

KATHLEEN WALLMAN  
KATHLEEN WALLMAN, PLLC  
9332 RAMEY LANE  
GREAT FALLS, VIRGINIA 22066

January 29, 2008

**BY ELECTRONIC FILING**

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

Re: *Liberty Media's Acquisition of DIRECTV, MB Docket 07-18*

Dear Ms. Dortch:

WealthTV seeks clarification of the record in the above-captioned matter. In a December 21, 2007 letter, The DIRECTV Group ("DIRECTV") responded to vertical concentration and independent programmer exclusion concerns raised by WealthTV in its December 13, 2007 *ex parte* letter to the Commission. A copy of WealthTV's letter is attached for the Commission's convenience.

In its December 13, 2007 letter, WealthTV urged the Commission to condition approval of the merger upon establishment of a capacity reserve for independent programmers not affiliated with any broadcaster or MVPD. WealthTV urged that the merger, if approved without this condition, would present new incentives for DIRECTV, Liberty Media and Dr. John Malone to favor carriage of programmers affiliated with them over independent programmers.

In its December 21, 2007 reply DIRECTV, asserted that "programming unaffiliated with either [News Corporation or Liberty Media] comprises about 74% of DIRECTV programming, while programming unaffiliated with any broadcaster or MVPD (*i.e.*, 'independent programming' as defined by WealthTV) comprises about 42%."

WealthTV has attempted to replicate the calculations that would support these representations, but has not been able to do so. WealthTV's calculations indicate that of the 230 video channels listed in DIRECTV's line-up, a copy of which is available on line at <http://www.directv.com/see/pdf/chnl lineup.pdf> and attached hereto, 64 channels, amounting to 27.8% are affiliated with DIRECTV, Liberty Media, Discovery or Dr. Malone. This is higher than the 26% (*i.e.* the inverse of 74%) reported to the FCC in DIRECTV's December 21, 2007 letter.

A larger discrepancy exists, according to WealthTV's calculations, with respect to the 42% figure in DIRECTV's December 21, 2007 letter. DIRECTV wrote that using the independent programming definition embraced by WealthTV, it calculated that 42% of DIRECTV's channels were unaffiliated with broadcasters or any MVPD. But when WealthTV reviewed DIRECTV's published line-up, it identified only 12 general appeal channels that would meet this definition. By "general appeal", WealthTV refers to those independent, nationally available channels that are not devoted to adult content, home shopping, non-English, PEG or religious programming. These 12 channels constitute 5.2% of the 230 channel line-up, far less than the 42% referred to in the December 21 letter.<sup>1</sup>

WealthTV calls these questions to the attention of the Commission so that the record may be illuminated by "apples to apples" calculations of the extent to which independent programmers have been granted carriage on DIRECTV's platform. A copy of this letter is being supplied to Counsel for DIRECTV with accompanying spreadsheets so that these questions may be responded to.

In all events, WealthTV reiterates its advocacy of the condition proposed in its December 13, 2007 letter. WealthTV's concerns about the exclusion of independent programmers after the merger relate to *future* incentives that will be created *by the merger*. It is immaterial, even if true, as asserted by DIRECTV in its December 21, 2007 letter, that "the proposed transaction will substantially decrease the amount of programming affiliated with DIRECTV." The issue is incentives regarding future behavior, and that is why the condition is essential.

Further, the *Verizon Communications* and *Comcast Corporation* cases cited in footnote 3 to DIRECTV's December 21, 2007 letter provide no precedential obstacle to the Commission acting in the public interest to impose the proposed condition. The condition is urged as a check on future behavior, not as a remedy to past behavior, and it is specifically and tightly tied to guarding against future harms related to incentives that will be created upon approval of the merger.

---

<sup>1</sup> If the 32 channels representing adult content, home shopping, non-English, PEG and religious programming were counted as independent channels, independent channels would still only constitute 16.2% of the 230 DIRECTV channels, still short of the 42% figure. If these same 32 channels were excluded from both the numerator and denominator of the calculation, independent channels would constitute 6% of the DIRECTV line-up. In short, no matter what assumptions WealthTV employed in its calculations, it could not replicate the 42% figure.

Very truly yours,

*//Kathleen Wallman//*

Kathleen Wallman  
Kathleen Wallman, PLLC  
9332 Ramey Lane  
Great Falls, VA 22066  
*Counsel to WealthTV*

cc: Bill Wiltshire

## DIRECTV Channel Lineup

Source: DirecTV, "Channel lineup as of 12/14/07," See: <http://www.directv.com/see/pdf/chnl lineup.pdf>

### *Channels Affiliated with MVPDs and Broadcastors*

<b>CHANNEL NAME</b>	<b>CH NO.</b>	<b>OWNERSHIP:</b>	<b>AFFILIATION:</b>
BIG TEN NETWORK *	220	News Corp (49%), Big Ten (51)	DirecTV/Fox
Sun Sports	632	News Corp.	DirecTV/Fox
SportSouth	631	News Corp.	DirecTV/Fox
The 101™	101	News Corp.	DirecTV/Fox
DIRECTV NEWS MIX	102	News Corp.	DirecTV/Fox
DIRECTV SPORTS MIX	104	News Corp.	DirecTV/Fox
Fox Business Network	359	News Corp.	DirecTV/Fox
Fox Movie Channel	258	News Corp.	DirecTV/Fox
Fox News Channel	360	News Corp.	DirecTV/Fox
Fox Reality	250	News Corp.	DirecTV/Fox
Fox Soccer Channel	613	News Corp.	DirecTV/Fox
Fox Sports en Espanol	425	News Corp.	DirecTV/Fox
Fox (WNYW - East) HD	88	News Corp.	DirecTV/Fox
Fox (KTTV - West) HD	89	News Corp.	DirecTV/Fox
FSN ARIZONA	649	News Corp.	DirecTV/Fox
FSN BAY AREA	654	News Corp.	DirecTV/Fox
FSN CINCINNATI	638	News Corp.	DirecTV/Fox
FSN DETROIT	636	News Corp.	DirecTV/Fox
FSN FLORIDA	634	News Corp.	DirecTV/Fox
FSN MIDWEST	647	News Corp.	DirecTV/Fox
FSN NEW YORK	624	News Corp.	DirecTV/Fox
FSN NORTH	641	News Corp.	DirecTV/Fox
FSN NORTHWEST	651	News Corp.	DirecTV/Fox
FSN OHIO	637	News Corp.	DirecTV/Fox
FSN PITTSBURGH	628	News Corp.	DirecTV/Fox
FSN PRIME TICKET	653	News Corp.	DirecTV/Fox
FSN ROCKY MOUNTAIN	645	News Corp.	DirecTV/Fox
FSN SOUTH	630	News Corp.	DirecTV/Fox
FSN SOUTHWEST	643	News Corp.	DirecTV/Fox
FSN WEST	652	News Corp.	DirecTV/Fox
FUEL TV *	612	News Corp.	DirecTV/Fox
FX *	248	News Corp.	DirecTV/Fox
National Geographic Channel *	276	News Corp.	DirecTV/Fox
Speed Channel *	607	News Corp.	DirecTV/Fox
TV Guide Network	237	News Corp.	DirecTV/Fox
TVG - The Interactive Horseracing Network	602	News Corp.	DirecTV/Fox
Boomerang	297	Time Warner	Time Warner
Cartoon Network *	296	Time Warner	Time Warner
Cinemax (East) *	512	Time Warner	Time Warner
Cinemax (West) *	514	Time Warner	Time Warner
CNN *	202	Time Warner	Time Warner

HBO (East)*	70	Time Warner	Time Warner
HBO (East)*	501	Time Warner	Time Warner
HBO (East)*	509	Time Warner	Time Warner
HBO (West) *	504	Time Warner	Time Warner
HBO Family (East)	507	Time Warner	Time Warner
HBO Family (West)	508	Time Warner	Time Warner
HBO Signature	503	Time Warner	Time Warner
HBO2 (East)	502	Time Warner	Time Warner
HBO2 (West)	505	Time Warner	Time Warner
Headline News	204	Time Warner	Time Warner
MoreMAX	513	Time Warner	Time Warner
NBA TV	601	Time Warner	Time Warner
TBS *	247	Time Warner	Time Warner
TNT *	75	Time Warner	Time Warner
TNT *	245	Time Warner	Time Warner
TruTV	246	Time Warner	Time Warner
Turner Classic Movies (TCM)	256	Time Warner	Time Warner
SportsNet New York	625	Time Warner, Comcast, New York Mets	Time Warner/Comcast
BET J	330	Viacom	Common Chairman with CBS
Black Entertainment Television (BET)	329	Viacom	Common Chairman with CBS
Comedy Central	249	Viacom	Common Chairman with CBS
Country Music Television (CMT)	327	Viacom	Common Chairman with CBS
Logo	263	Viacom	Common Chairman with CBS
MHD HD	332	Viacom	Common Chairman with CBS
MTV	331	Viacom	Common Chairman with CBS
MTV2	333	Viacom	Common Chairman with CBS
Nickelodeon/Nick at Nite (East)	299	Viacom	Common Chairman with CBS
Nickelodeon/Nick at Nite (West)	300	Viacom	Common Chairman with CBS
Nicktoons Network	302	Viacom	Common Chairman with CBS
Noggin	298	Viacom	Common Chairman with CBS
Spike	325	Viacom	Common Chairman with CBS
The N	303	Viacom	Common Chairman with CBS
TV Land	301	Viacom	Common Chairman with CBS
VH1	335	Viacom	Common Chairman with CBS
VH1 Classic	337	Viacom	Common Chairman with CBS
CBS (WCBS-East) HD	80	CBS Corporation	CBS
CBS (KCBS-West) HD	81	CBS Corporation	CBS
CSTV: College Sports Television	610	CBS Corporation	CBS
FLIX	547	CBS Corporation	CBS
SHO TOO * (ShowTime Too)	538	CBS Corporation	CBS
SHOWTIME (West) *	540	CBS Corporation	CBS
SHOWTIME (East)	71	CBS Corporation	CBS

SHOWTIME (East)	537	CBS Corporation	CBS
SHOWTIME (East)	543	CBS Corporation	CBS
SHOWTIME Extreme	542	CBS Corporation	CBS
SHOWTIME Showcase	539	CBS Corporation	CBS
The Movie Channel (West)	545	CBS Corporation	CBS
The Movie Channel *	544	CBS Corporation	CBS
Smithsonian Channel HD	267	CBS Corporation (Showtime Networks)/Smithsonian Institution	CBS
Sundance Channel	549	CBS Corporation, NBC Universal	CBS
Toon Disney	292	The Walt Disney Company	ABC
SOAPnet	262	The Walt Disney Company	ABC
A&E *	265	The Walt Disney Company	ABC
ABC Family	311	The Walt Disney Company	ABC
ABC (WAMC - East) HD	86	The Walt Disney Company	ABC
ABC (KABC - West) HD	87	The Walt Disney Company	ABC
Disney Channel (East)	290	The Walt Disney Company	ABC
Disney Channel (West)	291	The Walt Disney Company	ABC
E! Entertainment Television	236	The Walt Disney Company	ABC
ESPN *	206	The Walt Disney Company	ABC
ESPN HD	73	The Walt Disney Company	ABC
ESPN 2HD	72	The Walt Disney Company	ABC
ESPN CLASSIC	208	The Walt Disney Company	ABC
ESPN2 *	209	The Walt Disney Company	ABC
ESPNEWS	207	The Walt Disney Company	ABC
ESPNU	609	The Walt Disney Company	ABC
Style	235	The Walt Disney Company	ABC
Lifetime	252	The Walt Disney Company	ABC
Lifetime Movie Network	253	The Walt Disney Company (50%)	ABC
The Biography Channel	266	The Walt Disney Company, NBC Universal	ABC
History International	271	The Walt Disney Company, NBC Universal	ABC
Starz (East) *	520	Liberty Media Corporation	DirecTV
Starz (West) *	521	Liberty Media Corporation	DirecTV
Starz - Encore (East)	526	Liberty Media Corporation	DirecTV
Starz - Encore (West)	527	Liberty Media Corporation	DirecTV
Starz - Encore Action	532	Liberty Media Corporation	DirecTV
Starz - Encore Drama	531	Liberty Media Corporation	DirecTV
Starz - Encore Love	528	Liberty Media Corporation	DirecTV
Starz - Encore Mystery	530	Liberty Media Corporation	DirecTV
Starz - Encore Wam	533	Liberty Media Corporation	DirecTV
Starz - Encore Westerns	529	Liberty Media Corporation	DirecTV
Starz Comedy *	519	Liberty Media Corporation	DirecTV
Starz Edge *	522	Liberty Media Corporation	DirecTV
Starz InBlack	523	Liberty Media Corporation	DirecTV
Starz Kids & Family *	518	Liberty Media Corporation	DirecTV
GSN, the network for games	309	Liberty Media Corporation & Sony	DirecTV

Home Shopping Network	240	IAC/InterActiveCorp (Owned by Liberty)	DirecTV
Bravo *	273	NBC Universal	NBC
Chiller	257	NBC Universal	NBC
CNBC *	355	NBC Universal	NBC
CNBC World	357	NBC Universal	NBC
MSNBC	356	NBC Universal	NBC
NBC (WNBC - East)	82	NBC Universal	NBC
NBC (KNBC - West)	83	NBC Universal	NBC
Oxygen	251	NBC Universal	NBC
SCI FI Channel *	244	NBC Universal	NBC
Sleuth	308	NBC Universal	NBC
Universal HD	74	NBC Universal	NBC
USA Network *	242	NBC Universal	NBC
The History Channel *	269	NBC Universal/The Walt Disney Company	NBC
FitTV	368	Discovery Communicaitons, LLC	Brighthouse
BBC America	264	Discovery Communicaitons, LLC, BBC	Brighthouse
Animal Planet *	282	Discovery Communications, LLC	Brighthouse
Discovery Channel *	278	Discovery Communications, LLC	Brighthouse
Discovery HD Theater *	76	Discovery Communications, LLC	Brighthouse
Discovery Health Channel	279	Discovery Communications, LLC	Brighthouse
Discovery Home	286	Discovery Communications, LLC	Brighthouse
Discovery Kids	294	Discovery Communications, LLC	Brighthouse
Discovery Times Channel	285	Discovery Communications, LLC	Brighthouse
Military Channel	287	Discovery Communications, LLC	Brighthouse
Science Channel *	284	Discovery Communications, LLC	Brighthouse
The Learning Channel (TLC) *	280	Discovery Communications, LLC	Brighthouse
Comcast SportsNet (Chicago)	640	Comcast	Comcast
Comcast SportsNet (Mid-Atlantic)	629	Comcast	Comcast
Comcast SportsNet (New England)	620	Comcast	Comcast
Comcast SportsNet (West)	656	Comcast	Comcast
G4 videogame tv	354	Comcast	Comcast
The Golf Channel *	605	Comcast	Comcast
TV One	241	Comcast	Comcast
Versus *	603	Comcast	Comcast
Versus/The Golf Channel	604	Comcast	Comcast
PBS Kids Sprout	295	Comcast, PBS, HIT Entertainment, Sesame Workshop	Comcast
MGM HD	225	Comcast (and other partners)	Comcast
Fuse	339	Cablevision	Cablevision
Independent Film Channel	550	Cablevision	Cablevision
Madison Square Garden (MSG)	621	Cablevision	Cablevision
American Movie Classics (AMC)	254	Cablevision	Cablevision

WE: Women's Entertainment	260	Cablevision	Cablevision
SportsTime Ohio	657	Cablevision - Ownership is by the Dolan Family (Cleveland Indians owners)	Cablevision
Travel Channel	277	Cox Communications	Cable Company
C-SPAN	350	National Cable Satellite Corporation	Cable Company
C-SPAN2	351	National Cable Satellite Corporation	Cable Company
DIY Network	230	The E.W. Scripps Company	Broadcaster
FINE LIVING	232	The E.W. Scripps Company	Broadcaster
Food Network *	231	The E.W. Scripps Company	Broadcaster
Food Network HD	231-1	The E.W. Scripps Company	Broadcaster
Great American Country	326	The E.W. Scripps Company	Broadcaster
Home & Garden Television	229	The E.W. Scripps Company	Broadcaster
Home & Garden Television HD	229-1	The E.W. Scripps Company	Broadcaster
Univision	402	Broadcast Media Partners Inc.	Broadcaster
Ovation TV	274	Hubbard Broadcasting, Corp	Broadcaster
ReelzChannel	238	Hubbard Broadcasting, Corp	Broadcaster
ION Television	255	ION Media Networks	Broadcaster
Superstation WGN	307	Tribune Company	Broadcaster
The Weather Channel *	362	Landmark Communications	Broadcaster

***Adult, Shopping, Non-English, PEG and Religious Channels:***

<b><u>CHANNEL NAME</u></b>	<b><u>CH NO.</u></b>	<b><u>OWNERSHIP:</u></b>	<b><u>AFFILIATION:</u></b>
ONCE México*	415	Spanish Language Channel	Spanish Language
Galavision	404	Univision Communications, Inc.	Spanish Language
HITN-TV*	438	Non-Profit Organization	Spanish Language / Non Profit
CCTV-9	455	People's Republic of China	Chinese Language
QVC	317	Comcast	Comcast
ShopNBC	316	ValueVision Media	Shopping Channel
GemsTV	233	Public Company	Shopping Channel
Jewelry Television	313	Private Company	Shopping Channel
Hustler TV	599	LFP Broadcasting	Adult Programming
Adult Offers and Information	593	Unknown	Adult Programming
Fresh!	597	Unknown	Adult Programming
Juicy	596	Unknown	Adult Programming
Playboy TV	591	Unknown	Adult Programming
Playboy TV Information Channel	590	Unknown	Adult Programming
REAL	595	Unknown	Adult Programming
Spice:Xcess	598	Unknown	Adult Programming
Ten Clips	594	Unknown	Adult Programming
BYU TV	374	Brigham Young University	Religious Based
Daystar	369	Non-commercial/educational licensed stations	Religious Based
EWTN	370	Trustees of Charitable Company	Religious Based
GOD TV	365	Unknown	Religious Based
TCT Network	377	Unknown	Religious Based

The Church Channel	371	Unknown	Religious Based
NRB	378	National Religious Broadcasters	Religious Based
The Word	373	The Word	Religious Based
Trinity Broadcasting Network (TBN)	372	Religious Broadcaster	Religious Based
World Harvest Television	367	Lester Sumrall Evangelistic Association	Religious Based
Link TV	375	Link Media, Inc.	Non-commercial service.
NASA TV	376	National Aeronautics and Space Administration	Govt Owned
Tennis Channel	217	Equity to DirecTV for Carriage	TBD - Sports
MASN	626	Baltimore Orioles, Washington Nationals	Independent - Regional Sports
New England Sports Network	623	Boston Red Sox (80% stake) / Boston Bruins (20% stake)	Independent - Regional Sports

***Independent Channels:***

<b><u>CHANNEL NAME</u></b>	<b><u>CH NO.</u></b>	<b><u>OWNERSHIP:</u></b>	<b><u>AFFILIATION:</u></b>
Altitude Sports & Entertainment	644	Stan Kroenke	Independent - Sports
GoTV	614	Tenfield (100%)	Independent - Sports
NHL Network *	215	National Hockey League	Independent - Sports
NFL Network *	212	NFL	Independent - Sports
YES Network	622	Baseball	Independent - Sports
Bloomberg Television	353	Bloomberg L.P.	Independent
Current TV	366	Al Gore	Independent
Hallmark Channel	312	Crown Media Holdings	Independent
HDNet *	79	Mark Cuban	Independent
HDNet Movies		Mark Cuban	Independent
Outdoor Channel	606	Public Company	Independent
RFD-TV	379	Private Company	Independent



KATHLEEN WALLMAN

WALLMAN CONSULTING, LLC  
9332 RAMEY LANE  
GREAT FALLS, VIRGINIA 22066

December 13, 2007

**BY ELECTRONIC FILING**

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

Re: Liberty Media's Acquisition of DIRECTV, MB Docket 07-18

Dear Ms. Dortch,

WealthTV is an independent, single channel, lifestyle, entertainment and informational cable programmer, built from the ground up without any affiliation with a Multichannel Video Programming Distributor ("MVPD") or broadcaster. WealthTV has been bringing its programming service in high definition, twenty-four hours a day, seven days a week, since June of 2004 to viewers across the country. WealthTV is currently visible in the homes of subscribers to Verizon FiOS TV, AT&T U-verse TV, Qwest Communications, Charter Communications, and numerous small to mid-size cable companies across the United States, currently totaling over 75 different MVPD partners.

In spite of the appeal and success of WealthTV's compelling and aspirational programming on these other major delivery systems, WealthTV has been unable to come to acceptable terms of carriage with the nation's largest DBS provider, DIRECTV. WealthTV has been seeking carriage on DIRECTV for over three years. As it does with all potential partners, WealthTV negotiates in good faith and is highly motivated to make carriage deals that advance the interests of both parties: the MVPD needs high quality high definition content that will attract affluent subscribers and the advertisers who appeal to that demographic, and WealthTV needs access to the large MVPDs to ensure that its business model remains viable. As you may be aware, it requires access to a minimum threshold of 20 million viewers to make an independent channel viable financially.

WealthTV is concerned that the proposed merger of Liberty Media and DIRECTV will make it even more difficult for WealthTV to gain carriage on the DIRECTV platform because of the incentive and power that the new, vertically integrated entity will have.

Liberty Media, and its Chairman Dr. John Malone, own some of the nation's most recognizable channels. Liberty Media owns *both* the preeminent home shopping channels QVC and the parent of the Home Shopping Network; the Starz family of channels; and the parent company that owns the Game Show Network. Dr. John Malone, Liberty Media's Chairman, holds significant ownership in Discovery Holding Company and, thus, wields considerable power over that

company's holdings. Those holdings include: Discovery Channel, TLC, Animal Planet, Travel Channel, Discovery Health Channel, Fit TV, The Science Channel, Discovery Kids, The Military Channel, Discovery Home, Discovery Times and Discovery HD Theater.

The principals of WealthTV believe that they can clearly see the writing on the wall. The merged Liberty/DIRECTV entity will result in another large MVPD that can produce and broadcast its own content and leave the nation's independent programmers out in the cold.

Such an outcome would not serve the public interest and thus WealthTV respectfully submits that this merger should be conditioned in order to protect the public interest. In the absence of comprehensive carriage access reform, which was deferred from consideration at the November 27, 2007 Open Meeting and appears unlikely to resurface in the near term, WealthTV believes that such conditions are the only way for the Commission to protect the public interest with respect to this further vertical consolidation of the MVPD industry.

One of the long held commitments of the Commission has been to work to ensure that a diversity of programming is available to the American people. It is in that spirit that WealthTV proposes that following merger condition.

Five percent of the merged entity's capacity should be reserved for independent programming that is not affiliated with any MVPD or broadcaster. At least eighty percent of the reserved independent capacity shall be allocated to independent programmers at any given time with at least eighty percent of such independent programmers receiving distribution on the first or second most widely distributed tiers. We propose that the merged entity would have two years to reach this benchmark through the addition of new capacity or the attrition of existing contracts before it would be required by the Commission to remove existing programming to reach the five percent goal. Furthermore, no programming that is affiliated with Liberty Media or John Malone should be allowed to be added until the five percent threshold for independent programming has been met.

WealthTV believes that this condition will help ensure that subscribers to the merged entity will get the diversity of programming they deserve. There are many independent channels, like WealthTV, struggling to find a sustainable level of subscribership that allows them to continue to produce high quality, high definition programming and the public deserves the chance to enjoy these channels.

Very truly yours,

*Kathleen Wallman*

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