served with process by serving its agent of record, Corporation Service Co., 2711 Centerville Road, Suite 400, Wilmington, DE 19808.

5. Defendant DIRECTV Holdings LLC is a Delaware corporation with its principal place of business in El Segundo, California. DIRECTV Holdings LLC may be served with process by serving its agent of record, Corporation Service Co., 2711 Centerville Road, Suite 400, Wilmington, DE 19808.

6. Defendant DIRECTV Enterprises, LLC is a Delaware corporation with its principal place of business in El Segundo, California. DIRECTV Enterprises, LLC may be served with process by serving its agent of record, Corporation Service Co., 2711 Centerville Road, Suite 400, Wilmington, DE 19808

7. Defendant DIRECTV, Inc. is a California corporation with its principal place of business in California. DIRECTV, Inc. may be served with process by serving its agent of record, Corporation Services, 701 Brazos Street, Ste. 1050, Austin 78701.

8. Jurisdiction is proper in this Court because the amount in controversy exceeds the minimum jurisdictional limits of this Court and all parties are subject to personal jurisdiction in Texas based on their residences, state of organization, and the conduct alleged herein.

9. Venue is proper in Dallas County because all or a substantial part of the events or omissions giving rise to Plaintiff's claim occurred in Dallas County. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 15.002(1).

IV.

FACTUAL BACKGROUND

10. DIRECTV is a conglomeration of companies that, together, operate as the largest direct-to-home digital television service and the second largest provider in the multi-channel video programming distribution industry in the United States. Unlike traditional television broadcasting and cable companies, DIRECTV uses satellites to deliver programming directly to customers that have purchased subscriptions to their services.

11. Since its creation, DIRECTV has competed for subscribers. To succeed, DIRECTV initially needed to convince viewers to purchase and subscribe to a satellite system rather than obtaining their home television programs from the users' traditional – and free – antennae broadcast.¹ Moreover, DIRECTV needed viewers to choose their satellite system as opposed to more established cable television or other satellite systems.

12. For DIRECTV, the perceived solution was to differentiate their services from the competition, and to convince viewers that DIRECTV offered more – and better – viewing

¹ DIRECTV faced little or no competition in areas where no cable or regular broadcasting was available.

choices that would justify the expense. A key component of that strategy was high-definition broadcasting.

A. Defendants Seek to Become the Leader in High-Definition Broadcasting.

13. High-definition television (“HDTV”) is a digital television broadcasting system that provides significantly higher picture resolution than traditional broadcasting. By producing images that have significantly more pixels per inch than standard broadcasting and by using faster progressive encoding (*i.e.*, showing more frames per second), HDTV offers much better picture quality than standard television. This greater clarity means the picture seen on the television screen is less blurred and less fuzzy. HDTV also brings other benefits such as smoother motion, richer and more natural colors, and the ability to allow a variety of input devices to work together.

14. As a key part of their strategy to differentiate themselves from the competition, Defendants decided to brand DIRECTV as the industry leader in HDTV.

15. This commitment to HDTV was important to DIRECTV. In mid-2003, DIRECTV had more than 11.4 million customers, and advertised that it was the entertainment service of choice for nearly one in every nine television households in the country. Additionally, the company was in the process of being spun-off from General Motors and was seeking investors for the new company.

16. In the presentations made to potential investors, DIRECTV’s chairman and CEO, Eddy Hartenstein, touted the fact that DIRECTV was expecting significant growth among viewers and would experience rapidly accelerating cash flow under its new strategy. The gravamen of the new strategy was to differentiate DIRECTV’s service offerings from cable by,

among other things, offering customers “an un-paralleled selection of high definition-programming.”

17. At that time, the key to HDTV was HDNet, as it owned the only two full-time HDTV networks.

B. To Implement Their HDTV Strategy, Defendants Enter Into a Distribution Contract with HDNet.

18. HDNet was formed in 2001 by Mark Cuban and Philip Garvin. Since its inception, HDNet has been a pioneer in the television industry’s venture into HDTV. HDNet was the nation’s first national television network to present all of its programming in 1080i HD, the highest-quality format of HDTV, and today still televises more hours of original 108i HD sports, entertainment, and news programming each week than any other network.

19. HDNet offers two HD channels: “HDNet” and “HDNet Movies.” “HDNet” presents original and licensed programs – such as the groundbreaking *HDNet World Report* and *Dan Rather Reports* and the *HDNet Sunday Concert Series*, which has the largest HD concert library in the world – live sporting events, such as games from the National Hockey League, Major League Soccer, and college football and basketball, and more. HDNet also owns the exclusive HD rights to certain major events, such as all NASA shuttle launches. Its counterpart, “HDNet Movies,” presents full-length motion pictures without commercial interruption, including both original productions and licensed features. HDNet Movies is the only network in the world to offer *Sneak Previews*, which are exclusive showings of nationally released theatrical offerings shown *before* they are even in theaters. The first of which was the Academy Award nominated *Enron: The Smartest Guys in the Room*. In fact, many of the films released as a *Sneak Preview* have been nominated for an award. In addition, HDNet Movies has offered the High Definition World Premiere of some of the most highly respected movies ever made,

including classic films such as *West Side Story*, *One Flew Over the Cuckoos Nest*, *Blues Brothers*, *Blazing Saddles*, and many more. Unlike other HD movie channels, none of the motion pictures shown on HDNet Movies are ever up-converted (which can compromise the HD image), nor does HDNet Movies accept movies that were not shot in film or originally in High Definition. That defines HDNet Movies as unique in the world of movie channels.

20. In mid-2003, there were very few non-premium HDTV channels available for DIRECTV to broadcast, and none offered HDTV full-time except for HDNet and HDNet Movies. Thus, if DIRECTV intended to offer the most HDTV programming, HDNet and its stable of programming would be essential.

21. HDNet signed a written contract with DIRECTV on January 1, 2002 to offer HDNet's HDTV programming to viewers. That relationship was expanded in 2003, when DIRECTV signed a contract with HDNet whereby DIRECTV obtained the rights to broadcast HDNet's two channels in exchange for paying HDNet a per-subscriber monthly fee.

22. A key provision in the 2003 contract was Defendants' guarantee to feature HDNet's channels in DIRECTV's main HDTV programming package. As the contract reads:

If DIRECTV distributes a tier or package containing television-programming services in any high definition format, DIRECTV will immediately include both [HDNet and HDNet Movies] as part of *the most widely distributed tier or package* for which the customer pays a separate fee containing such services (the "[HD] Tier"). . . . Once launched, except as expressly set forth herein, *at no time during the Term may DIRECTV delete either or both of [HDNet and HDNet Movies] from the platform.*

The contract's term runs from June 2, 2003 through December 31, 2008.

23. The relationship looked like a perfect match. DIRECTV received much-needed HDTV content that it could tout to investors and customers, while HDNet expanded its viewership. Even after other channels – such as ESPN HD and Discovery HD Theatre –

followed HDNet's pioneering ways, HDNet and HDNet Movies still comprised 50 percent of DIRECTV's non-premium HD programming, for which the Defendants charged a significant monthly fee.

C. Defendants Launch their HDTV Programming Tier with HDNet as a Central Figure.

24. On June 3, 2003, DIRECTV issued a press release announcing the new HDTV premium package referenced in the contract. This new service was touted to potential DIRECTV investors as a major milestone for the Defendants. As Mr. Hartenstein noted: "Beginning July 1st, DIRECTV will offer a new HDTV programming package consisting of Discovery HD Theater, ESPN HD, HDNet and HDNet Movies. This package will be offered to customers a la carte for \$10.99 per month and will include selected sporting events in high-definition."

25. With this premium package in place – and HDNet providing 50 percent of the HD content – DIRECTV marketed itself to viewers and investors as the unquestioned leader in HDTV. As Stephanie Campbell, the Senior Vice President for Programming for DIRECTV stated: "Over the last year, as the HD category has gained tremendous momentum, our customers have told us they want more HD programming. The launch of this HD package reinforces DIRECTV's commitment to the category, and to offering our customers the best quality high-definition programming."

26. This announcement formally triggered the "HD Tier" provision of the contract. As required, Defendants broadcast the two HDNet networks on the most widely distributed tier for which they charged a fee (then called the "HD Access" fee). Because the HD Tier clause was triggered, Defendants also had the ability to decrease its payments to HDNet by a set percentage for each HDTV network that was included in the HD tier. DIRECTV immediately

took advantage of that provision and reduced its payments (due to the inclusion of ESPN HD and Discovery HD Theatre). The fee was reduced further when other HDTV channels were offered.

27. Just as DIRECTV hoped, numerous customers signed up for DIRECTV due in large part to the HDTV offerings that HDNet provided. Since its launch, and in reliance upon the promise of the widest possible distribution from DIRECTV, HDNet has expanded its offerings to include war coverage, more sporting events, additional original programming, and first-run movie simulcasts. This programming content has garnered significant publicity for the network, and for its broadcast partner, DIRECTV. That publicity allowed DIRECTV to profit, and to continue to claim superiority in the HDTV business. In fact, the demand for HDTV among DIRECTV subscribers has been so great that DIRECTV experienced dramatic unexpected shortfalls in providing equipment – such as HD digital video recorders – to subscribers, who were required to be on a waitlist until the equipment could be obtained.

28. For its part, DIRECTV has achieved the explosive growth it sought, and has become the nation's leading satellite television service provider, wielding dramatic control over the industry.

29. As DIRECTV and HDNet have grown, both parties have operated and performed under the contract without issue. Over time, DIRECTV has expanded the number of HDTV channels it broadcasts, but has always offered HDNet's programming in its main package as required under the contract. Indeed, as recently as the Summer of 2007, HDNet and HDNet Movies comprised over 25 percent of DIRECTV's National HD programming. HDNet and HDNet Movies continue to be the standard bearers in HD broadcasting, as they remain the only networks offered by DIRECTV in which 100 percent of the programming content is offered in full HD resolution, and, according to TNS Media Research, the HDNet networks are some of the

most watched HDTV networks and regularly draw larger audiences in metered areas than standard definition networks with far greater number of subscribers.

30. Now, however, blinded by greed, Defendants have decided to try to kill HDNet.

D. Defendants Seek to Move HDNet's Channels Into Obscurity.

31. For several years, DIRECTV has promised its subscribers that even more HD channels were coming. Recently, the company promised that there would be 100 HDTV channels broadcast on DIRECTV by the end of 2007.

32. After much delay, the additional channels were offered and made available to the public within the past few weeks. As of today's date, the number of HDTV channels offered by DIRECTV – according to their website – exceeds 70.

33. With the rolling out of the new channels, HDNet looked forward to continuing its service in the most widely distributed tier of HDTV channels, as the parties' contract mandates. Unfortunately, Defendants had other plans.

34. Starting in September of this year, HDNet began to hear rumors that Defendants were going to move the HDNet channels onto a new programming package that would require an additional fee. When HDNet approached Defendants, it was told that nothing had been determined and that there was no reason for alarm.

35. That reassurance was false.

36. On October 15, 2007, DIRECTV issued a press release discussing their HDTV expansion to date. In it, DIRECTV notes that "DIRECTV HD customers will *continue to pay only a \$9.99 access fee*," to receive HDTV programming. Unless the customers pay the premium access fee, no HDTV channels are available.

37. Under the newly announced structure, the HDTV channels a customer will receive will depend upon which underlying non-HDTV package the customer purchases from the four that are offered. In addition to four local HDTV channels (ABC, NBC, FOX, CBS), the “Family” package offers 9 HD channels; the “Choice” package comes with 32 HD channels; the “Choice Extra” package offers 42 HD channels; and the “Premium” package provides the subscriber with 57 national HD channels and 9 local HD sports networks.

38. However, rather than including HDNet’s programming on the “most widely distributed tier” of HDTV programming as the contract mandates, Defendants’ press release revealed to the public – and to HDNet for the first time – that HDNet’s programming would be part of a new, smaller package of channels that requires yet another fee:

Customers who want the ultimate HD experience can subscribe to the DIRECTV(R) HD EXTRA PACK for an additional \$4.99 per month. This new addition of HD-only channels is for the true HD fan and includes: HDNet, HDNet Movies, Universal HD, MHD, Smithsonian HD and MGM HD.

Thus, while the vast majority of HDTV content is included in the single \$9.99 “Access Fee,” any consumer wanting HDNet or HDNet Movies must pay both the \$9.99 fee and an additional, specially concocted fee.

39. To make matters worse, Defendants have managed to make it almost impossible to order HDNet or HDNet Movies and are misleading consumers about what is needed. For example, when one tries to sign up for the Premier Package with HD, the website states:

PREMIER - The most HD channels in the known universe: Want the best in HD? The PREMIER package has it all, including the best in HD programming when you add HD Access (\$9.99/month). Plus, you get all of the premium channels — HBO, SHOWTIME, Starz, Cinemax — in HD. *If you want the works, this is it.*

However, the package is not “it,” as it leaves out DIRECTV’s original HDTV partner, HDNet. Moreover, the language suggesting that “the best in HD programming” is provided through this package – as opposed to the “Extra Pack” – suggests to the viewer that HDNet is lesser.

40. Indeed, for the average person, it takes extreme effort to even locate and order the Extra Pack. When ordering service from the DIRECTV website, after one chooses the programming package, a customer can either say he is “done” or ask to look at a page of “extras.” If the customer does not ask to see “extras,” the Extra Pack will never be offered. If a customer goes to the “extras” page, the Extra Pack is listed, but there is no way to determine what – or how many – channels are being offered for the annual \$60 fee. In an effort to seek help, a call to DIRECTV’s “1-800” phone number was worse. The DIRECTV customer service representative stated that she was not sure if the Extra Pack could be ordered on-line, but that the inability to obtain the add-on service was not really important because the HD Extra Pack only contained channels that “most people don’t want.”

41. If a viewer goes directly to the new website DIRECTV has set up to showcase its new HD offerings, the Extra Pack is not included as an option when one browses the available base packages. The website also advertises its “Choice Extra Plus HD Access” as including “All the Best HD Channels,” and, as discussed above, advertises its “Premier” package as including “the Works.” HDNet and HDNet Movies are not available in either of these packages. When the Extra Pack is finally located on DIRECTV’s HDTV website, potential customers are informed that they will have to pay *two* access fees to obtain HDNet and HDNet Movies by language saying: “Add DIRECTV HD Extra Pack (\$4.99/mo.) along with HD Access (\$9.99/mo.) to your base package.” Defendants’ removal of HDNet and HDNet Movies from its

most widely distributed packages, and implementation of a two-tiered fee to obtain these channels clearly contravenes the contract and seeks to destroy HDNet.

42. In short, because of the way Defendants have chosen to repackage and sell HDTV programming (and by charging a premium of 150% more than for other HDTV networks), it is a practical certainty that the DIRECTV “Extra Pack” tier will be the *least distributed* of any of the HDTV offerings. Importantly, the other channels with which HDNet had been previously offered to consumers as a package – ESPN HD and Discovery HD Theatre – have been placed in tiers that are much more widely distributed.

E. The Truth Revealed.

43. The decision to relegate HDNet and HDNet Movies to the least distributed package is, on information and belief, an intentional and deliberate move by Defendants. Defendants, who hold an effective monopoly on HDTV satellite services, are seeking to pay less to independent programmers and to promote their own programming and programming that is controlled by their favored partners in blatant discrimination against HDNet.

44. At the present time, the largest and controlling investor in DIRECTV is News Corp. (through its subsidiary, Fox Entertainment Group). Earlier this year, News Corp. announced that it was selling its controlling shares in DIRECTV to Liberty in exchange for stock, cash, several regional television networks, and other considerations. Unlike HDNet, *all* of the HD channels operated by News Corp., Liberty, or companies controlled by Liberty’s chairman, Mr. Malone, are being provided on highly distributed tiers. In fact, based on a rough view of the available channels, it appears that more than one-third of all HDTV channels that are being provided in the main tiers are owned or controlled by either News Corp., Liberty or Mr. Malone.

45. Besides putting HDNet in a hidden tier, Defendants are employing other aggressive tactics against HDNet. For example, DIRECTV created “channel 101” and shifted a significant portion of its programming to various concerts (aping HDNet’s Sunday programming). Seeking artists and bands to broadcast, DIRECTV began competing with HDNet for the same acts. This channel added nothing of value to DIRECTV, and indeed served no purpose other than to draw viewers away from HDNet.

46. In short, Defendants are seeking not only to avoid paying HDNet, but also to ensure that the two HDNet channels cannot survive.

F. The Immediate and Irreparable Impact on HDNet.

47. After discovering this grievous situation – by being contacted by the media, not through communication with Defendants – HDNet immediately contacted Defendants and objected. Defendants claimed to be willing to look at the issue and assured HDNet that nothing was happening immediately. That, however, was not the truth.

48. Within the last few days, Defendants have attempted to drive the final nail in the HDNet coffin. On information and belief, Defendants sent a flyer to every DIRECTV subscriber that is currently receiving HDNet programming and informed them that keeping the channels would require paying a new, substantially higher, premium fee. DIRECTV announced the change as follows:

HDNet, HDNet Movies and Universal HD will no longer be part of the HD Access fee that allows you to see all the HD simulcast associated with your DirecTV base or premium package. These channels . . . will be part of the new DirecTV HD Extra Pack which offers unique channels not available in standard definition. Beginning December 15, 2007, this package will be available for only \$4.99 per month. Until then, you can enjoy these channels as part of a free preview.

This immediately moved HDNet from the most widely distributed tier of HD for which DIRECTV charged a fee. Moreover, DIRECTV's implication that all of the channels that are HD unique" and not simulcast in standard definition have been moved to the "Extra Pack" is simply false. DIRECTV is still offering at least one "HD unique" channel to customers for only the HD Access Fee: Discovery HD Theatre (which is a channel controlled by Liberty's chairman).

49. Satellite providers, such as Defendants, control which networks are ultimately made available to consumers in the United States. Accordingly, contracting with domestic satellite providers is the only way that independent networks can ensure their programming is made available to the satellite television subscribers. When satellite providers exert their power over independent networks like HDNet, these independent networks must turn to the terms of their contracts to ensure that their services are made available as promised. If Defendants are not held to their agreed contractual obligations with HDNet, HDNet will suffer immediate, irreparable harm.

50. The massive loss of existing and future subscribers – as well as the loss of advertising and sponsorship revenue correlated to subscriber and viewership numbers – would have a dramatic and instantaneous effect on HDNet. Viewers become loyal to programs that they can see. If HDNet is taken away from its subscribers, even if it is later put back on the schedule, much of its audience would be lost and never regained.

51. For television networks, available viewership is the critical driving point in almost every aspect of the business. The availability of programming content, the value of original programming, and the price of advertisements, *etc.*, are all dependent on the number of potential viewers. If a substantial portions of its potential viewers are removed, then HDNet loses all of

this. The full extent of the repercussions are impossible to fully quantify – but the very existence of the company is at stake.

52. Indeed, just the recent series of announcements have started to cause harm to HDNet. At least one fellow television network has announced that it will no longer accept HDNet's advertising, in large part because HDNet will not have the viewership to justify such actions. Also, viewers have started to complain that they are losing their channels and cannot afford to pay yet another fee.

53. If the Court does not issue an immediate injunction, HDNet will suffer imminent and irreparable harm to its business, reputation, viewership, and good will.

V.

CAUSES OF ACTION

Declaratory Judgment

54. HDNet realleges and incorporates the foregoing as if fully stated herein.

55. An actual controversy exists between HDNet and Defendants regarding the obligations of Defendants under the June 2, 2003 contract.

56. HDNet seeks a declaration from the Court that Defendants must offer HDNet and HDNet movies on its most highly distributed HD package, rather than being offered as part of the lesser-distributed DIRECTV Extra Pack.

57. HDNet has retained counsel to represent it in this proceeding, and has agreed to pay its counsel for the reasonable attorneys fees, expenses, and other costs incurred in this proceeding on HDNet's behalf. Accordingly, HDNet is entitled to recover those reasonable and necessary attorneys' fees and all other costs associated with this proceeding. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 37.009.

Breach of Contract

58. HDNet realleges and incorporates the foregoing as if fully stated herein.

59. HDNet and Defendants have a valid, enforceable contract by which Defendants must provide HDNet and HDNet Movies on DIRECTV's most highly distributed HDTV package.

60. HDNet has fully performed its obligations under the contract.

61. Defendants have breached the contract by removing HDNet and HDNet Movies from DIRECTV's most widely distributed package containing HD channels, "HD Access".

62. Defendants' removal of HDNet and HDNet Movies from DIRECTV'S most widely distributed HD package has caused Plaintiff harm.

63. HDNet is entitled to recover reasonable attorney's fees from Defendants. *See* TEX. CIV. PRAC. & REM. CODE § 38.001.

Tortious Interference With Contract

64. HDNet realleges and incorporates the foregoing as if fully stated herein.

65. HDNet has a valid, enforceable contract with at least Defendant DIRECTV, Inc., by which Defendants must provide HDNet and HDNet Movies on its most widely distributed HDTV package.

66. Defendants DIRECTV Group, Inc.; DIRECTV Holdings LLC; and DIRECTV Enterprises, LLC willfully and intentionally interfered with that contract and caused HDNet and HDNet Movies to be removed from the most widely distributed package containing HD programming.

67. This action has caused Plaintiff harm.

Tortious Interference with Prospective Business Relationships

68. HDNet realleges and incorporates the foregoing as if fully stated herein

69. But for Defendants' wrongful actions, there was a reasonable probability that HDNet would have entered into business relationships with numerous third persons, *i.e.*, potential viewers of HDNet, advertisers, and distribution companies.

70. Defendants intentionally interfered with these relationships by knowingly removing HDNet's programs from the vast majority of the viewing public with the intent of harming HDNet's business.

71. Defendants' conduct was independently tortious or unlawful as described herein.

72. Defendants' intentional interference with HDNet's business was the proximate cause of actual damage to HDNet, damages that HDNet seeks to recover through this action.

73. In addition, because Defendants committed these wrongful acts with malice, HDNet seeks to recover exemplary damages pursuant to Section 41.001, *et seq.*, of the Texas Civil Practice & Remedies Code.

Tortious Interference with Existing Business Relationships

74. HDNet realleges and incorporates the foregoing as if fully stated herein.

75. HDNet has existing business relationships with numerous third persons, *i.e.*, viewers of HDNet, advertisers, and distribution companies, regarding HDNet and HDNet Movies.

76. Defendants, with full knowledge, intentionally interfered with these relationships by knowingly removing HDNet's programs from the vast majority of the viewing public with the intent of harming HDNet's business.

77. Defendants' conduct was independently tortious or unlawful as described herein.

78. Defendants' intentional interference with HDNet's business was the proximate cause of actual damage to HDNet, damages that HDNet seeks to recover through this action.

79. In addition, because Defendants committed these wrongful acts with malice, HDNet seeks to recover exemplary damages pursuant to Section 41.001, *et seq.*, of the Texas Civil Practice & Remedies Code.

Civil Conspiracy

80. HDNet realleges and incorporates the foregoing as if fully stated herein.

81. Defendants, together and with non-party co-conspirators, including Liberty, entered into a combination or conspiracy to harm HDNet's business and to interfere tortiously with HDNet's prospective business relationships as described herein.

82. The conspirators entered into this conspiracy to damage HDNet's business through the removal of HDNet and HDNet Movies from DIRECTV's most widely distributed HD packages and the publication of statements regarding same.

83. Defendants reached a meeting of the minds on the foregoing objectives and course of action.

84. In connection therewith, the conspirators committed one or more unlawful acts or otherwise lawful acts for unlawful purposes, including tortiously interfering with HDNet's business relationships and breaching its contractual obligations.

85. This conspiracy and the acts committed during its course have proximately caused injury to HDNet for which HDNet seeks to recover compensatory and consequential damages.

86. In addition, because the conspiracy among the Defendants and nonparty co-conspirators is the equivalent of fraud and Defendants committed these wrongful acts with

malice, HDNet seeks to recover exemplary damages pursuant to Section 41.001, *et seq.*, of the Texas Civil Practice & Remedies Code.

VI.

APPLICATION FOR TEMPORARY RESTRAINING ORDER

87. HDNet realleges and incorporates the foregoing as if fully stated herein.

88. HDNet seeks injunctive relief under both equitable and statutory principles. *See* TEX. R. CIV. P. 680-693 and TEX. CIV. PRAC. & REM. CODE § 65.011. As shown above, HDNet has a probable right of recovery in this action. In addition, HDNet will suffer imminent and irreparable harm to its business if Defendants are not enjoined from moving HDNet's channels to a new distribution tier rather than continuing to offer the channels as part of the so-called "HD Access fee" programming tier.

89. This Court must immediately and temporarily restrain Defendants from taking any actions or making any announcements that would move or declare that HDNet's channels are part of a new distribution tier rather than continuing to offer the channels as part of the so-called "HD Access fee" package.

90. HDNet is directly and irreparably threatened because Defendants' actions will be immediately detrimental to HDNet's business with the loss of viewers, programming opportunities, advertising opportunities, and publicity. HDNet is entitled to a temporary restraining order and a temporary injunction because it has a probable right of recovery on its claims.

91. HDNet has no adequate remedy at law and seeks immediate injunctive relief as stated above. Unless such injunctive relief issues immediately in the form of a temporary restraining order without notice, HDNet will be irreparably harmed. If a temporary restraining

order does not issue immediately, then Defendants' unlawful acts, will immediately and irreparably harm HDNet.

92. HDNet requests that a temporary restraining order be issued and temporary and permanent injunctions be granted enjoining and restraining Defendants and, as applicable, their collective and respective agents, servants, employees, attorneys, and those persons in active concert or participation with any of them, from directly or indirectly:

- (1) Requiring viewers to pay an extra fee beyond the "HD Access fee" to receive HDNet and HDNet Movies,
- (2) Advertising or publicizing that DIRECTV subscribers must pay an extra fee beyond the "HD Access fee" to receive HDNet and HDNet Movies, and
- (3) Excluding HDNet and HDNet Movies from DIRECTV's most "widely distributed" package containing HD programming.

VII. APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTIONS

93. HDNet realleges and incorporates the foregoing as if fully stated herein.

94. HDNet additionally requests that, after notice of hearing, the Court enter temporary and permanent injunctions on the same grounds and for the same relief as sought in the temporary restraining order.

95. HDNet seeks injunctive relief under both equitable and statutory principles. *See* TEX. R. CIV. P. 680-693 and TEX. CIV. PRAC. & REM C. § 65.011. As shown above, HDNet has a probable right of recovery in this action. In addition, HDNet will suffer immediate and irreparable harm as a proximate result of Defendants' conduct. Further, HDNet has no adequate remedy at law as the total damages caused by Defendants' activities are not readily quantifiable or measurable and/or will likely be unrecoverable.

A. Probable Right of Recovery.

96. To be entitled to a temporary injunction, an applicant need not show that they will win at trial, but that it is probable that they will prevail and that they will likely suffer harm waiting for the trial of their case. *Bobbitt v. Cantu*, 992 S.W.2d 709, 712 (Tex. App.—Austin 1999, no writ). In fact, a probable right of recovery on the merits is shown by alleging a cause of action and presenting evidence that tends to sustain it. *Miller Paper Co. v. Roberts Paper Co.*, 901 S.W.2d 593, 597 (Tex. App.—Amarillo 1995, no writ). HDNet has met this standard. The facts alleged and supported in this Verified Petition and exhibits thereto clearly demonstrate HDNet’s legal right to the relief requested.

B. Immediate Irreparable Harm With No Adequate Remedy At Law.

97. As stated above, HDNet is threatened with irreparable harm by Defendants’ conduct because of the imminent and certain harm that will be caused by Defendants’ actions, including the disruption in HDNet’s business and the loss of viewers, programming opportunities, advertising opportunities, publicity, and other matters that simply cannot be fully calculated.

98. HDNet has no adequate remedy at law that will provide protection against this loss, as its damages are not capable of being fully quantified, and the years of effort and expense that have gone into creating HDNet and establishing it to its current level would be instantaneously lost.

99. HDNet therefore requests the Court grant a temporary and permanent injunction on the same terms as the temporary restraining order.

VIII.

JURY DEMAND

HDNet demands a jury trial of all claims in this Petition on which a jury trial is available.

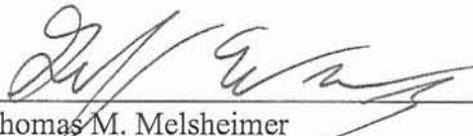
IX. PRAYER

WHEREFORE, PREMISES CONSIDERED, HDNet prays that the Court:

- i. issue a temporary restraining order against Defendants as requested herein;
- ii. cite Defendants to appear and show cause, and on such hearing, issue a temporary injunction restraining Defendants as requested herein;
- v. order a permanent injunction upon final trial of this cause enjoining Defendants as requested herein;
- vi. award HDNet all damages to which it is entitled, including, but not limited to, exemplary damages; and
- vii. render judgment against DIRECTV for pre-judgment and post-judgment interest, reasonable attorneys' fees and expenses, costs of suit, and all other relief that the Court deems appropriate.

November 6, 2007

Respectfully submitted,



Thomas M. Melsheimer
State Bar No. 13922550
Geoffrey S. Harper
State Bar No. 00795408
Scott C. Thomas
Texas Bar No. 24046964

FISH & RICHARDSON P.C.
1717 Main Street, Suite 5000
Dallas, Texas 75201
Telephone: 214-747-5070
Telecopy: 214-747-2091

**ATTORNEYS FOR PLAINTIFF
HDNET LLC**

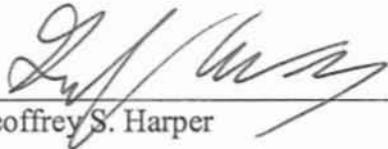
Of Counsel:

Jeffrey Kessler
Eva Cole
DEWEY & LEBOEUF LLP
1301 Avenue of the Americas
New York, NY 10019
Telephone: (212) 259-8000
Telecopy: (212) 259-6333

David S. Turetsky
DEWEY & LEBOEUF LLP
1101 New York Avenue NW, Suite 1100
Washington, DC 20005-4213
Telephone: (202) 986-8000
Telecopy: (202) 986-8102

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing FIRST AMENDED VERIFIED PETITION AND APPLICATION FOR TEMPORARY RESTRAINING ORDER AND TEMPORARY AND PERMANENT INJUNCTIONS was served on all counsel of record pursuant to facsimile and certified mail.



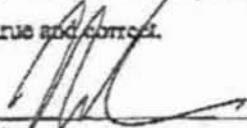
Geoffrey S. Harper

VERIFICATION

STATE OF TEXAS
COUNTY OF DALLAS

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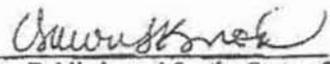
Before me, the undersigned Notary Public, on this day personally appeared Mark Cuban, who, after being duly sworn, stated under oath that he is a duly authorized agent of HDNet in this action; that the factual statements contained in Paragraphs 18, 19, 20, 21, 22, 23, 26, 29, 32, 33, 36, 37, 38, 42, 45, 47, 48, 49, 50, 51, and 53 of the foregoing and attached Original Verified Petition and Application for Temporary Restraining Order and Temporary and Permanent Injunctions are within his personal knowledge and are true and correct.



Mark Cuban

SUBSCRIBED AND SWORN TO before me, on this the 2nd day of November, 2007.





Notary Public in and for the State of TEXAS
Name: Dawn Knox
My Commission Expires: 6-24-09

VERIFICATION

STATE OF TEXAS

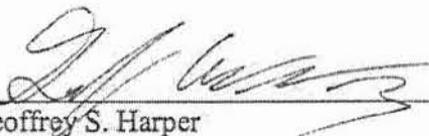
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COUNTY OF DALLAS

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Before me, the undersigned Notary Public, on this day personally appeared Geoffrey S. Harper, who, after being duly sworn, stated under oath that he is a counsel of record for Plaintiff HDNet in this action; and that the factual statements contained in Paragraphs 10, 15, 16, 24, 25, 31, 32, 36, 37, 38, 39, 40 (other than the statements regarding the phone call), 41 (other than the last sentence), 44, and 48 of the foregoing and attached Original Verified Petition and Application for Temporary Restraining Order and Temporary and Permanent Injunctions, were obtained from public filings of the Defendants before the FCC and/or SEC, the Defendants' websites, or press releases issued by Defendants.



Geoffrey S. Harper

SUBSCRIBED AND SWORN TO before me, on this the 1st day of November, 2007.



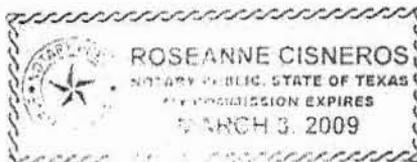
Notary Public in and for the State of Texas

Name: Roseanne Cisneros

Expires: March 3, 2009

My

Commission



Attachment 2

FILED
CLERK OF DISTRICT COURT
DALLAS COUNTY, TEXAS
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HDNET LLC,

Plaintiff,

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IN THE DISTRICT COURT OF

v.

DALLAS COUNTY, TEXAS

DIRECTV GROUP, INC., DIRECTV
HOLDINGS LLC, DIRECTV
ENTERPRISES, LLC, and DIRECTV,
INC.,

Defendants.

101st JUDICIAL DISTRICT

**AFFIDAVIT OF MARK CUBAN IN SUPPORT OF
PLAINTIFF'S VERIFIED PETITION AND APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND TEMPORARY AND PERMANENT INJUNCTIONS**

STATE OF TEXAS

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§

COUNTY OF DALLAS

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Mark Cuban, and who, after being by me duly sworn, on oath deposes and states as follows:

A. Affiant's Personal Knowledge

1. My name is Mark Cuban, I am over twenty-one (21) years of age, and I have never been convicted of a felony or of a crime involving moral turpitude. Unless otherwise stated, I have personal knowledge of every factual statement contained herein, and each of those statements are true and correct

2. In 2001, I co-founded HDNet, LLC ("HDNet") with Philip Garvin. Since co-founding HDNet, I have remained intimately involved in the company's operations and have participated in negotiations with third parties for programming, distribution and other aspects of

the business. Due to my activities on behalf of HDNet over the past six (6) years, I have direct personal knowledge of HDNet's business; the technology associated with HD television programming, broadcasting and distribution; and knowledge of the television industry in general. I am familiar with the terms of HDNet's contract with DIRECTV and the relationship between the parties since they entered into the contract.

3. Prior to co-founding HDNet, I formed, operated and sold several start-up businesses. Among the companies I founded and operated are MicroSolutions and broadcast.com, Inc. With regards to each of these companies, I was intimately involved in the formation and early operations of the businesses. Each of these ventures started out very small, and was considered a start-up enterprise in its respective industry. Through the investment of time and effort, I was actively involved in bringing these companies up from their infancy into mature, stable enterprises. As a result of my experiences with MicroSolutions, broadcast.com and others, I have gained extensive knowledge relating to operating start-up enterprises, bringing them to maturity, and, in some instances, selling or divesting those enterprises.

B. DIRECTV's Actions Will Have an Immediate and Unquantifiable Impact on HDNet's Business.

4. As discussed in more detail below, DIRECTV has breached the terms of its agreement with HDNet because it has removed HDNet's channels from DIRECTV's most widely distributed HD tier. If DIRECTV is not stopped from publicly advertising (a) its removal of HDNet and HDNet movies from the "HD Access" tier of channels and (b) its decision to require subscribers to pay an additional premium fee to obtain access to HDNet and HDNet Movies, these comments will cause HDNet to suffer immediate and noncompensable damage to its business, reputation, ongoing business, and goodwill. Specifically, as detailed below, HDNet

will immediately lose subscribers, advertisers, programming opportunities, and critical stature needed for its business.

(1) **DIRECTV's Comments Will Cause an Immediate and Incalculable Loss or HDNet Subscribers.**

5. Based upon my experience in the media industry, it is clear that DIRECTV's creation of the an additional tier of HD programming will move HDNet and HDNet Movies from among the most-watched HD programming to among the least-available to subscribers. DIRECTV has stated that it intends to offer up to 100 HD channels by the end of 2007, and it is advertising that these channels are available for a single, \$9.99 fee. Subscribers who want to receive HDNet and HDNet Movies, however, will be required to pay an additional \$4.99 fee to receive those two channels. Based upon the knowledge I have gained in the television and other industries, I can say with certainty that *HDNet's channels will lose more than 75% of their subscriber base if they are placed on the HD Extra Pack*. The simple fact is that the vast majority of HD subscribers will not pay an additional fee solely to receive the six channels that are only available through the HD Extra Pack package.

6. The most important statistic for HDNet's business operation is the number of subscribers to its network. By DIRECTV's announcement that HDNet is no longer in the HD Access tier, that subscription base has been destroyed. The availability of programming content, the value of original programming, and the price of advertisements are all dependent on the number of subscribers. Saying that HDNet and HDNet movies are being provided to normal DIRECTV subscribers as a "free preview" for the next six weeks provides little or no benefits to HDNet. For purposes of HDNet's business, the number of subscribers that it can identify to advertisers and others is limited to the people who have subscribed to HDNet through the Extra Pack – which is a very small number.

7. Moreover, by telling subscribers that HDNet and HDNet movies will only be available on the HD Access tier for the next six weeks, DIRECTV will cause an *immediate* decrease in subscribers that watch HDNet. Subscribers become loyal to programs and networks that they can see. If subscribers believe that HDNet is only available to them for a few more weeks, much of its audience will be lost immediately, preferring not to watch or become involved in programming that will soon not be available to the consumer.

8. It is almost impossible to place a number on the amount of subscribers that will be lost because of DIRECTV's public announcement and threatened conduct in violation of its contract. That is particularly true where there is brand new competition in the marketplace (with the new HD channels) and new programming on HDNet's channels, such that it would be virtually impossible to determine which subscribers did not watch the channels for which reason. Accordingly, it is nearly impossible to determine the financial impact such a massive loss of subscribers will have on HDNet.

(2) **DIRECTV's Comments Will Immediately Impact HDNet's Subscriber Base with Other Broadcasters.**

9. Beyond the immediate loss of DIRECTV subscribers, HDNet's business with other broadcasters will be impacted as well. The language at issue in this contract is used in the majority of HDNet's contracts with other broadcasters. Also, just like this contract, most of HDNet's agreements have "most favored nation" clauses, that demand that HDNet allow other broadcasters to carry the networks on the same terms as other carriers. If DIRECTV is allowed to move HDNet away from its most widely distributed HD package, then other carriers will be allowed to do so as well. This replication of DIRECTV's actions *could cut HDNet's overall subscriptions by more than 60%.*

10. HDNet is also deeply involved in negotiations with other distributors to have them broadcast the HDNet networks. Those proposed contracts have the same provisions that are at issue in this case. DIRECTV's announcement will impact 100% of those negotiations negatively for HDNet. Not only will HDNet have great difficulty obtaining promises for distribution on the most widely distributed tiers, HDNet will not be seen as a "major player" in the HDTV market, and the impact of that, while dramatic, is simply unquantifiable.

11. It will be extremely difficult, if not impossible, to calculate the damages caused by this decision. It will be virtually impossible to say what contracts would have been entered into and on what terms.

(3) HDNet Will Immediately Lose Advertisers.

12. Just as important – if not more so – the continuing announcements by DIRECTV that the subscriber base will be dramatically cut in a few weeks, will, if not stopped, have immediate devastating effects on the operation of HDNet's business.

13. If DIRECTV continues to issue public statements and advertise that it is removing HDNet and HDNet Movies from its most widely distributed HD tier, HDNet will begin to lose advertising immediately. Advertising is tied to programming and amount of subscribers. With knowledge that HDNet and HDNet Movies will be seen by less subscribers in the next six weeks, advertisers will immediately begin seeking to advertise on other networks that can expect higher ratings, rather than HDNet. The number of and extent to which advertisers will turn their business elsewhere because of the announced decrease in subscribers is extremely difficult, if not impossible, to calculate. That is particularly true where the advertisers have new HD channels as an option and new programs on HDNet's channels to look at, so that it would be virtually impossible to determine which advertisers did not buy ads for which reason.

14. Thus, while it is a certainty that advertisements will be lost, it will be virtually impossible to put a value on the damage HDNet will suffer as a result of lost advertising revenue due to DIRECTV's public statements regarding the imminent decrease in distribution of HDNet and HDNet Movies.

(4) **DIRECTV's Comments will Cause Immediate Loss of Programming.**

15. In addition to loss of advertising revenue, DIRECTV's continued statements regarding the upcoming decrease in subscribers will have an immediate impact on HDNet's ability to attract and develop the high level of programming (such as the award-winning *Enron: The Smartest Guys in the Room*) and talent (such as Dan Rather and his program *Dan Rather Reports*) to which its subscribers have grown accustomed. Programs, actors and other professionals flock to networks where they know they will be seen. HDNet is continuously seeking new programming, bidding on programs and talent, and scheduling its programming line-up. DIRECTV's public statements make it nearly impossible for HDNet to compete with other channels for programming content and talent. For example, DIRECTV has created "channel 101" and is attempting to compete with HDNet for a significant portion of its programming relating to various concerts. DIRECTV's announcements regarding HDNet's relegation to the least distributed tier of HD programming give DIRECTV an immediate competitive advantage in bidding against HDNet for performers.

16. It will be nearly impossible to calculate the economic impact DIRECTV's public statements and removal of HDNet from the "HD Access" tier will have on HDNet's ability to attract and retain programs and talent of the quality that HDNet subscribers have grown to expect, as one cannot know for certain which programs have been lost or opportunities that were not given to HDNet and how profitable those opportunities would have been.

(5) HDNet's Damages Cannot be Measured by Past Performance.

17. One cannot attempt to quantify these damages by looking at the past performance of the company. HDNet has grown significantly over the past two years. Accordingly, it will be impossible to project what financial impact DIRECTV's announcement and further actions will have on HDNet based upon the company's historical performance. Based upon the knowledge I have gained in forming and running start-up businesses, historical financial figures are inadequate to serve as the basis for financial projections in newer companies that are hitting its prime, such as HDNet, especially where the company has undergone significant growth after several years of infancy as an enterprise, because such numbers minimize the actual revenues and operations that the mature company would have made.

18. While the full extent of the damage to HDNet is incalculable, the company's livelihood is certainly at stake.

19. The television industry is at an inflection point. There is intense competition among satellite and cable providers for the business of the tens of millions of consumers who have purchased HD televisions.

20. DIRECTV has taken the lead and promoted itself as having the greatest number of HD channels – 70 plus – in the marketplace. Among the HD channels DIRECTV is including in this promotion are HDNet and HDNet Movies. DIRECTV has spent a significant amount of time and money on marketing their expansion of HD programming and the 70 new channels that are available. DIRECTV advertises to consumers that *all* of these channels are available for a single, \$9.99 fee. Thus, a consumer could certainly be led to believe they will receive all HD channels, including HDNet and HDNet Movies, for \$9.99. However, HDNet and HDNet movies are not included in this tier. Accordingly, after receiving the majority of the HD networks for the

single \$9.99 fee, consumers will be surprised to see that they must pay another fee, almost \$60 per year, to receive HDNet and HDNet Movies. It will be nearly impossible for HDNet to overcome the damage to the company's goodwill, reputation, customer base and ability to compete in the television industry because of DIRECTV's breach of the contract with HDNet.

21. HDNET will suffer immediate harm from DIRECTV's announcements that it has removed HDNet and HDNet Movies from DIRECTV's most widely distributed HD packages or tiers. Quite simply, if HDNet is required to wait until subscribers begin leaving – or even an additional two weeks – to obtain relief for DIRECTV's conduct, the damage to the company will have already been done. HDNet has already suffered damage to its goodwill and reputation. If DIRECTV is not enjoined from issuing public statements like those described above, HDNet will suffer further, unquantifiable injury to its goodwill and reputation in the TV industry. Any further injury could result in the HDNet's inability to continue operations.

C. Background of HDNet

22. Since its inception in 2001, HDNet has been a pioneer in the television industry's venture into high definition ("HD") television. HDNet was the nation's first national television network to present all of its programming in 1080i HD, the highest-quality format of HDTV, and today still televises more hours of original 1080i HD sports, entertainment, and news programming each week than any other network.

23. HDNet offers two HD channels: "HDNet" and "HDNet Movies." "HDNet" presents original and licensed programs - such as the groundbreaking *HDNet World Report* and *Dan Rather Reports* and the *HDNet Sunday Concert Series*, which has the largest HD concert library in the world - live sporting events, such as games from the National Hockey League, Major League Soccer, and college football and basketball, and more. HDNet also owns the

exclusive HD rights to certain major events, such as all NASA shuttle launches. Its counterpart, “HDNet Movies,” presents full-length motion pictures without commercial interruption, including both original productions and licensed features. HDNet Movies is the only network in the world to offer *Sneak Previews*, which are exclusive showings of nationally released theatrical offerings shown before they are even in theaters. The first of the *Sneak Previews* was the Academy Award nominated *Enron: The Smartest Guys in the Room*. In fact, many of the films released as a *Sneak Preview* have been nominated for an award. In addition, HDNet Movies has offered the High Definition World Premiere of some of the most highly respected movies ever made, including classic films such as *West Side Story*, *One Flew Over the Cuckoos Nest*, *Blues Brothers*, *Blazing Saddles*, and many more. Unlike other HD movie channels, none of the motion pictures shown on HDNet Movies are ever up-converted (which can compromise the HD image), nor does HDNet Movies accept movies that were not shot in film or originally in high definition. That defines HDNet Movies as unique in the world of movie channels.

D. HDNet’s Contract with DIRECTV

24. Around mid-2003, there were very few HDTV channels available for DIRECTV to broadcast, and none offered HDTV full-time except for HDNet and HDNet Movies. Thus, if DIRECTV intended to offer the most HDTV programming, HDNet and its stable of programming would be essential.

25. HDNet signed a written contract with DIRECTV in or about January, 2002 to offer HDNet’s programming to subscribers. That relationship was expanded when DIRECTV signed another contract with HDNet dated June 2, 2003 (hereinafter, the “2003 Contract”), whereby DIRECTV obtained the rights to broadcast HDNet’s two channels in exchange for paying HDNet a per-subscriber monthly fee.

26. At the time HDNet entered into its contract with DIRECTV, HDNet was in its infancy as a business and was just beginning to generate business. Through the 2003 Contract, HDNet expected to grow its business substantially due to the wide distribution that the agreement with DIRECTV promised.

27. A key provision in the 2003 Contract was DIRECTV's guarantee to feature HDNet's channels in DIRECTV's main HDTV programming package or tier. As the contract reads:

If DIRECTV distributes a tier or package containing television-programming services in any high definition format, DIRECTV will immediately include both [HDNet and HDNet Movies] as part of the most widely distributed tier or package for which the customer pays a separate fee containing such services (the "[HD] Tier"). . . . Once launched, except as expressly set forth herein, at no time during the Term may DIRECTV delete either or both of [HDNet and HDNet Movies] from the platform.

This provision was of utmost importance to HDNet. In fact, HDNet has refused to sign other distribution agreements that did not contain similar language.

28. The 2003 Contract's term runs through December 31, 2008.

29. Shortly after entering into the 2003 Contract, DIRECTV announced that it would begin offering an HDTV programming tier consisting of Discovery HD Theater, ESPN HD, HDNet and HDNet Movies in July, 2003. Thus, at that time HDNet and HDNet Movies comprised half of the HD programming offered by DIRECTV. The creation of this HD Tier triggered Defendants' ability under the 2003 Contract to decrease its payments to HDNet by a set percentage for each HDTV network that was included in the HD Tier. DIRECTV immediately took advantage of that provision and reduced its payments (due to the inclusion of ESPN HD and Discovery HD Theatre). The fee was reduced further when subsequent HDTV channels were offered on the HD Tier in 2004. This fee was not impacted by other HD channels that were not part of the HD Tier, such as premium channels like HBO HD.

30. As DIRECTV and HDNet have grown, both-parties have operated and performed under the contract without issue – as have the parties to HDNet’s similar agreements with other distributors. Over time, DIRECTV has expanded the number of HDTV channels it broadcasts, but has always offered HDNet’s programming in its main HD tier as required under the 2003 Contract. Indeed, as recently as the Summer of 2007, HDNet and HDNet Movies comprised over 25 percent of DIRECTV’s national, non-premium HD programming.

31. HDNet has approximately 7 million subscribers through DIRECTV and other cable and satellite providers. DIRECTV, however, is by far and away the largest distributor of HDNet and HDNet Movies.

32. HDNet and HDNet Movies continue to be the standard bearers in HD broadcasting, as they remain the only networks offered by DIRECTV in which 100 percent of the programming content is offered in full HD resolution without up-converting the picture, and, according to TNS Media Research, the HDNet networks are some of the most watched HDTV networks and regularly draw larger audiences in metered areas than standard definition networks with far greater number of subscribers.

33. Since entering into the 2003 Contract, HDNet’s business has grown and the company has matured. The increase in revenue and subscribers has allowed the company to create more elaborate original programming, invest in higher quality equipment, and increase demand for advertising on HDNet and HDNet Movies. The growth of HDNet’s business can be attributed, in large part, to the wide distribution it has received through DIRECTV. The ability of HDNet to survive, however, depends on its ability to continue to receive the wide distribution DIRECTV promised in the 2003 Contract.

E. DIRECTV Removed HDNet's Programming from its Most Widely Distributed HDTV Tier.

34. Recently, DIRECTV announced that it would offer nearly 100 channels of HD programming by the end of 2007.

35. After much delay, many of the additional channels were offered and made available to the public within the past few weeks. As of today, the number of HDTV channels offered by DIRECTV – according to their website – exceeds 70.

36. With the rolling out of the new channels, HDNet expected that its programming would continue to be provided in the most widely distributed tier of HDTV channels, as the 2003 Contract mandates. In reliance upon this, HDNet has continued to invest in its programming and infrastructure as seen through its signing of Dan Rather and its recent contracts to broadcast various sporting events in full HD.

37. On October 15, 2007, DIRECTV issued a press release discussing their HDTV expansion to date. In it, DIRECTV notes that “DIRECTV HD customers will continue to pay only a \$9.99 access fee,” to receive HDTV programming. Thus, unless the customers pay the premium access fee, they will receive no HDTV channels at all.

38. Under the newly announced structure, the HDTV channels a customer will receive will depend upon which underlying non-HDTV package the customer purchases from the four that are offered. In addition to four local HDTV channels (ABC, NBC, FOX, CBS), the “Family” package offers 9 HD channels; the “Choice” package comes with 32 HD channels; the “Choice Extra” package offers 42 HD channels; and the “Premier” package provides the subscriber with 57 national HD channels and 9 local HD sports networks.

39. However, rather than including HDNet's programming on the “most widely distributed tier” of HDTV programming, as the 2003 Contract mandates, DIRECTV revealed to

the public – and to HDNet for the first time through these public statements – that HDNet’s programming would be part of a new, smaller tier of channels that requires yet another fee:

Customers who want the ultimate HD experience can subscribe to the DIRECTV HD EXTRA PACK for an additional \$4.99 per month. This new addition of HD only channels is for the true HD fan and includes: HDNet, HDNet Movies, Universal HD, MHO, Smithsonian HD and MGM HD.

40. Thus, while the vast majority of HDTV content is included in the single \$9.99 “HD Access” fee, any consumer wanting HDNet or HDNet Movies must pay both the \$9.99 fee and an additional \$4.99 fee.

41. DIRECTV’s newly announced HDTV tiers relegate HDNet and HDNet Movies to near-premium status, like HBO HD. Though DIRECTV is offering up to 70 HD channels for a single, \$9.99 “HD Access” fee, consumers must pay one-and-a-half times that amount to receive six additional channels, including HD Net and HDNet Movies.

42. Through experience in the television industry, I have learned that there is a substantially lower rate of subscription to premium channels. Simply put, consumers subscribe less frequently to channels that are offered for a higher per-channel fee. Thus it is a practical certainty that the DIRECTV “Extra Pack” tier will be the least distributed of any of the HDTV offerings. That is particularly true considering the discrepancy between DIRECTV’s promotion of its HD Access tier versus the HD Extra Pack.

43. In fact, I have been contacted by various HDNet subscribers who have indicated that they are unhappy that they will no longer receive HDNet and HDNet Movies for the same price as the other HD programming they had received in the past.

44. Though they co-existed on DIRECTV’s HD tier for nearly four years, the other channels with which HDNet had been previously offered – ESPN HD and Discovery HD Theater – are not part of the HD Extra Pack, and are available as part of base packages when the \$9.99

HD Access fee is paid. Thus, ESPN HD and Discovery HD Theater will be offered on a more widely distributed basis than HDNet under DIRECTV's announced packages.

45. DIRECTV has publicly stated that the HD Extra Pack was developed for all of the HD channels which are not simulcast in standard definition, i.e. the channels are "HD unique." DIRECTV's implication that all of the channels that are "HD unique" and not simulcast in standard definition have been moved to the "Extra Pack" is untrue. DIRECTV is still offering at least one "HD unique" channel to customers for only the HD Access Fee: Discovery HD Theater.

46. Satellite providers, such as DIRECTV, control which networks are ultimately made available to consumers in the United States. Accordingly, contracting with domestic satellite providers is the only way that independent networks, such as HDNet, can ensure their programming is made available to the satellite television subscribers.

47. After being contacted by the media – not through communication with a DIRECTV representative – HDNet immediately contacted DIRECTV and objected to DIRECTV's announcements as they indicated that DIRECTV would no longer abide by the terms of the 2003 Contract. DIRECTV claimed to be willing to look at the issue and assured HDNet that nothing was happening immediately.

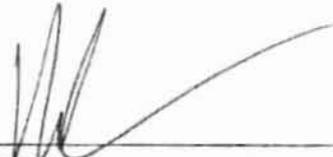
48. DIRECTV, however, recently sent a flyer to DIRECTV subscribers that are currently receiving HDNet's programming and informed them that keeping the channels would require paying a new, substantially higher, premium fee. DIRECTV announced the change as follows:

HDNet, HDNet Movies and Universal HD will no longer be part of the HD Access fee that allows you to see all the HD simulcast associated with your DirecTV base or premium package. These channels ... will be part of the new DirecTV HD Extra Pack which offers unique channels not

available in standard definition. Beginning December 15, 2007, this package will be available for only \$4.99 per month. Until then, you can enjoy these channels as part of a free preview.

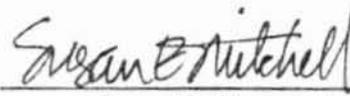
49. This immediately removed HDNet and HDNet Movies from the most widely distributed tier of HD programming for which DIRECTV charged a fee, an act that is prohibited by the 2003 Contract.

FURTHER AFFIANT SAYETH NOT.



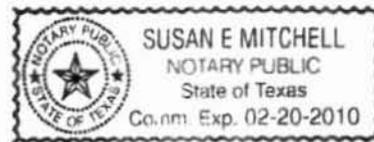
Mark Cuban

SWORN TO and SUBSCRIBED before me by SUSAN E. MITCHELL
on November 6, 2007.



Notary Public in and for the State of Texas

My commission expires:
2/20/2010



Attachment 3

HDNET LLC,

Plaintiff,

v.

DIRECTV GROUP, INC., DIRECTV
HOLDINGS LLC, DIRECTV
ENTERPRISES, LLC, and DIRECTV,
INC.,

Defendants.

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IN THE DISTRICT COURT OF

DALLAS COUNTY, TEXAS

101st JUDICIAL DISTRICT

TEMPORARY RESTRAINING ORDER

The Court, having considered the First Amended Verified Petition and Application for Temporary Restraining Order and Temporary, and Permanent Injunctions (“Verified Petition”) filed by Plaintiff HDNet LLC (“HDNet”), the Affidavit of Mark Cuban in Support of the Verified Petition (the “Cuban Affidavit”), and the numerous responses, replies, affidavits, and arguments submitted by all parties from November 2, 2007 to date, finds that Plaintiff’s Application for Temporary Restraining Order against Defendants DIRECTV Group, Inc.; DIRECTV Holdings LLC; DIRECTV Enterprises, LLC, and DIRECTV, Inc. (collectively “DIRECTV” or “Defendants”) should be, and hereby is, GRANTED as modified herein. Accordingly, the Court makes the following findings and orders:

The Court finds that HDNet has established the elements necessary for temporary injunctive relief, including a cause of action against the Defendants and a probable right to the relief sought. The Court further finds that HDNet will probably suffer imminent and irreparable harm because of a loss of customers, irreparable damage to its goodwill, programming, and business unless this Temporary Restraining Order is entered. The Court further finds that this

harm will take place before a full hearing is held unless Defendants are immediately restrained and enjoined as set forth below.

Accordingly, it is hereby **ORDERED** that Defendants and, as applicable, their parents, subsidiaries, affiliates, officers, agents, servants, employers, employees, and attorneys, and all of those acting in active concert or participation with Defendants and such persons or entities, are temporarily enjoined from engaging in the following acts, directly or indirectly:

Charging subscribers that receive television-programming services in any high definition format from DIRECTV any additional fees beyond the \$9.99 "HD Access" fee for the inclusion of HDNet and HDNet Movies as part of their subscription.

Because the conclusion of the fourteen-day term prescribed by Texas Rules of Civil Procedure 680 falls immediately after a court holiday, the Court finds that there is good cause to extend the term of this Temporary Restraining Order by an additional fourteen days, so that this order shall remain effective until the earlier of December 10, 2007 at ~~10:00 a.m.~~^{9:46 a.m. 95} Central Standard Time or such date and time when the Court enters an order on Plaintiff's Application for Temporary Injunction.

It is further **ORDERED** that the hearing on HDNet's Application for Temporary Injunction shall commence on **December 7, 2007 at 10:00 a.m. in the 101st Judicial District Court, Dallas County, Texas.**

It is further **ORDERED** that, prior to the issuance and effectiveness of this Temporary Restraining Order, HDNet shall file a bond with the Dallas County District Clerk in the amount of \$100,000.00, which amount the Court finds will adequately protect the interests of Defendants, pending a hearing on HDNet's Application for Temporary Injunction.

It is further **ORDERED** that the Clerk shall issue a Writ of Injunction incorporating this Temporary Restraining Order.

It is further ORDERED that all relief not expressly granted herein is DENIED.

SIGNED at 9:46 o'clock A.m. on the 12th day of November, 2007.


JUDGE PRESIDING

Teresa Guerra Snelson
Associate Judge
Sitting for the
1015th Civil District Court

Attachment 4

DEWEY & LEBOEUF

Dewey & LeBoeuf LLP
1101 New York Avenue N.W.
Suite 1100
Washington, D.C. 20005-4213

tel +1 202 986 8077
fax +1 202 956 3337
dturetsky@dl.com

November 16, 2007

BY ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *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*

EX PARTE

Dear Ms. Dortch:

On November 14, 2007, Mark Cuban, co-founder of HDNet LLC, and the undersigned and Brett A. Snyder of Dewey & LeBoeuf LLP, met separately with (i) Commissioner Adelstein, Rudy Brioché, and Renee Crittendon, (ii) Michelle Carey, (iii) Commissioner McDowell and Cristina Chou Pauzé, and (iv) Rick Chessen, to discuss the interest of HDNet LLC in these proceedings.

The group discussed the issues that HDNet LLC presented to Commission Staff on November 9, 2007 and that were the subject of the *ex parte* submission HDNet LLC made on November 13, 2007 in these proceedings. HDNet LLC hereby incorporates that submission by reference. That submission was also provided to the attendees.

In addition to the issues identified in the November 13, 2007 submission, the following topics were also discussed at one or more of the meetings:

1. Most High Definition Television (“HDTV”) channels primarily offer content that does not provide a full HD-quality experience. Instead, that content is up-converted from low-resolution media. An up-conversion does not add resolution where it is lacking to begin with. In marked contrast, independently owned HDNet and HDNet Movies videotape

their original content in HD, and non-original (licensed) content is translated from high-resolution media, like film. This enables customers to have a significantly different and better HD experience.

2. The type of programming on HDNet and HDNet Movies provides diverse perspectives and viewpoints, as the Commission seeks to encourage. HDNet News broadcast live for seven straight hours a continuous feed of Iraqi citizens approaching their polling place, sometimes even showing an ink-marked thumb as they emerged, permitting viewers to observe in depth a part of that election. It offers regularly high quality well known original programming, including shows like *HDNet World Report* and *Dan Rather Reports*. HDNet is the first network to offer live coverage of a NASA launch in the highest quality HD and coverage of major international news events from the Vatican, Middle East, Asia and more. HDNet has created a network of stringers in more than 60 cities around the world, allowing it to cover events in a manner no other network can.

3. HDNet Movies is the only network in the world to offer *Sneak Previews*, an exclusive showing of a nationally released theatrical offering *before* it is even in theaters, the first of which was the Academy Award nominated *Enron: The Smartest Guys in the Room*. This offering is unique not only for the pre-theatrical presentation of movies, but because of its impact on the entire entertainment industry.

4. Prior to the filing of the pending application, Mr. Cuban and the two networks considered their relationship with DIRECTV to be good, and DIRECTV indicated that it valued HDNet and HDNet Movies. However, after Liberty Media's transaction to acquire control of DIRECTV was announced and its application for approval filed at the Commission earlier this year, this began to change. HDNet LLC also heard from Liberty Media and was in contact with Dr. John Malone in this period. Among other things, over the course of this period:

-- Liberty Media proposed buying a 50% interest in HDNet and HDNet Movies.

-- DIRECTV told HDNet LLC of a new approach that would eliminate compensation to HD-only networks.

-- Dr. Malone advised that Discovery HD Theater, which also is an HD-only channel, would receive compensation from DIRECTV.

-- Rumors circulated that HDNet and HDNet Movies would be moved to a new, obscure, and pricey tier. HDNet and HDNet Movies and DIRECTV had discussions about that possibility, and DIRECTV advised HDNet and HDNet Movies quite late in the process that it had not made a final decision.

-- After trying to solve the problem and finding out indirectly that a decision had been made, HDNet and HDNet Movies filed suit and obtained temporary relief based on its contract rights.

-- Discovery ran advertisements for HDNet and HDNet Movies on Discovery HD Theater, which reached viewers of HD programming, in return for agreed compensation. Well before expiration of the agreed period for the advertisements to run, Discovery refused to run any more of the advertising. It indicated that MVPDs that did not carry HDNet and HDNet Movies were displeased.

5. Discovery HD Theater, although also an HD-only network that had long been in the same tier, would not be in the tier in which DIRECTV was attempting to place HDNet and HDNet Movies. It is affiliated with Dr. Malone. No network in the "HD Extra Pack" is affiliated with DIRECTV, Liberty Media, John Malone or News Corp.

6. The 101, a channel affiliated with DIRECTV would benefit competitively from placing HDNet and HDNet Movies in an obscure and pricey tier.

7. DIRECTV is an important platform for HD networks because of its national reach and because many consumers in the United States do not have any access to HDTV through cable.

8. A network that is already on a MVPD's system faces a different set of carriage issues than a network that is trying to gain access to the system for the first time and is highly vulnerable to discrimination and retaliation.

9. This transaction requires conditions that protect independent programmers and deter retaliation, discrimination, and other illegal and anticompetitive behavior. These must include a guarantee that an independent review and determination is available before DIRECTV can take adverse action against the unaffiliated programmer. The conditions were discussed. The need for such conditions in this transaction is reinforced and underscored by Liberty Media's business plan and approach: by becoming an MVPD it will gain powerful opportunities in content; it is looking to buy independent programmers and they will become available; and independent programmers would be better off if they were owned by vertically integrated companies.

As Liberty's CEO Greg Maffei explained only days ago in an interview:

[Q.] Do you have any plans to buy more programming assets?

[A.] Liberty and DirecTV are great believers in the power of distribution content [entity] interplay—strength in distribution can

create content opportunity, strength in content can create opportunity in distribution. Chase is a believer in that, John Malone is a believer in that.

While we have no plans to announce, we'll certainly be looking for those. I think you'll see a lot of the independent content companies becoming available over the next few years. They'd be better served being in the hands of either a consolidated content entity or consolidated distribution entity, and there are probably only a handful of consolidators or likely consolidators and I'd put us in the category of being one.

"Liberty With Content for All," *Broadcast and Cable*, Vol. 137, Issue 45 (Nov. 12, 2007).

Respectfully submitted,

/s/ David S. Turetsky

David S. Turetsky
Counsel to HDNet LLC

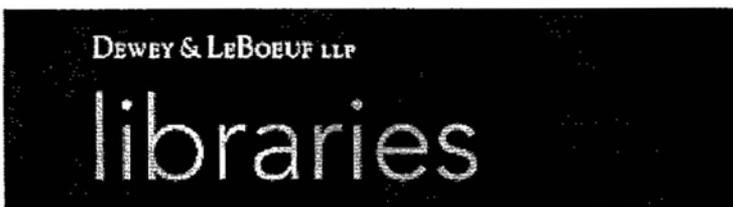
Attachment

cc: Mania Baghdadi, FCC (via e-mail)
William Beckwith, FCC (via e-mail)
Jim Bird, FCC (via e-mail)
Rudy Brioché, FCC (via e-mail)
Ann Bushmiller, FCC (via e-mail)
Michelle Carey, FCC (via e-mail)
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Renee Crittendon, FCC (via e-mail)
Rosemary Harold, FCC (via e-mail)
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Betsy McIntyre, FCC (via e-mail)
Joel Rabinovitz, FCC (via e-mail)
Debra Sabourin, FCC (via e-mail)
Royce Sherlock, FCC (via e-mail)
Marilyn Simon, FCC (via e-mail)
Elvis Stumbergs, FCC (via e-mail)
Tracy Waldon, FCC (via e-mail)

Marlene H. Dortch, Secretary
November 16, 2007
Page 5

Patrick Webre, FCC (via e-mail)
Sarah Whitesell, FCC (via e-mail)

Attachment 5



Westlaw.

11/12/07 BCSTCBL 3

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2007 WLNR 22347365

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November 12, 2007

Volume 137; Issue 45

Section: News

Liberty With Content for All

Staff

Like a chameleon changing its colors, **Liberty Media** is becoming an owner and distributor of television content.

The media company run by the cable pioneer **John Malone** is expected to close on its acquisition of a 38.4% stake of **DirectTV** from News Corp. in the fourth quarter. In advance, Liberty announced it will split Liberty Capital into two tracking stocks to group the satellite television service under the same roof as its programming assets such as Starz Entertainment, Game Show Network and regional sports networks it will receive as part of the deal with News Corp.

Liberty anticipates that the move will increase the valuation of the new stock holding the operating assets, Liberty Entertainment, so it can be used as currency to consolidate DirectTV.

The move does not affect Liberty Interactive, which holds a portfolio of e-commerce and digital businesses, and QVC, Liberty's largest revenue generator with \$3.4 billion in the first half of the year.

Liberty Media CEO Greg Maffei spoke with B&C's Jonathan Hemingway about acquiring DirectTV, competition in the video service business, and about the prospects for its digital operations.

Does it worry you that AT&T may make a bid for Echostar's Dish Network?

Of course we respect AT&T and we've been their partner in the Bellsouth territory before the purchase of Bellsouth and still afterward. We have a contract and we are partners with them. And it's a great and successful relationship. So we know that they can be a very helpful partner.

We also have been living under the case where they've been partnered with Dish in the old AT&T and SBC territory. We've continued to succeed and prosper, and had video subscribers in

that territory, nonetheless. While I respect them, love to partner with them, I don't think their purchase of Dish, if it occurs, would be a knock-out blow for DirecTV.

What about reports of their interest in DirecTV?

Right now we're just focused on trying to complete our deal with [News Corp.] At such time we are the owner, if somebody comes and makes an offer, whether it's AT&T or anyone else, we'll try to respond in the best interest of the shareholders.

DirecTV is using its HD package as a competitive differentiator. How will it respond as cable companies increase their capacity?

You have a couple things happening. You know, the cable companies are playing catch-up in HD. They are adding capacity. That's one of the reasons why their free cash flows, it appears, have not been up to what Wall Street really wanted.

We have an edge in particular in the delivery of HD video product because we made investments earlier and in many ways because satellites are a more efficient platform for the delivery of HD. We have an edge that I believe, is now, and I think it's an edge DirecTV will continue to press going forward.

I think it's a lead that cable will address in some markets, but certainly not uniformly. I think it's a lead we will continue to press as we add more HD channels. So stay tuned.

Do you have any plans to buy more programming assets?

Liberty and DirecTV are great believers in the power of distribution content [entity] interplay-- strength in distribution can create content opportunity, strength in content can create opportunity in distribution. Chase is a believer in that, John Malone is a believer in that.

While we have no plans to announce, we'll certainly be looking for those. I think you'll see a lot of the independent content companies become available over the next few years. They'd be better served being in the hands of either a consolidated content entity or consolidated content distribution entity, and there are probably only a handful of consolidators or likely consolidators and I'd put us in the category of being one.

Is a slow down in consumer spending a concern for QVC?

We've seen for a while that retailers--I'd call in the upper end but not necessarily the highest end to the lower end--have all been reporting less than killer results. So, they've been reporting OK to poor reports. I think QVC is in the category of reporting OK results. So, on a relative basis I think we're doing OK but I clearly, if you look across that industry, the entire retail market is not as robust as, say, a year ago.

So "concern" may not be my word, but we certainly are aware of the environment.

What are the long term plans for Liberty Interactive?

We are continuing to generate large free cash flow because QVC is enormously profitable. And we are continuing to redeploy that cash flow primarily in two ways.

First, at looking at incremental e-commerce opportunities like the three that we bought: Provide Commerce, Buyseasons and Backcountry.com. Secondly, we continue to repurchase equity because we are long-term believers in the future of QVC and [Liberty Interactive].

---- INDEX REFERENCES ----

COMPANY: NEWS CORP; BACKCOUNTRY COM; BELLSOUTH; ECHOSTAR COMMUNICATIONS CORP; NEWS CORPORATION LIMITED (THE); BACKCOUNTRY STORE INC; BELLSOUTH CORP

NEWS SUBJECT: (Mergers & Acquisitions (1ME39); Major Corporations (1MA93); Corporate Groups & Ownership (1XO09))

INDUSTRY: (TV (1TV19); I.T. (1IT96); Entertainment (1EN08); Satellite (1SA91); Satellite Television (1SA85); Cable TV Programming (1CA07); Broadcast TV Programming (1BR42); TV Programming (1TV26); Telecom Satellites & Services (1TE46); Television Networks (1TE85); Cable TV (1CA92); Satellite TV Programming (1SA03); Broadcast TV (1BR25))

Language: EN

OTHER INDEXING: (BACKCOUNTRY COM; BELLSOUTH; DISH; DISH NETWORK; HD; NEWS CORP; QVC; SBC; STARZ ENTERTAINMENT GAME SHOW NETWORK) (Chase; Echostar; Greg Maffei; John Malone; Jonathan Hemingway; Liberty; Liberty Interactive; Liberty Media)

Word Count: 959
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