

## DESCRIPTION OF THE TRANSACTION AND PUBLIC INTEREST STATEMENT

Dr. John Malone (“Dr. Malone”) and DIRECTV respectfully submit this consolidated application for Commission approval of the transfer of *de facto* control over various space station, earth station, and terrestrial wireless authorizations held by DIRECTV and its subsidiaries, which the Commission has attributed to Dr. Malone, from Dr. Malone to DIRECTV. The proposed transaction will result in the termination of such *de facto* control of DIRECTV, placing control of DIRECTV in the hands of all its shareholders, a large and diverse group primarily comprised of institutional shareholders. It will thereby result in a more independent DIRECTV, eliminate any vertical integration with video programming providers in which Dr. Malone has an attributable interest, and conclusively resolve the attributable links between competing multi-channel video programming distribution (“MVPD”) systems in Puerto Rico – all transaction-specific, verifiable, and easily quantifiable benefits of the transaction.

In addition, this transaction presents no cognizable public interest harms. Indeed, it will resolve any concerns the Commission had with DIRECTV’s current ownership structure. Further, the applicants do not seek relief in this Application from the programming safeguards established by the Commission in the *Liberty Media-DIRECTV Order*.<sup>1</sup>

### I. BACKGROUND

The DIRECTV Group, Inc. (“DTVG”) is the corporate name adopted by Hughes Electronics Corporation (“Hughes”) in March 2004 following News Corporation’s acquisition of *de facto* control of Hughes in December 2003.<sup>2</sup> Thereafter, Liberty Media Corporation (“Liberty Media”) acquired *de facto* control of DTVG from News Corporation in 2008,<sup>3</sup> at which time Dr. Malone became the company’s Chairman of the Board. Last year, Liberty Media split-off Liberty Entertainment, Inc. (“LEI”), which held certain assets – including its interest in DTVG and three regional sports networks (“RSNs”) (the “LEI Split-off”). Immediately following the LEI Split-off, each of DTVG

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<sup>1</sup> See *News Corporation and The DIRECTV Group, Inc., Transferors, and Liberty Media Corporation, Transferee*, 23 FCC Rcd. 3265, Appendix B (2008) (“*Liberty Media-DIRECTV Order*”).

<sup>2</sup> *General Motors Corporation and Hughes Electronics Corporation, Transferors, and the New Corporation Limited, Transferee*, 19 FCC Rcd. 473 (2004) (“*News Corp.-Hughes Order*”).

<sup>3</sup> *Liberty Media-DIRECTV Order, supra*. In a series of pro-forma transfers associated with a share repurchase process implemented by DTVG, Liberty Media’s equity ownership interest in DTVG increased above 50%. See Public Notice, 23 FCC Rcd. 10168 (Int’l Bur. 2008). Although Liberty Media held an equity interest in DTVG of approximately 57% at the time of the LEI Split-off, its voting interest was contractually fixed at approximately 47.9% with the remainder “to be voted in the same manner as, and in the same proportion to,” the shares held by all other DTVG shareholders.

and LEI became wholly-owned subsidiaries of DIRECTV as a result of merger transactions (such transactions, together with the LEI Split-off, are referred to in this application as the "LEI/DTV Transactions"). Because Dr. Malone was considered by the Commission to have *de facto* control of the licenses now held by DIRECTV both before and after the LEI/DTV Transactions, the Commission treated the LEI/DTV Transactions as a *pro-forma* transfer of control.<sup>4</sup>

As a result of the LEI/DTV Transactions, Liberty Media itself no longer holds an equity or voting interest in DIRECTV. However, Dr. Malone, his wife and two trusts for the benefit of his children (collectively, the "Malones") own, in the aggregate, approximately 2.5% of the equity and have voting rights of approximately 24.3% in DIRECTV.<sup>5</sup> The difference between these two figures is explained by the fact that the Malones hold all of the outstanding shares of Class B common stock, which carry 15 votes per share, whereas all other DIRECTV shareholders hold shares of Class A common stock, which carry one vote per share.<sup>6</sup> The remainder of DIRECTV's equity and voting interests are widely held, and no other party currently controls more than ten percent of either of such interests. Dr. Malone is the Chairman of the Board of DIRECTV, as he was for DTVG. Moreover, as was the case with DTVG, two of the remaining ten members of the Board of Directors also hold positions with companies which may be considered to be affiliated with Dr. Malone – Greg Maffei (CEO and director of Liberty Media) and Paul Gould (director of Discovery Communications, Inc. ("Discovery") and Liberty Global, Inc. ("LGI")).

## II. Description of the Transaction

Under the terms of a Share Exchange Agreement, in exchange for all shares of high-vote Class B common stock held by the Malones, DIRECTV will issue to the Malones a number of shares of Class A common stock equal in the aggregate to the shares of Class B common stock held by them plus approximately 4.74 million additional shares (the "Exchange"). After the Exchange, the Malones will beneficially own DIRECTV Class A Common Stock representing approximately 3% of the equity and aggregate voting power of DIRECTV.<sup>7</sup> Currently, there are several other shareholders

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<sup>4</sup> See *Liberty Media Corp.*, 24 FCC Rcd. 12221 (Int'l Bur. and WTB 2009).

<sup>5</sup> By agreement, Dr. Malone's maximum percentage voting interest in his Class B shares is limited to 24%. Dr. Malone has agreed to cause any Class B shares that exceed the maximum percentage voting interest to be voted in the same manner as, and in the same proportion to, the shares held by all other DIRECTV stockholders.

<sup>6</sup> With certain limited exceptions, Class A and Class B shares vote together as one class on all matters on which stockholders are entitled to vote, including election of the board of directors. The Class B common stock is not publicly traded or listed on any public exchange.

<sup>7</sup> In conjunction with the Exchange, Dr. Malone has entered into a "standstill" agreement restricting his purchase of additional DIRECTV shares which would result in his acquisition of beneficial ownership of 5% or more of the equity of DIRECTV until the earlier of the date upon which DIRECTV or its subsidiaries ceases to be an FCC licensee and the date upon

with a larger equity and voting interest in DIRECTV than the Malones will have upon completion of the Exchange. In addition, the Malone interests will fall well below the minimum levels specified for attribution under relevant Commission rules and orders.<sup>8</sup>

As a condition of the Exchange, Dr. Malone, Mr. Maffei, and Mr. Gould will each tender their resignation from the DIRECTV Board of Directors, effective as of the closing of the Exchange. This will eliminate any cognizable interest any of them would otherwise have had in DIRECTV due to “positional” attribution.<sup>9</sup> DIRECTV’s Nominating Committee, composed of independent directors, will evaluate and nominate replacement directors to fill the three vacancies. No such nominee will have an attributable interest in Liberty Media or LGI, or otherwise be considered to be attributable to Dr. Malone as determined in accordance with the Commission’s rules.

As a result of the transaction, DIRECTV will continue to be owned by its existing shareholders. Shares of Class A common stock will continue to be publicly traded on the NASDAQ Global Select Market and the vast majority of shares will remain widely held. All that will change is that (1) no person or entity (other than institutional investors) will hold a 5% or greater voting interest in DIRECTV, where the Malones previously did; and (2) DIRECTV’s Board of Directors will be entirely independent of Dr. Malone and companies which may be considered to be under his *de facto* control, where three of DIRECTV’s 11 Directors (including its Chairman) may be considered to be currently so affiliated.

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which Dr. Malone ceases to have an attributable interest in a United States MVPD, subject to certain exceptions.

<sup>8</sup> Under the Commission’s rules, voting interests amounting to 5% or more of the outstanding stock of a corporation are attributable. *See* 47 C.F.R. § 76.501 note 2(a). The Commission’s rules contain no attribution standards explicitly applicable to satellite MVPD systems. Nonetheless, for purposes of Condition I of Appendix B of the Liberty Media-DIRECTV Order (the “Puerto Rico Condition”), the Commission established Section 76.1000(b) as the governing rule. *See* 47 C.F.R. § 76.1000(b). This rule incorporates by reference the attribution rule applicable for purposes of cross-ownership limitations on cable systems set forth in Section 76.501 and extends the limitations to nonvoting equity interests of 5% or more, with certain exceptions not relevant here.

<sup>9</sup> The Commission’s rules provide that “[o]fficers and directors of an entity . . . are considered to have a cognizable interest in the entity which they are so associated.” 47 C.F.R. § 76.501 note 2(g).

### III. THE PROPOSED TRANSACTION WILL SERVE THE PUBLIC INTEREST, CONVENIENCE AND NECESSITY WITH NO OFFSETTING HARMS

Consistent with the public interest requirements of the Communications Act, the proposed transaction will continue the reduction of vertical integration that the Commission has previously found would “benefit[] the public.”<sup>10</sup>

Further, and perhaps most importantly, this transaction will conclusively resolve the attributable links between two competing MVPDs in Puerto Rico – DIRECTV Puerto Rico, Ltd. (“DTVPR”), which is a subsidiary of DIRECTV, and Liberty Cablevision Puerto Rico Ltd. (“LCPR”), which is a subsidiary of LGI. The Commission found Dr. Malone to have *de facto* control over the parent companies of these two entities. Based on these and other factors, the Commission found that the prior “transaction could reduce competition in those portions of Puerto Rico that are served by LCPR, leading to higher prices, lower quality service or both.”<sup>11</sup> Thus, as a condition of approving the *Liberty Media-DIRECTV* transaction, the Commission required that all of the attributable interests connecting DTVPR and LCPR be severed, either by divestiture or by otherwise making the interest non-attributable.<sup>12</sup>

In an effort to comply with this condition, DIRECTV has placed its entire interest in DTVPR into a trust intended to render that interest non-attributable under the Commission’s rules pending further disposition of that interest.<sup>13</sup> DTVPR has operated under the control of the independent trustee since February 2009, with the ultimate goal of divestiture. But this is an interim arrangement, and results in additional costs and inefficiencies at DTVPR, which will be eliminated when the trust and related decision-making and information restrictions are terminated. By finally resolving the attributable links between DTVPR and LCPR, the proposed transaction will (1) satisfy the Puerto Rico Condition and (2) allow DIRECTV to eliminate the costs and inefficiencies associated with the trust and related arrangements. This will eliminate uncertainty regarding DTVPR’s future and make DTVPR an even stronger competitor in the Puerto Rico MVPD market – both of which will serve the public interest.<sup>14</sup>

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<sup>10</sup> *Liberty Media-DIRECTV Order*, ¶¶ 150, 157 (finding that a transaction would “lead to less media vertical integration” and “decrease media consolidation and that this decrease benefits the public”); *News Corp.-Hughes Order*, ¶¶ 150, 157 (same).

<sup>11</sup> *See Liberty Media-DIRECTV Order*, ¶ 39.

<sup>12</sup> *See id.*, Appendix B, Condition I.

<sup>13</sup> The Commission has recognized in previous cases that “a trust may be used to indefinitely avoid divestiture of a valuable investment, often in conjunction with a new transaction.” *Corporate Ownership Reporting and Disclosure by Broadcast Licensees*, 97 FCC 2d 997, ¶ 53 (1984) (footnote omitted). However, the Commission staff has advised DIRECTV that, in this instance, the trust cannot remain in place indefinitely.

<sup>14</sup> Since the completion of the News Corp./Liberty Media transaction in February 2008, DTVPR has, among other things, significantly expanded its high-definition service offering

DIRECTV and Liberty Media currently operate under additional conditions first adopted in the *Liberty Media-DIRECTV Order*.<sup>15</sup> Some of those conditions remain in place for a set term, absent modification or early termination by the Commission,<sup>16</sup> while others continue to apply until the later of (1) a determination that Liberty Media no longer holds an attributable interest in DIRECTV, or (2) the Commission's program access rules no longer remain in effect.<sup>17</sup> Because the program access rules remain in effect, the proposed transaction will not automatically result in termination of those conditions. The Commission has previously concluded "that these conditions are sufficient to ameliorate any potential vertical integration harms that might otherwise occur" due to the combination of Liberty Media's and DIRECTV's assets under common control.<sup>18</sup> Since Liberty Media and Dr. Malone will no longer have any attributable links to DIRECTV after the proposed transaction is consummated, there is no public interest basis for imposing additional conditions in connection with this application.

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and launched a pre-paid, lower priced service, resulting in greater than 25% growth in its subscriber base.

<sup>15</sup> See *Liberty Media-DIRECTV Order*, Appendix B, Conditions II through IV.

<sup>16</sup> See *id.*, Conditions IV.E.2 and V.E.2.

<sup>17</sup> *Id.*, Condition III.6.

<sup>18</sup> *Id.*, ¶¶ 153, 155.

**Authorizations to be Transferred**

International Bureau Authorizations

<b>Licensee/Registrant</b>	<b>Call Sign</b>
DIRECTV Enterprises, LLC <i>Satellite Space Stations – DBS</i>	S2430 S2455 S2632 S2669 S2673
DIRECTV Enterprises, LLC <i>Satellite Space Stations – 17/24 GHz BSS</i>	S2711 S2712 S2243 S2796
DIRECTV Enterprises, LLC <i>Satellite Space Stations – Ka-band</i>	S2132 S2133 S2191 S2640 S2641 S2689 S2797
DIRECTV Enterprises, LLC <i>Satellite Earth Stations – Transmit/Receive</i>	E010129 E010130 E020172 E030105 E030117 E050112 E050113 E050121 E050122 E050229 E050230 E050255 E050286 E060014 E060187 E060188 E060236 E060298 E060299 E060441

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E950349  
E980285  
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E070111  
E070122  
E070123  
E080025  
E080026  
E080027  
E080028  
E080056  
E080057  
E090024  
E090025  
E090068  
E090069  
E090173

DIRECTV Enterprises, LLC  
*Satellite Earth Stations – Transmit Only*

E050340

DIRECTV Enterprises, LLC  
*Satellite Earth Stations – Receive Only*

E980170  
E980341  
E040179  
E040180

California Broadcast Center, LLC  
*Satellite Earth Stations – California Broadcast Center*

E010237  
E020091

DIRECTV Enterprises, LLC  
*Satellite Earth Stations – Blanket Earth Station*

E040024

Game Show Network  
*Satellite Earth Stations – Transmit/Receive*

E950013

Wireless Authorizations

<b>Licensee/Registrant</b>	<b>Call Sign</b>
DIRECTV, Inc.	WPTZ691
DIRECTV Enterprises, LLC	WPZC401
DIRECTV INC	WQMH919
LABC Productions, LLC	WQIU946