IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

MATTHEW SCIABACUCCHI, Individually and on Behalf of All Others Similarly Situated, Plaintiff, v. LIBERTY BROADBAND CORPORATION, JOHN MALONE, GREGORY MAFFEI, MICHAEL HUSEBY, BALAN NAIR, ERIC ZINTERHOFER, CRAIG JACOBSON, THOMAS RUTLEDGE, DAVID MERRITT, LANCE CONN, and JOHN MARKLEY, Defendants, and CHARTER COMMUNICATIONS, INC. Nominal Defendant.	)	C.A. No. 11418-VCG

VERIFIED AMENDED CLASS ACTION COMPLAINT

Plaintiff Matthew Sciabacucchi ("Plaintiff"), by and through his attorneys, alleges upon personal knowledge as to himself and his own acts, and upon information and belief as to all other matters, based upon the investigation conducted by and through his attorneys, which included, *inter alia*, a review of documents filed by Defendants (defined below) with the United States Securities and Exchange

Commission (the "SEC"), news reports, press releases, conference call transcripts and other publicly available documents, as follows:

I. SUMMARY OF THE ACTION

1. Plaintiff brings this action on behalf of himself and as a class action on behalf of the stockholders of Charter Communications, Inc. ("Charter" or the "Company"), against members of Charter's board of directors (the "Board" or the "Director Defendants") and Charter's controlling stockholders, Liberty Broadband Corporation ("Liberty Broadband") and Dr. John Malone ("Malone", and collectively with Liberty Broadband, the "Stockholder Defendants"), for breaches of fiduciary duty.

2. Liberty Broadband is the Company's largest stockholder, owning approximately 26% of its outstanding shares and exercising effective control over a majority of the Board.[1] Liberty Broadband is itself controlled by its Chairman and

[1] Under the terms of a preexisting agreement with Charter, Liberty Broadband is entitled to designate the holders of four seats on the Company's ten member Board. Two other Board members have significant financial dealings with Malone and companies that he controls. And Charter's CEO is a full-time employee who depends on the Company (and thus, Malone's goodwill) for his livelihood. Thus, seven out of the ten board members are directly controlled and unduly influenced by Liberty Broadband and Malone. Public filings and media reports demonstrate that the Stockholder Defendants used these levers to exercise *de facto* control over Charter at all relevant times. In addition, by declaring that it is exempt from the Investment Company Act of 1940, Liberty Broadband has itself acknowledged that it exercises a "controlling influence over the management of policies" of Charter.

Chief Executive Officer ("CEO") Malone, who owns approximately 47% of its voting shares. Thus, Liberty Broadband and Malone—individually and collectively—control Charter.

3. This litigation arises from two related transactions between Charter and Liberty Broadband, entered into in connection with Charter's proposed acquisition of Time Warner Cable, Inc. ("TWC") and Bright House Networks, LLC ("Bright House").

4. On May 26, 2015, Charter and TWC announced that they had agreed to an acquisition whereby the two companies would merge in a cash and stock transaction (the "TWC Transaction") with a wholly-owned subsidiary of Charter, CCH I, LLC ("New Charter"), emerging as the surviving, publicly traded entity. In the same press release that announced the TWC Transaction, Charter also announced that it had agreed to acquire Bright House from Advance/Newhouse Partnership ("Advance/Newhouse"), a privately held New York partnership (the "Bright House Transaction", and together with the TWC Transaction, the "Transactions").[2]

[2] A proposed transaction with Advance/Newhouse for Bright House had previously been announced on March 31, 2015 (the "Original Bright House Transaction" and with the Bright House Transaction, the "Bright House Transactions") containing similar terms as the Bright House Transaction. The Original Bright House Transaction, however, was contingent on a proposed acquisition of TWC by Comcast Corporation ("Comcast"), which was subsequently abandoned because of anti-trust concerns. Because a material condition was not satisfied (*i.e.*, a merger between TWC and Comcast), the Original Bright House Transaction was void.

5. In connection with the Transactions, Defendants caused Charter to cater to the interests of the Stockholder Defendants at the expense of unaffiliated public stockholders. The Stockholder Defendants exploited their control over the Company to receive special treatment in three material respects.

6. *First*, in connection with the Bright House Transaction, Charter will allow Liberty Broadband to purchase $700 million in newly issued shares for $173/share, a total of more than 4 million shares. The pricing of this share issuance (the "Bright House Liberty Share Issuance") represents a discount to Charter's market price at the time the Bright House Transaction was announced.

7. Similarly, in connection with the TWC Transaction, Charter will allow Liberty Broadband to purchase $4.3 billion of newly issued shares of New Charter at a price equivalent to $176.95 per Charter share (the "TWC Liberty Share Issuance" and, collectively with the Bright House Liberty Share Issuance, the "Liberty Share Issuances"). Although it purportedly is tied to Charter's then-market-price, the price of the TWC Liberty Share Issuance is also unfair because the pre-announcement market price did not account for the fact that Charter's value would increase significantly as a result of its purchase of TWC and Bright House.[3] The

[3] At the time the Transactions were announced, the Company's financial advisors projected that the combined Company would be worth significantly more than $177/share by the time the Transactions closed. On the day the Transactions were

discounted cash flow analyses of Charter's financial advisors—LionTree Advisors LLC ("LionTree") and The Goldman Sachs Group, Inc. ("Goldman" or "Goldman Sach")—projected that the combined company would be worth $176.22 to $244.45 and $181 to $243 per share, respectively.

8. *Second*, in addition to the ability to purchase discounted shares, Liberty Broadband will receive an irrevocable five-year voting proxy for 6% of the outstanding voting power of New Charter (the "Voting Proxy"). This will bring Liberty Broadband's total voting power to 25% (as compared to its equity ownership of approximately 19%). Liberty Broadband will thus be the only shareholder to avoid significant dilution of its voting interest upon the consummation of the Transactions. Liberty Broadband is paying ***nothing*** for this material benefit.

9. *Third*, and finally, with respect to the TWC Transaction, only Liberty Broadband is able to elect to receive all stock as consideration for each share of TWC it holds. This provides Liberty Broadband with a tax benefit not available to public stockholders and will allow Liberty Broadband to fully enjoy the future benefits and synergies of the Transactions.

10. By structuring the Transactions to provide these benefits to Liberty Broadband—and Liberty Broadband alone—the Board has deprived Plaintiff and

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announced, Charter closed at $179.78/share. On April 21, 2016, Charter closed at $199.70/share.

Charter's public stockholders of additional value that should have been shared equally amongst all stockholders.

II. PARTIES

11. Plaintiff Matthew Sciabacucchi was a stockholder of Charter at the time of the Transactions and maintains his ownership of Charter today.

12. Defendant Liberty Broadband is a Delaware corporation that maintains its corporate headquarters in Englewood, Colorado. Liberty Broadband was formerly a wholly-owned subsidiary of Liberty Media Corporation ("Liberty Media"). In November 2014, Liberty Media completed a spin-off of Liberty Broadband (the "Liberty Broadband Spin"). Liberty Media and Liberty Broadband are now separate, publicly traded companies but have the same controlling shareholder: John Malone. According to Liberty Broadband's and Liberty Media's most recent Form 10-Ks, Malone owns approximately 47% of the aggregate voting power in each entity.

13. Defendant Malone has been a member of the Board since May 2013 and is one of Liberty Broadband's designees to the Board. Malone is the controlling stockholder and Chairman of Liberty Broadband and Liberty Media. Malone is also the Chairman of Liberty Interactive Corporation ("Liberty Interactive") (in which he holds approximately 37% of the aggregate voting power) and Liberty Global plc ("Liberty Global") (in which he holds approximately 30% of the aggregate voting

power). Malone serves on the board of directors of Discovery Communications, Inc., ("Discovery") and has a 28.9% voting interest in Discovery for purposes of director elections. In addition, Malone has 46.6% of the voting power and was formerly a non-executive Chairman of the board of Starz, a pay television network which was spun off from Liberty Media in 2013. Malone also sits on the board of Lions Gate Entertainment Corporation ("Lionsgate") and owns approximately 3.4% of Lionsgate's shares. In November 2015, Lionsgate sold an additional 3.4% stake to Discovery and another 3.4% stake to Liberty Global.

14. Defendant W. Lance Conn ("Conn") has been a member of the Board since November 2009. Conn was an officer of Charter Investment, Inc. ("Charter Investment").

15. Defendant Michael Huseby ("Huseby") has been a member of the Board since May 2013 when he was appointed by Liberty Media. At the time the Transactions were announced, he was the CEO and a director of Barnes & Noble, Inc. ("Barnes & Noble"), of which Liberty Media owned a 17% stake until 2014. Since August 3, 2015, Huseby has been serving as the Executive Chairman of the Board of Directors of Barnes & Noble Education, Inc., which was spun off of Barnes & Noble.

16. Defendant Craig Jacobson ("Jacobson") has been a member of the Board since July 2010. He is a member of the boards of directors of Expedia, Inc.

("Expedia") and Aver Media and was a director of Ticketmaster until its merger with Live-Nation, Inc.

17. Defendant Gregory Maffei ("Maffei") has been a member of the Board since May 2013 and is one of the designees of Liberty Media to the Board. He is the president and CEO of both Liberty Media and Liberty Interactive. Maffei is also chairman of the boards of directors of Live Nation Entertainment, Inc., Sirius XM Radio, Inc., Starz and TripAdvisor, Inc. He is a director of Zillow, Inc. and was formerly a director at Barnes & Noble.

18. Defendant John Markley, Jr. ("Markley") has been a member of the Board since November 2009. He is the managing director for Bear Creek Capital Management and is a director of BroadSoft, Inc., Millennial Media, Inc. and several private companies.

19. Defendant David Merritt ("Merritt") has been a member of the Board since December 2009 and serves as the Chairman of its Audit Committee. He is the president of BC Partners, Inc. ("BC Partners") and a director of Buffet Restaurant Holdings, Inc., Calpine Corporation and Taylor Morrison Home Corporation. Merritt served in a variety of capacities over a 25 year career at KPMG, including as the national partner in charge of the media and entertainment practice. While he was at BC Partners, the firm engaged in a transaction with Liberty Global and Apollo

Management, L.P. ("Apollo") whereby it sold its stake in Unitymedia GmbH ("Unitymedia") for a 40% profit.

20. Defendant Balan Nair ("Nair") has been a member of the Board since May 2013 when he was appointed by Liberty Media. He is an executive vice president and chief technology officer ("CTO") for Liberty Global. Nair is currently a director of Adran Corporation and Telenet Group Holding, N.V. ("Telenet"), a subsidiary of Liberty Global.

21. Defendant Thomas Rutledge ("Rutledge") has been the Company's CEO and a member of the Board since February 2012. Rutledge is a full-time employee of Charter who depends on the Company for his livelihood. He was the chief operating officer of Cablevision prior to joining the Company, and currently serves as a director for CableLabs and C-SPAN. He formerly worked at American Television and Communications ("ATC"), a predecessor company of TWC. Rutledge is also expected to remain as CEO of New Charter, on a five year guaranteed contract.

22. Defendant Eric Zinterhofer ("Zinterhofer") has been a member of the Board since 2009 and has been its non-executive chairman since December 1, 2009. He founded Searchlight Capital Partners, LLC ("Searchlight") and previously served as a partner at Apollo and Morgan Stanley Dean Witter & Co. Zinterhofer is a director of Dish TV India Ltd., Integra Telecom, Inc., Hunter Boot, Ltd. and Leo

Cable, LLC. Leo Cable LLC is a joint venture between Searchlight and Liberty Global.

23. Malone, Conn, Huseby, Jacobson, Maffei, Markley, Merrit, Nair, Rutledge and Zinterhofer are, collectively, the "Director Defendants."

III. NOMINAL DEFENDANT

24. Nominal Defendant Charter is a Delaware corporation that maintains its corporate headquarters in Stamford, Connecticut. Charter trades on the NASDAQ stock market under the ticker symbol "CHTR." The Company is one of the largest cable providers in the United States, serving approximately 6.7 million residential and commercial customers, as of December 31, 2015.

IV. OTHER RELEVANT PARTIES

25. New Charter is a Delaware limited liability company and a wholly owned subsidiary of Charter. In connection with the Transactions, New Charter will become the publicly traded parent company of Charter and Charter's public stockholders will receive shares of New Charter in exchange for their shares of the Company.

26. Advance/Newhouse is a privately owned New York partnership headquartered in Syracuse, New York. Advance/Newhouse is controlled by two brothers, Donald Newhouse and Si Newhouse, Jr. Advance/Newhouse owns the publisher, Condé Nast, a number of local newspapers and is a significant investor in

Discovery, controlling 22% of its aggregate voting power. Discovery's board of directors has three Advance/Newhouse designees, two current members of the board of directors of Liberty Media, three current members of the board of directors of Liberty Global and two current members of the board of directors of Liberty Interactive.

27. Bright House is a wholly owned subsidiary of Advance/Newhouse. It is the sixth-largest owner and operator of cable systems in the United States.

28. Time Warner Cable, Inc. is a publicly traded Delaware corporation, headquartered in New York, New York.

29. Goldman Sachs is a large investment bank that acted as a financial advisor to Charter in connection with the Transactions.

30. LionTree is a boutique investment bank that acted as a financial advisor to Charter in connection with the Comcast Divestment Transactions (defined below) and the Transactions. LionTree has, in the words of the Schedule 14A jointly filed by Charter and TWC with the SEC on August 20, 2015 (the "Definitive Proxy"), "a substantial historic and ongoing relationship with Liberty." LionTree's founder and CEO, Aryeh Bourkoff, was also formerly an investment banker with UBS AG ("UBS"), which acted as financial advisor to Advance/Newhouse in connection with the Bright House Transaction.

V. FURTHER SUBSTANTIVE ALLEGATIONS

A. Background

31. Paul Hodgson, formerly The Corporate Library's and then GMI Ratings' Chief Research Analyst, has written that "John Malone-controlled-and-owned Charter Communications is – like every other company Malone has a hold over" a "governance nightmare." In short, there are insufficient controls in place to prevent Malone from bending the Company to do his bidding.

1. A Shareholder Agreement Sets Forth Liberty Broadband's Influence Over Charter

32. On May 1, 2013, Liberty Media completed a $2.6 billion purchase of approximately 26.9 million shares of Charter, along with warrants to purchase an additional 1.1 million shares, from a consortium of investment funds managed by, or affiliated with, Apollo, Oaktree Capital Management, L.P. and Crestview Partners (the "Original Liberty Transaction"). At the time, the interests purchased by Liberty Media represented a 27% beneficial ownership in Charter.

33. In connection with the Original Liberty Transaction, Charter entered into a stockholders agreement with Liberty Media (the "Original Stockholders Agreement"). Pursuant to the Original Stockholders Agreement, at the closing of the Original Liberty Transaction on May 1, 2013, Liberty Media submitted four

designees who were immediately added to the Board: Malone, Maffei, Nair, and Huseby.

34. The Original Stockholders Agreement provided that—subject to Liberty Media's continued ownership of 20% or more of the outstanding shares of Class A common stock of Charter—Liberty Media would be entitled to designate up to four persons as nominees for election to the Board at least until January 2016 and that one such designee director (as specified by Liberty Media) would serve on each of the Audit Committee, the Nominating and Corporate Governance Committee, and the Compensation and Benefits Committee of the Board. Charter agreed further not to adopt any takeover device (such as a poison pill) that would preclude Liberty Media's continued accumulation of the Company's voting securities, up to a threshold of 39.99% of Charter's outstanding stock.

35. Liberty Media agreed that it would not acquire more than 35% of Charter's voting stock before January 2016 or more than 39.99% of Charter's voting stock thereafter. Liberty Media was also subject to modest standstill provisions that prohibited it from, among other things, engaging in any solicitation of proxies or consents.

36. By notice to Liberty Media in early January 2016, Charter could elect to terminate the obligation to nominate Liberty Media's designees to the Board. If it did so, the standstill provisions restraining Liberty Media would also terminate.

Beginning in 2017, Liberty Media and Charter would each have an annual right to terminate the Board nomination and standstill obligations by delivering notice to the other party of such termination in early January of such year.

37. On September 29, 2014, in connection with the Liberty Broadband Spin, Liberty Media, Liberty Broadband, and Charter entered into an amendment to the Original Stockholders Agreement. Pursuant to that amendment, Liberty Media assigned all of its rights and obligations under the Original Stockholders Agreement to Liberty Broadband. Liberty Broadband assumed all such rights and agreed to perform all such obligations and Charter consented to the rights' assignment and assumption.

2. Malone And Liberty Broadband Have Admitted Their Control Over Charter

38. As of June 10, 2015, Liberty Broadband owned approximately 25.74% of Charter's Class A common stock. Charter acknowledges the influence and control that Liberty Broadband has over it. As the Company disclosed in its most recent Form 10-K filed with the SEC on May 24, 2015, "Liberty Broadband Corporation [has] … influence over corporate transactions and other matters…. Liberty Broadband Corporation may be able to exercise substantial influence over all matters requiring stockholder approval, including the election of directors and approval of significant corporate action, such as mergers and other business

combination transactions … Liberty Broadband Corporation's substantial influence over [Charter's] management and affairs could create conflicts of interest if Liberty Broadband Corporation faced decisions that could have different implications for it and [Charter]."

39. Liberty Broadband also has admitted that it controls Charter. In its most recent Form 10-K, Liberty Broadband stated that:

> We do not believe we are currently subject to regulation under the Investment Company Act of 1940, ***because our investment in Charter enables us to exercise significant influence over Charter. We have substantial involvement in the management and affairs of Charter, including through our board nominees. Liberty nominated four of Charter's ten current directors, and we have assumed Liberty's nomination right under the terms of the Charter Stockholders Agreement.***

40. The Form 10-K further states that "If [Liberty Broadband's] investment in Charter were deemed to become passive … we could become subject to regulation under the Investment Company Act of 1940. In such event, we would be required to register as an investment company, which could result in significant registration and compliance costs, could require changes to our corporate governance structure and financial reporting, could restrict our activities going forward and could adversely impact our existing capital structure. For example, we would not be permitted to keep our dual class capital structure."

41. In other words, to avoid regulation under the Investment Company Act of 1940, Liberty Broadband must show that "either directly or … through controlled companies," it is "primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities." 15 USCS § 80a-3(b)(2). Thus, if Liberty Broadband is to avoid regulation under the Investment Company Act of 1940, it must show that Charter is a "controlled" company. *Id.*

42. The Investment Company Act of 1940 defines control—rather tautologically—as the "power to exercise a controlling influence over the management or policies of a company." 15 U.S.C. § 80a-2(a)(9). The Act provides a presumption—not found in Delaware law—that "[a]ny person who owns beneficially, either directly or through one or more controlled companies, more than 25[%] of the voting securities of a company shall be presumed to control such company." *Id.* However, that presumption "may be rebutted by evidence." *Id.*

43. Thus, in determining that it was not subject to regulation under the Investment Company Act of 1940, Liberty Broadband has conceded that there is insufficient evidence available to rebut the presumption that it exercises a "controlling influence over the management of policies" of Charter. Thus, Liberty Broadband exerts control over Charter under both federal and Delaware law.

44. Liberty Broadband's attorneys elaborated on this theory in correspondence to the SEC filed publicly on September 12, 2014:

if (i) Charter is primarily controlled by Broadband; (ii) through Charter, Broadband engages in a business other than that of investing, reinvesting, owning, holding or trading in securities; (iii) Charter is not an investment company; and (iv) Broadband is not an investment company under Sections 3(a)(1)(A) or 3(a)(1)(B) of the Act, then Broadband should be entitled to rely on Rule 3a-1 as the basis for the conclusion that Broadband is not an investment company for purposes of the Act. For the reasons discussed below, Liberty believes each of the foregoing criteria has been met.

First, Broadband's investment in Charter will represent an approximate 25.5% ownership interest in Charter's issued and outstanding shares of common stock and a beneficial ownership interest (assuming the exercise of warrants held by Liberty to be contributed to Broadband) of approximately 26.2% (based on the number of shares of common stock of Charter reported by it as outstanding as of June 30, 2014). Under Section 2(a)(9) of the Act, a person who owns beneficially, either directly or through one or more controlled companies, more than 25% of the voting securities of a company is presumed to control such company. ***Thus, by virtue of the size of its ownership stake in Charter, Broadband will be presumed to control Charter***. [4] Moreover, Broadband will "primarily" control Charter because it will be the largest single stockholder of Charter.

…

Second, through Charter, Broadband will engage in a business other than that of investing, reinvesting, owning, holding or trading in securities. ***Broadband will devote substantial time and resources to overseeing Charter's communications businesses, and will actively participate in the governance of Charter***. Under Liberty's stockholders agreement with Charter, which will be assigned to Broadband in connection with the Spin-Off, Liberty has the right to designate four persons for election to the Charter board of directors, subject to certain exclusions and requirements. Such directors (who were appointed to the Charter board upon the closing of Liberty's initial acquisition of Charter shares in 2013 and who subsequently were re-elected by shareholders to the Charter board) constitute approximately

[4] Unless otherwise noted, all emphasis has been added by counsel.

> 36% of the total number of directors on the Charter Board. Pursuant to the stockholders agreement, Charter has agreed to cause one of Liberty's designees to serve on each of the nominating and corporate governance, audit and compensation and benefits committees of the board, provided such persons meet the applicable independence and other qualifications for membership on those committees. Currently, directors designated by Liberty serve on each of those committees.
>
> Third, Charter is not an investment company, as defined under the Act. …
>
> Finally, Broadband will not be an investment company under Sections 3(a)(1)(A) or 3(a)(1)(B) of the Act. …

45. Liberty Broadband's letter to the SEC went on to argue (at a time when certain, since-cancelled transactions with Comcast were still pending) that:

> [Even i]f Broadband's interest is diluted to an amount less than the 25% threshold at which "control" is presumed …, Broadband believes that, based upon the facts and circumstances anticipated to exist following conclusion of the Comcast Transaction, ***it would continue to maintain "primary control" of Charter***. This view is based upon several factors:
>
> (i) … Broadband estimates that, after giving effect to the Stock Issuance, it will continue to own a greater percentage of the outstanding common stock of New Charter than any other individual or entity;
>
> (ii) based upon current stock prices and numbers of shares outstanding, Broadband estimates that it will be diluted to no less than 22% of the outstanding shares of New Charter as a result of the Stock Issuance; and
>
> (iii) pursuant to the Stockholders Agreement (which, in accordance with its terms, will be assigned from Liberty to Broadband in connection with the Spin-Off), so long as Broadband beneficially owns 20% or more of the outstanding common stock of New Charter, it will continue to be entitled to the same level of

> representation on the board of New Charter as Liberty currently has at Charter.

46. At Liberty Media's June 2, 2015 annual meeting, Malone himself stated that he and Mr. Maffei, "do represent these various Liberty companies on the public companies that they are ***substantial or controlling shareholders*** of. And to do otherwise would be silly. So I hate to call these various advisory services [which have criticized the corporate governance implications] silly, but if it fits, they should wear it."

3. The Board Is Beholden To The Stockholder Defendants

47. In addition to Liberty Broadband's voting power and the formal rights provided by the Original Stockholders Agreement, a majority of Charter's ten-person Board is personally beholden to Liberty Broadband and/or Malone. Four of the directors have been directly appointed by the Stockholder Defendants, and at least three others have such strong ties to either Liberty Broadband, Malone or both that they cannot truly be considered independent and cannot act in the best interests of the Company's unaffiliated stockholders.

48. Malone himself was a Liberty Broadband designee to the Board.

49. Maffei was one of Liberty Broadband's designees to the Board. He is currently the CEO of Liberty Broadband and Liberty Media and is the chairman of

the boards of directors of Starz, Live Nation Entertainment, Inc., Sirius XM Radio, Inc. and was formerly Liberty Media's appointee to the board of Barnes & Noble.

50. Huseby was one of Liberty Broadband's designees to the Board. From 2002 to 2004, he was Charter's Chief Financial Officer ("CFO"). From 2004 to 2011, he was the CFO of Cablevision Systems Corporation ("Cablevision"). Malone sat on Cablevision's board for a brief period in 2005. At the time the Transactions were announced, Huseby was Barnes & Noble's CEO and a member of its board of directors, and had been with that company since July 2013. He is now the Executive Chairman of Barnes & Noble Education, Inc., which was spun off from Barnes & Noble. Until mid-2014, Liberty Media was a major, activist holder of Barnes & Noble stock, owning a stake of approximately 17%.

51. Huseby got his start in the cable industry at AT&T Broadband, where he served as CFO from December 1999 through December 2002, after leaving the accounting firm Arthur Andersen. At the time, AT&T Broadband was a subsidiary of AT&T Corp. From March 1999 until August 2001, Malone sat on the board of AT&T Corp and controlled approximately 44% of a special class of AT&T Corp. stock ("Liberty Media Shares"). A June 6, 2015 article by *Barron's* suggested that Malone acted as a mentor to Huseby during this period: "One asset is Barnes & Noble's little-known CEO, Michael Huseby. He was schooled by one of the great value creators—cable and media mogul John Malone—in the early 2000s, and later

was CFO of Cablevision Systems (CVC) when it moved to unlock what became two winning spinoffs: AMC Networks (AMCX) and Madison Square Garden (MSG)."

52. When Huseby was appointed as Barnes & Noble's CEO, commentators suggested that he was chosen because of his history with Malone. A January 9, 2014 article by *Digital Book World*, for example, suggested that Huseby's "appointment did point generally to a digital future. But it pointed very specifically to John Malone, chairman of investment firm Liberty Media, which holds a significant equity stake in Barnes & Noble. Liberty also has a stake at former Huseby employer Charter Communications and Malone was on the board of Cablevision during Huseby's tenure."

53. Nair was one of Liberty Broadband's designees to the Board and is the executive vice president and CTO for Liberty Global, of which Malone is the chairman of the board of directors.

54. As the four designees of Liberty Broadband to the Board, there is no genuine dispute that Malone, Maffei, Huseby and Nair are influenced by and agents of Liberty Broadband and Malone. However, the reach of the Stockholder Defendants extends well beyond this near majority and influences and subverts an actual majority of the Board.

55. Zinterhofer is the one of three founding partners of the private equity firm Searchlight. In November 2012, a joint-venture entity named Leo Cable LP—

owned 60% by Liberty Global and 40% by Searchlight—purchased San Juan Cable, LLC ("San Juan Cable"), d/b/a OneLink Communications for approximately $585 million.

56. On December 10, 2014, Liberty Global and Searchlight announced that they had teamed up again to purchase the parent of Puerto Rico Cable Acquisition Company Inc., d/b/a Choice Cable TV ("Choice Cable") in a $272 million transaction. When the transaction was completed in June 2015, Choice Cable was combined with Liberty Cablevision of Puerto Rico LLC ("LCPR") and the combined business—60%-owned by Liberty Global and 40%-owned by Searchlight—became the largest cable operator in Puerto Rico.

57. Thus, Zinterhofer is a *current* business partner with Liberty Global and Malone in corporate enterprises worth almost $1 billion—the second of which was negotiated while discussions regarding a Liberty-funded acquisition of Bright House by Charter were *ongoing*.[5]

58. Despite these significant ties, the Definitive Proxy states that Zinterhofer was selected as a key member of a "working group" of purportedly

[5] Prior to forming Searchlight, Zinterhofer was a partner at Apollo, which was a substantial investor in Charter, and was part of the private equity consortium from which the Stockholder Defendants acquired their 27% stake in the Company. Apollo was also involved in the sale of Unitymedia to Liberty Global, a $5.2 billion transaction.

independent directors charged with assessing the terms of the Transactions vis-à-vis Liberty Broadband.

59. Zinterhofer is not alone. Jacobson is a member of the board of directors of Expedia. Liberty Interactive owns approximately 18% of Expedia's common stock and Malone is also a member of its board of directors. Moreover, Jacobson is one of the founders of New Form Digital Studios, a joint venture with Discovery, Brian Grazer, and Ron Howard. Malone serves on the board of directors of and has a 28.9% voting interest in Discovery.

60. In addition, Jacobson is an entertainment lawyer whose practice focuses on the representation of individual entertainers. In November 2014, *Variety* reported that Starz had purchased a television franchise—"Ash vs. Evil Dead"—that had been "packaged" by Jacobson, Creative Artists Agency and Agency for the Performing Arts. Malone has a near majority (45.5%) of the voting power and was a non-executive Chairman of the board of directors of Starz.

61. Rutledge's independence is also highly questionable. In early May 2015, the NEW YORK TIMES wrote an article on officer compensation practices at Malone-controlled companies—including Charter, which paid Rutledge (a "Malone confidant," according to the TIMES) $16 million last year. That pay represented an increase of 259% over 2013. The article noted, "[i]t pays to work for John C. Malone," stating that "C.E.O.s at the companies he oversees are routinely among the

best compensated managers on the planet." The NEW YORK TIMES then quoted Robert Jackson Jr., a professor of corporate governance at Columbia Law School, who stated that: "At John Malone's companies, there's still a great deal of inside baseball in setting executive pay[.]" As Maffei and Zinterterhofer are two of the three members of the Company's Compensation & Benefits Committee, it is no surprise that Rutledge would feel loyalty to Malone and his controlled companies.

62. Although the Definitive Proxy notes that certain meetings and deliberations took place without the four Liberty Broadband designees, these conflicted directors still voted to approve the Transactions and participated in nearly every discussion. Moreover, the Company took ***no*** measures to isolate the influence of either Zinterhofer or Jacobson and, in fact, delegated significant responsibilities relating to negotiations with Liberty Broadband to Zinterhofer, a business partner of Malone.

B. The Comcast/TWC Transaction

63. Since acquiring its controlling stake in mid-2013, the Stockholder Defendants have set an aggressive course for Charter with an eye toward large acquisitions. Less than a month after the Original Liberty Transaction closed, Liberty Media began pushing Charter towards a major strategic transaction. According to the Form S-4 filed on March 20, 2014, by Comcast in connection with that company's attempted acquisition of TWC:

> Between May 22, 2013 and July 9, 2013, ***at the request of Gregory Maffei, Chief Executive Officer and President of Liberty Media Corporation*** and Thomas Rutledge, Chief Executive Officer and President of Charter Communications, Inc., Glenn Britt, then Chairman and Chief Executive Officer of TWC, Robert Marcus, then President and Chief Operating Officer of TWC and now Chairman and Chief Executive Officer of TWC, and Arthur Minson, Executive Vice President and Chief Financial Officer of TWC, participated in several meetings with Messrs. Maffei and Rutledge. Based on public filings, Liberty is Charter's largest shareholder and holds an approximately 27% stake in Charter. ***During those meetings, Messrs. Maffei and Rutledge expressed Charter's interest in engaging in discussions with TWC concerning Charter's potential acquisition of TWC***.

64. Driven by the need to further Liberty Media's goals, Charter continued an aggressive pursuit of TWC into early 2014. During late 2013 and early 2014, Charter and Comcast engaged in substantive discussions regarding the possibility of a joint bid for TWC. Those negotiations broke down on February 4, 2014. The following day, according to a Comcast Form S-4, "N.J. Nicholas, Jr., the lead TWC independent director, received a call from John Malone, Chairman of Liberty. Mr. Malone expressed interest in pursuing an alternative, more collaborative path toward combining TWC and Charter."

65. This Malone-led attempt by Charter to acquire TWC on its own was unsuccessful. Just days later, on February 13, 2014, Comcast and TWC announced that they had reached an agreement for Comcast to acquire TWC in an all-stock transaction valued at approximately $45 billion (the "Comcast/TWC Transaction").

To address the likely concerns of anti-trust regulators, Comcast and TWC stated that they planned to divest a number of subscribers in connection with their merger.

66. Following the announcement of the Comcast/TWC Transaction, Charter entered into a series of subscriber swaps with TWC and Comcast and a purchase agreement for the acquisition of a Comcast spun off subsidiary (together, the "Comcast Divestment Transactions"), each of which was contingent upon the Comcast/TWC Transaction being consummated.

C. The Bright House Transactions Ensure Special Benefits To The Stockholder Defendants

67. Once the Comcast/TWC Transaction and the Comcast Divestment Transitions had been announced and appeared to be on the path to completion, the Stockholder Defendants resumed their campaign to expand Mr. Malone's empire through his ownership of Charter. One such opportunity arose through the Bright House Transaction.

68. The possibility of the Original Bright House Transaction was first made public on March 12, 2015, when Bloomberg reported that Charter was in talks to purchase Bright House Networks from Advance/Newhouse:

> Charter Communications Inc., the U.S. cable company that was outbid in an effort to buy Time Warner Cable Inc. last year, is in talks to acquire billionaire Si Newhouse Jr.'s Bright House Networks, people with knowledge of the matter said.

> The discussions have been ongoing for months and both sides have agreed on the outline of a potential all-stock deal, two people said, asking not to be identified discussing private information.
>
> Bright House, with about 2.5 million cable subscribers in states including Florida, California and Michigan, could be valued at about $12 billion if it fetches the same per-subscriber value that Charter last year agreed to pay in a deal with Comcast Corp.
>
> Charter jumped 5.9 percent to $193.46 as of 4 p.m. in New York Thursday, giving the company a market value of about $22 billion. Closely held Bright House is owned by Newhouse's Advance Publications Inc., which also controls Conde Nast Publications and the Golf Digest Cos.

69. Just a few weeks later, on March 31, 2015, the Original Bright House Transaction was officially announced. The Original Bright House Transaction was contingent on the completion of the Comcast Divestment Transactions. The press release issued by Charter stated, in part:

> Charter Communications, Inc. (NASDAQ: CHTR) and its subsidiary, CCH I, LLC (together, the "New Charter" or "Charter") and Advance/Newhouse Partnership (the parent company of Bright House Networks, LLC) today announced that the companies have reached a definitive agreement (the "Agreement") whereby Charter will acquire Bright House Networks ("Bright House") for $10.4 billion. Bright House is the sixth largest cable operator in the United States, and serves approximately 2 million video customers in central Florida including Orlando and Tampa Bay, as well as Alabama, Indiana, Michigan, and California.
>
> The business will be conducted through a partnership (the "Partnership") of which Charter will own 73.7%, and of which Advance/Newhouse will own 26.3%. The consideration to be paid to Advance/Newhouse by New Charter will include common and convertible preferred units in the Partnership, in addition to $2 billion in cash. The partnership units owned by Advance/Newhouse will be

> exchangeable for common shares of New Charter. The deal is subject to several conditions, including Charter shareholder approval, the expiration of Time Warner Cable's right of first offer for Bright House, the close of Charter's previously-announced transactions with Comcast and regulatory approval.
>
> …
>
> Pursuant to the Agreement, New Charter and Advance/Newhouse will form the Partnership utilizing an existing subsidiary of Charter Communications Holding Company, LLC, a partnership subsidiary of Charter. New Charter will contribute 100% of its assets into the Partnership, and Advance/Newhouse will contribute 100% of Bright House's assets into the Partnership. In exchange for its contribution, Advance/Newhouse will receive $5.9 billion of exchangeable common partnership units, and $2.5 billion of convertible preferred partnership units which will pay a 6% coupon. *The common and convertible preferred partnership units are each exchangeable into New Charter Class A common stock, with 34.3 million common units priced at $173.00 (the "Reference Price") per share.* The Reference Price negotiated with Advance/Newhouse represents the 60-day Charter volume weighted average price as of March 27, 2015, and adjusted from March 12, 2015. The 10.3 million preferred partnership units will be convertible at $242.19, a 40% premium to the Reference Price. Advance/Newhouse will also receive $2 billion in cash and will receive governance rights reflecting its economic ownership in the partnership through a new class of shares at New Charter.

70. The release detailed some of the preferential treatment Liberty Broadband had carved out for itself in the Original Bright House Transaction:

> In addition, Liberty Broadband Corporation … has agreed to purchase, upon closing of the Bright House transaction, $700 million of newly issued New Charter shares at the Reference Price. On an as-converted basis of its exchangeable partnership units, and including the impact of both the issuance of shares to acquire 33% of GreatLand Connections Inc. and Liberty Broadband's purchase of new shares, Advance/Newhouse is expected to own 26.3% of New Charter's outstanding common shares, and it is expected that Liberty

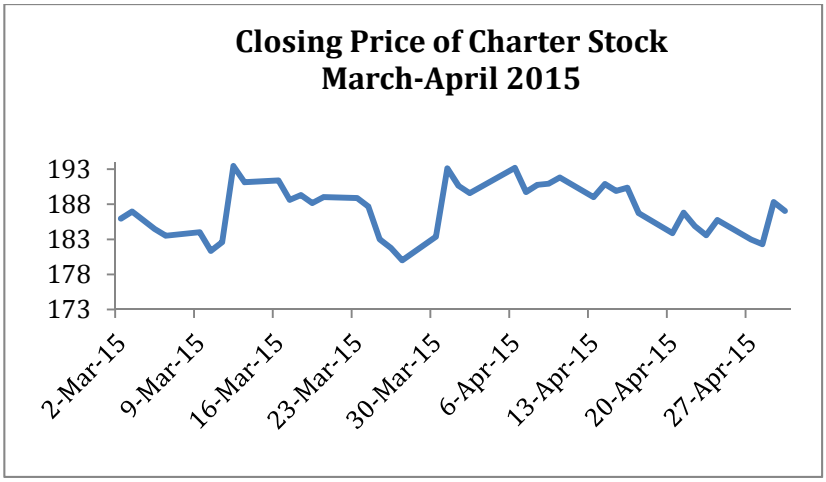
> Broadband's equity ownership will represent 19.4% of New Charter's outstanding common shares. ***In connection with the transaction, Advance/Newhouse has agreed to grant Liberty Broadband a voting proxy on its shares, capped at 6%, for the five years following the close of the transaction, such that Liberty Broadband would have total voting power of an anticipated 25.01% at closing. The proxy excludes votes on certain matters***.
>
> Upon closing, a new shareholder's agreement [the "New Shareholders Agreement"] with Advance/Newhouse and Liberty Broadband will become effective. ***Under the new agreement, Advance/Newhouse and Liberty Broadband will be granted preemptive rights, allowing each to maintain their pro rata ownership in New Charter***. The [New] Shareholder's Agreement also provides for voting caps and required participation in buybacks at specified acquisition caps, and stipulates transfer restrictions among other shareholder governance matters.
>
> At the close of the transaction, New Charter's Board of Directors will consist of 13 directors, including ***three directors designated by Advance/Newhouse and three directors designated by Liberty Broadband***.

(Emphasis added).

71. The terms of the Original Bright House Transaction included the issuance of $700 million worth of shares to Liberty Broadband—at a below-market price.

72. More specifically, the Bright House Liberty Share Issuance contemplated that Charter would issue and sell to Liberty Broadband approximately 4,046,242 shares at $173/share. This represents a significant discount to the market value of those shares at the time that the Original Bright House Transaction was negotiated. The Company's stock closed at $183.39/share the day before the

Original Bright House Transaction was first announced and had not closed below $173/share since February 9, 2015. On the day that the Original Bright House Transaction was announced, Charter's stock traded as high as $199.00/share and closed at $193.11/share. As shown by the following chart, during this time period, the closing price of Charter ***never*** approached $173/share in the month prior to nor the month proceeding the announcement of the Original Bright House Transaction.



D. The TWC/Comcast Transaction Collapses

73. In March 2015, at Morgan Stanley's Technology, Media & Telecom Conference, Liberty Media CEO Maffei announced, prophetically, that "for a ton of reasons" Charter "would likely pursue" Time Warner Cable if a Comcast merger failed for any reason. Malone offered identical thoughts at a Liberty Media Investor's Day gathering in November 2014, where his response to whether Charter would make another attempt to acquire TWC if the Comcast/TWC Transaction were to fail was a blunt "Hell yes!"

74. The long-contemplated possibility of the Comcast/TWC Transaction running into regulatory difficulties—despite the TWC and Comcast divestments and asset sales—came to fruition in May 2015. Amid widespread speculation that the Federal Communications Commission ("FCC") was on the verge of bringing suit to stop or alter the Comcast/TWC Transaction, on April 24, 2015, it was announced that the Comcast/TWC Transaction was being called off. As a result, because the Original Bright House Transaction was conditioned upon the TWC/Comcast Transaction closing, the Original Bright House Transaction became void.

75. Immediately, speculation ran rampant that Charter would again attempt to acquire TWC. That speculation came to fruition when, approximately one month later, Charter announced that it had agreed to terms with TWC, and announced the TWC Transaction in a press release, issued on May 26, 2015, which stated in relevant part as follows:

> Charter Communications, Inc. (Nasdaq: CHTR) (together with its subsidiaries "Charter") and Time Warner Cable Inc. (NYSE: TWC) today announced that they have entered into a definitive agreement for Charter to merge with Time Warner Cable. The deal values Time Warner Cable at $78.7 billion. Charter will provide $100.00 in cash and shares of a new public parent company ("New Charter") equivalent to 0.5409 shares of CHTR for each Time Warner Cable share outstanding. The deal values each Time Warner Cable share at approximately $195.71 based on Charter's market closing price on May 20, or approximately $200 based on Charter's 60-trading day volume weighted average price. In addition, Charter will provide an election option for each Time Warner Cable stockholder, other than Liberty Broadband Corporation ("Liberty Broadband") or Liberty Interactive

Corporation, who will receive all stock, to receive $115.00 of cash and New Charter shares equivalent to 0.4562 shares of CHTR for each Time Warner Cable share they own.

E. The Board Enters Into A New Bright House Transaction And Bestows Improper Benefits Upon The Stockholder Defendants

76. As noted above, the Original Bright House Transaction was contingent upon the Comcast/TWC Transaction being completed.[6] Once that deal became void, Defendants could have come to their senses, disavowed the sweetheart deal and preferential treatment they had agreed to provide Liberty Broadband, and protected the rights of Charter's public stockholders.

77. The Company easily could have proceeded with either just the TWC Transaction or with the TWC Transaction and a transaction to acquire Bright House without improperly benefiting Liberty Broadband. Instead, at the same time it announced the TWC Transaction, Charter announced the Bright House Transaction—with terms very similar to the Original Bright House Transaction—once again extending preferential treatment and benefits to the Stockholder Defendants. The Bright House Transaction provides for the Bright House Liberty Share Issuance and the Voting Proxy to remain in place on almost identical terms to

[6] More specifically, the Original Bright House Transaction was contingent upon the consummation of the Comcast Divestment Transactions, which, in turn, were contingent upon the Comcast/TWC Transaction being completed.

the Original Bright House Transaction, and adds to the unfairness via additional preferential terms negotiated in the TWC Transaction.

78. In conjunction with the announcement of the TWC Transaction, Charter announced that it entered into a new Bright House Transaction (with terms substantially similar to the Original Bright House Transaction) and announced the Voting Proxy and the Bright House Liberty Share Issuance as integral parts of the Bright House Transaction. The press release issued on May 26, 2015, announcing the TWC Transaction also announced the Bright House Transaction.

79. With respect to the Bright House Transaction, the May 26, 2015 press release stated, in relevant part:

> In addition, Charter and Advance/Newhouse Partnership (a parent of Bright House Networks, LLC) today announced that the two companies have amended the agreement which the two parties signed and announced on March 31, 2015, whereby Charter will acquire Bright House Networks ("Bright House") for $10.4 billion. That agreement, as amended, provides for Charter and Advance/Newhouse to form a new partnership (the "Partnership") of which New Charter will own between approximately 86% and 87% and of which Advance/Newhouse will own between approximately 13% and 14%, depending on the Time Warner Cable shareholders' cash election option described above. The consideration to be paid to Advance/Newhouse by Charter will include common and convertible preferred units in the Partnership, in addition to $2 billion in cash. The common and convertible preferred partnership units will each be exchangeable into shares of New Charter. The Charter-Advance/Newhouse transaction is expected to close contemporaneously with the Charter-Time Warner Cable transaction.

> Charter also announced today that Liberty Broadband Corporation ("Liberty Broadband") has agreed to purchase, upon closing of the Time Warner Cable transaction, $4.3 billion of newly issued shares of New Charter at a price equivalent to $176.95 per Charter share, which represents Charter's closing price as of May 20, 2015. As previously-announced, Liberty Broadband will also purchase, upon closing of the Charter-Advance/Newhouse transaction, $700 million of newly issued Charter shares at a price equivalent to $173.00 per Charter share.

80. Regarding the ownership amounts of New Charter, the release stated:

> Following the close of both the Charter-Time Warner Cable and the Charter-Advance/Newhouse transactions, and depending on the outcome of the cash election feature offered in the Charter-Time Warner Cable transaction, Time Warner Cable shareholders, excluding Liberty Broadband and its affiliates, are expected to own between approximately 40% and 44% of New Charter, and Advance/Newhouse is expected to own between approximately 13% and 14% of New Charter. Liberty Broadband is expected to own between approximately 19% and 20% of New Charter.

81. In accordance with the terms of the TWC Transaction, and as noted in the May 26, 2015, press release, Liberty Broadband is purchasing $4.3 billion in newly issued shares of New Charter (the "TWC Shares"), at a price of $176.95, the closing price of Charter as of May 20, 2015 (the "TWC Liberty Share Issuance" and collectively with the Bright House Liberty Share Issuance, the "Liberty Share Issuances"). The price for the $700 million Bright House Liberty Share Issuance, however, will remain unchanged at just $173.00 per share.

82. The Definitive Proxy provides no explanation for the difference in prices, stating only that "Charter and Liberty Broadband eventually agreed that

Liberty Broadband's $700 million investment provided for in the original BHN contribution agreement [*i.e.*, the Original Bright House Transaction] would remain at the approximately $173 per share price specified in those agreements, while Liberty Broadband's additional investment, which was to be for $4.3 billion, would be priced at a recent market price, on which the TWC transaction value was also based."

83. The May 26, 2015 press release also noted that the Company had adopted the Voting Proxy, stating in relevant part:

> Upon closing of the Charter-Advance/Newhouse transaction, a new shareholder's agreement (the "Shareholder's Agreement") with Advance/Newhouse and Liberty Broadband will become effective. Under the new agreement, Advance/Newhouse and Liberty Broadband will be granted preemptive rights, allowing each to maintain their pro rata ownership in New Charter. The Shareholder's Agreement also provides for voting caps and required participation in buybacks at specified acquisition caps, and stipulates transfer restrictions among other shareholder governance matters. ***In connection with the Charter-Advance/Newhouse transaction as amended, Advance/Newhouse has agreed to grant Liberty Broadband a voting proxy on its shares, capped at 7%, for the five years following the close of the transaction, such that Liberty Broadband would have total voting power of approximately 25% at closing***.

(Emphasis added).

84. In addition to the Voting Proxy and the Liberty Share Issuances, the Bright House Transaction also provides a top-up provision allowing Liberty Broadband to purchase from any issuance of equity in conjunction with capital

raising efforts sufficient shares to maintain its investment in the Company. Liberty Broadband has also been explicitly carved out from any future stockholder rights plan which Charter may adopt, essentially rendering it immune from future corporate governance reforms made by the Company.

F. The Stockholder Defendants Exerted De Facto Control Over The Transactions

85. The Definitive Proxy and other public reports demonstrate that the Stockholder Defendants exercised *de facto* control over the Company in the negotiation of the Transactions.

86. In its story announcing the TWC Transaction, THE WALL STREET JOURNAL wrote that "Charter Communications Inc. reached a $55 billion deal for Time Warner Cable Inc., giving cable mogul John Malone the prize he has been chasing for two years." Quoting "people familiar with the matter," the paper reported that "Mr. Malone got more involved," than he had been in Charter's initial pursuit of TWC, "calling Time Warner Cable CEO Rob Marcus in the early stages of Charter's pursuit to indicate he wanted a friendly deal."

87. In a story headlined, "The 'King of Cable' Behind a Charter-Time Warner Cable Deal," the NEW YORK TIMES wrote that the Transactions represent "Mr. Malone tr[ying] to pull off the biggest land grab of his career." The story went on to say that "there is little doubt that Mr. Malone is behind the scenes, orchestrating

an upheaval of the industry he helped create two decades ago." The story quotes Jason Bazinet, a media analyst with Citigroup, stating that Malone is "the genius behind the curtain" and concludes that "Mr. Malone … is widely understood to be guiding the company's aggressive acquisition strategy." The article also quotes Mark Robichaux, author of *Cable Cowboy: John Malone and the Rise of the Modern Cable Business*, who states that, with respect to Charter, Malone "is the power behind the throne[.]"

88. In an interview for the NEW YORK TIMES story, Charter's CEO, Mr. Rutledge, did not deny Malone's influence, stating "***[w]hen he talks, I listen. And he is a significant talker***."

89. Other journalists have reached the same conclusion. NPR stated bluntly, "Malone is behind the proposed takeover of Time Warner Cable by the much smaller Charter Communications." The FINANCIAL TIMES wrote that "The three-way deal to combine Charter, TWC and Bright House Networks, a smaller cable operator, is a ***classic Malone deal with a fiendishly complex structure aimed at delivering the maximum amount of influence*** and tax savings" and that the deal would "give[] Liberty [Broadband] de facto control of the second-largest supplier of high-speed broadband services in the US." Variety wrote that "Malone has yet to publicly comment on the Charter transactions, but industry observers note ***he was a facilitator of the talks*** that led to a rich deal[.]"

90. The Definitive Proxy provides further evidence of the Stockholder Defendants' *de facto* control over the negotiation of the Transactions.

91. For example, the Definitive Proxy states that Advance/Newhouse sent its initial draft of a high-level term sheet to Charter on June 11, 2014. When Charter proposed revisions on June 19, 2014, many of its suggestions were "proposing limits on A/N's influence over Charter following a transaction, ***particularly in conjunction with the existing share ownership and governance rights of Liberty Media Corporation …***, then Charter's largest stockholder." In other words, from the very start of the process, Charter appeared to be primarily concerned with protecting Liberty's control over the Company rather than obtaining the best deal possible for *all* shareholders.

92. After extensive negotiations, Charter and Advance/Newhouse had, by October 21, 2014, developed a term sheet which "laid out the material terms of the potential combination."

93. Once Liberty Media had access to this term sheet, it added additional terms, including Advance/Newhouse "grant[ing] Liberty Media a proxy … to vote as many of [Advance/Newhouse]'s shares in Charter as would be required to increase Liberty Media's total voting stake in Charter to 25.01%." Liberty was also directly involved in determining the structure and size of the combined company's board of directors

94. The Definitive Proxy further notes that, as of November 2014, it was "Charter and Liberty Broadband" who "agreed to continue pursuing the potential combination with Bright House" and not Charter or the Board alone making this decision. Further evidencing the influence of the Stockholder Defendants, negotiations with Steven A. Miron ("Miron"), CEO of Bright House, were conducted by Zinterhofer, who is a hopelessly conflicted director, as well as by Malone directly.

95. The Definitive Proxy makes clear that Malone and his envoys played a key role in the negotiation of both transactions. For example:

- "On November 25, 2014, each of Mr. Zinterhofer and Dr. John C. Malone, Chairman of Liberty Broadband and a director of Charter, separately had telephone conversations with Mr. Miron to discuss the next steps for the potential combination with Bright House. Mr. Miron advised each of them that A/N was still considering the proposed changes to the term sheet that Charter and Liberty Broadband had negotiated since the October 21, 2014 draft."

- "On December 17, 2014, after conversations between Dr. Malone and Mr. Miron, Mr. Zinterhofer and Mr. Rutledge met with Mr. Miron and other representatives of A/N and Bright House to discuss the next steps for the potential combination."

- "[O]n April 24, 2015, Mr. Rutledge spoke with Mr. Marcus [CEO of TWC] regarding the termination of the Comcast-TWC merger agreement and expressed interest in engaging with TWC in discussions regarding a potential combination. … Mr. Zinterhofer and Dr. Malone separately spoke with Mr. Marcus about this possibility as well."

96. The Definitive Proxy also reflects instances where Liberty Broadband interacted directly with Advance/Newhouse's counsel, and further notes instances where "Charter and its advisors met with Liberty Broadband and [Advance/Newhouse] and their respective financial and legal advisors … to discuss outstanding issues."

G. The Board Did Not Employ Sufficient Protections To Prevent The Stockholder Defendants From Exploiting Their Control Over Charter To Extract Unfair Benefits

97. As set out in the Definitive Proxy, the Merger Agreement required that some aspects of the Transactions, such as "the Liberty transactions (including stock issuances pursuant to the Liberty investment agreement [*i.e.*, the Liberty Share Issuances] and the BHN/Liberty stockholders agreement [*i.e.*, the Voting Proxy])" be approved by "the affirmative vote of a majority of the outstanding shares of Charter Class A common stock (excluding the shares beneficially owned by Liberty Broadband and its affiliates and associates)."

98. The stockholder vote took place on September 21, 2015 and Charter stockholders voted to approve the Transactions, including the necessary share issuances. As set forth below, however, the stockholder vote was tainted by, *inter alia*, material omissions and misrepresentations in the Definitive Proxy.

99. Moreover, the stockholder vote to approve the Liberty Share Issuances and the Voting Proxy was coerced. The acquisitions of Bright House and TWC—

which were valuable opportunities for the Company—would occur only if shareholders approved the corresponding side deals for the Stockholder Defendants. The Definitive Proxy told shareholders that:

> In order to satisfy the conditions to the completion of the mergers, Charter and TWC stockholders must vote to approve the adoption of the merger agreement and Charter stockholders must vote to approve the stock issuances in connection with the transactions contemplated by the merger agreement, the Liberty investment agreement and the BHN/Liberty stockholders agreement, the Liberty transactions and the amended and restated certificate of incorporation, as described in this joint proxy statement/prospectus.
>
> In order to satisfy the conditions to the completion of the BHN transactions, Charter stockholders must vote to approve the stock issuances in connection with the transactions contemplated by the BHN/Liberty stockholders agreement and the BHN contribution agreement, certain Liberty transactions (including the provisions of the BHN/Liberty stockholders agreement) and the amended and restated certificate of incorporation, as described in this joint proxy statement/prospectus.

100. The inclusion of a majority-of-the-minority provision appears to be an attempt by the Stockholder Defendants to invoke the protections of *Kahn v. M&F Worldwide Corp.* ("*MFW*"), 88 A.3d 635 (Del. 2014), as well as perhaps a tacit admission that entire fairness is, in the first instance, the appropriate standard of review. But as *MFW* makes clear, a majority-of-the-minority provision triggers business judgment review, "if and only if: (i) the controller conditions the procession of the transaction on the approval of both a Special Committee and a majority of the minority stockholders; (ii) the Special Committee is independent; (iii) the Special

Committee is empowered to freely select its own advisors and to say no definitively; (iv) the Special Committee meets its duty of care in negotiating a fair price; (v) the vote of the minority is informed; and (vi) there is no coercion of the minority." *Id.* at 645. These conditions must be imposed *ab initio*. *Id.* at 644.

101. That standard is not met here, where Defendants made little effort to establish procedures to address the obvious conflicts between the Stockholder Defendants' interests and those of public shareholders.

102. Liberty Broadband's initial offer certainly was not conditioned on the approval of a Special Committee. According to the Definitive Proxy, not until October 24, 2014—*i.e.*, long after the broad outlines of the Original Bright House Transaction had been agreed to, including Charter acting as an advocate on Liberty's behalf—did "the members of Charter's board of directors other than the directors designated by Liberty Media (Dr. Malone and Messrs. Huseby, Maffei and Nair) [meet] to discuss [a] term sheet [proposed by Liberty Media] and also considerations regarding the potential combination with Bright House."

103. These directors "resolved to form a *working group* comprising Eric L. Zinterhofer, Chairman of Charter, John D. Markley Jr. and Lance Conn to meet as necessary to consider and negotiate the potential transaction. Because LionTree advised the Charter board of directors that they had a substantial historic and ongoing relationship with Liberty, [these] directors of the Charter board of directors

negotiated and considered the transactions with Liberty without the participation of LionTree."

104. There is no evidence that the "working group" was empowered to freely select its own advisors, definitively negotiate terms, or to say no definitively. Indeed, it does not appear that the "working group" ever retained independent financial or legal advisors.[7]

105. The working group gave the Stockholder Defendants effectively everything they wanted. On October 24, 2014, Liberty Media demanded "that A/N grant Liberty Media a proxy (the "Bright House Proxy") to vote as many of A/N's shares in Charter as would be required to increase Liberty Media's total voting stake in Charter to 25.01%. Liberty Media's markup also proposed that Charter grant Liberty Media preemptive rights to maintain its pro rata ownership stake in Charter after the closing of the combination with Bright House in connection with any issuance of equity securities of Charter after signing[.]"

106. After a period of half-hearted negotiation by the "working group,"—led by the hopelessly conflicted Mr. Zinterhofer—the Stockholder Defendants achieved their goals. As stated in the Definitive Proxy, "[o]n November 21, 2014,

[7] Considering the vast experience Charter's counsel has in Delaware corporate dealmaking and litigation, it is telling that the so-called "working group" does not even purport to call itself a "Special Committee."

Charter and Liberty Broadband agreed to continue pursuing the potential combination with Bright House on the basis of a revised version of the non-binding term sheet that, among other provisions, provided for pre-emptive rights enabling Liberty Broadband to maintain a 25.01% voting interest in Charter, at closing and in equity issuances thereafter, and for a 13-member board with three Liberty Broadband designees and three A/N designees for as long as each maintained a 20% voting or equity interest in Charter."

107. The Director Defendants were even more lackadaisical in negotiating the terms of the Liberty Share Issuance in connection with the TWC Transaction. As stated in the Definitive Proxy:

> On April 24, 2015, Mr. Rutledge spoke with Mr. Maffei and noted Charter's possible interest in pursuing a strategic transaction with TWC, and Mr. Maffei expressed general support for Charter pursuing a transaction with TWC and for continuing discussions with Bright House. Mr. Maffei also noted Liberty Broadband's interest in making a significant additional investment in Charter, including by exchanging its TWC shares for Charter shares, and that Liberty Interactive might consider engaging in a similar transaction, in light of Charter's potential financing needs and Liberty Broadband's desire to maintain its percentage equity interest in Charter, assuming such exchange could occur on a tax-free basis.

108. Without any further discussion, Charter executives appear to have assumed that the TWC Transaction would be financed, in part, by a further share purchase by Liberty Broadband. The terms of that investment do not appear to have

been discussed further until May 16, 2015—just a week before the TWC Transaction was announced. According to the Definitive Proxy:

> On May 16, 2015, [unnamed] members of Charter management had a call with members of Liberty Broadband management, including Mr. Maffei, to discuss the potential terms on which Liberty Broadband was interested in making an additional investment in Charter shares to partially finance the cash portion of the consideration to be paid to TWC stockholders and the terms on which Liberty Broadband would consider exchanging TWC shares for Charter shares. Charter also requested that Liberty Broadband provide a support letter to be delivered with Charter's proposal to TWC, reflecting its willingness to make such investment and exchange. Liberty Broadband indicated that Liberty Interactive might be interested in exchanging its shares of TWC stock for shares of Charter stock on the same terms as Liberty Broadband instead of receiving cash and stock consideration.

109. Over the next two days, the Charter directors, other than the four Liberty designees, "receive[d] an update from Mr. Zinterhofer," about the Liberty Share Issuance and "together with Goldman Sachs and [the Company's legal advisor] Wachtell Lipton, discussed the potential Liberty Broadband investment and appropriate valuation for that investment, and the terms, including with respect to corporate governance, of the Bright House transaction."

110. Some *pro forma* discussions regarding the TWC Liberty Share Issuance then took place. The Definitive Proxy states that:

> On May 20 and May 21, 2015, representatives of Charter, including Mr. Rutledge, Mr. Zinterhofer and Goldman Sachs, had several discussions with Mr. Maffei regarding the pricing of the Liberty Broadband investment. On May 20, 2015, Wachtell Lipton began discussions with Baker Botts regarding documentation of both the

> Liberty Broadband investment and an agreement for Liberty Broadband and Liberty Interactive to exchange their TWC shares for Charter shares, and exchanged drafts of the revised support letter from Liberty Broadband which included a support letter from Liberty Interactive to Liberty Broadband. Charter and Liberty Broadband eventually agreed that Liberty Broadband's $700 million investment provided for in the original BHN contribution agreement would remain at the approximately $173 per share price specified in those agreements, while Liberty Broadband's additional investment, which was to be for $4.3 billion, would be priced at a recent market price, on which the TWC transaction value was also based.

111. Negotiations continued on May 22 and May 23. According to the Definitive Proxy, it appears that Charter's primary focus was increasing Liberty Broadband's control over the combined company through reducing the rights of Advanced/Newhouse:

> Charter also began continuous negotiations with Liberty Broadband, Liberty Interactive and with Bright House regarding the Liberty agreements and the Bright House agreements, including with respect to adjusting the number of board seats A/N could designate and the percentage ownership thresholds at which A/N would lose board designation and other governance rights, in each case in light of the new pro forma ownership percentages that A/N would have in the combined entity assuming the consummation of the TWC transactions, the elimination of supermajority approval requirements for certain business combinations with interested stockholders from Charter's certificate of incorporation and the circumstances under which A/N would be committed to sell Bright House to Charter in the absence of a Charter and TWC merger.

112. The Board approved the Transactions on May 23, 2015 with the directors other than the Liberty-Broadband-designated directors voting to approve "the amendment to the BHN contribution agreement, the BHN/Liberty stockholders

agreement, the Liberty investment agreement and the Liberty contribution agreement."

H. The Board Relied Upon Flawed Fairness Opinions Conducted By Conflicted Advisors

1. LionTree Was Conflicted Because Of Its Prior Engagements With Liberty Entities

113. The Definitive Proxy acknowledges that LionTree was conflicted, noting, for example that LionTree "had provided significant services to Liberty Media and Liberty Broadband in the past." The Definitive Proxy does not delve into these significant services, however, or fully demonstrate how important the continued favor of Malone and his Liberty family of companies was to LionTree. Indeed, the WALL STREET JOURNAL blog Deal Journal opined that, with regards to the relationship between LionTree and the Stockholder Defendants, "[w]orking for John Malone may be all the work a boutique bank needs."

114. From the very beginning of the Stockholder Defendants' relationship with Charter, LionTree has been at its side. It was the sole advisor to Liberty Media in the transaction where Liberty Media acquired its initial stake in Charter and was cited as having played a pivotal role in arranging the investment.

115. Malone has reciprocated this pivotal role through his patronage of LionTree. For example, it was Malone's Liberty Global which was responsible for "thrusting little-known investment advisor LionTree into the spotlight, giving it a

place among the likes of Goldman Sachs and JPMorgan Chase," according to a Fortune article. LionTree was Liberty Global's lead advisor in its acquisition of Virgin Media, a $23.3 billion transaction through which LionTree collected a share of $23 million in fees.

116. LionTree was also an advisor to Liberty Global and Zinterhofer's Searchlight in their $585 million acquisition of San Juan Cable. The firm also advised Liberty Global and Searchlight in their $272.5 million acquisition of Choice Cable.

117. In yet another Malone related engagement, in September 2014, Bloomberg reported that "Starz, the pay-TV channel controlled by billionaire John Malone" had hired LionTree to investigate a sale of the company following its spin-off from Liberty Media in 2013.

118. Despite the obvious and inherent conflict of interest involved in relying on LionTree to evaluate the fairness of the Transactions, LionTree remained engaged by the Board. Its opinion that the Transactions are purportedly fair was listed as two of the reasons that the Board recommends shareholders vote in favor of the Transactions. Yet, LionTree's advice was so obviously conflicted and biased in favor of the interests of the Stockholder Defendants that its representatives left certain Board meetings along with the Liberty-appointed directors.

2. Goldman Was Conflicted Through Its Prior Engagements

119. Goldman has provided significant services for Liberty-related entities and these engagements have rendered its advice in the Transactions highly conflicted, particularly as it concerns the benefits received by Liberty and unavailable to ordinary stockholders of the Company.

120. Goldman acted as financial advisor to Telenet, a subsidiary of Liberty Global, ***while the Bright House Transaction was being negotiated*** in connection with its acquisition of BASE Company NV in April 2015. It was the financial advisor when Malone adjusted the DirecTV and Liberty Media assets by spinning off the Liberty Entertainment unit and merging it with DirectTV. That transaction was structured with an eye to giving Malone more direct control over the operations of DirecTV.

121. Goldman has also acted: as joint bookrunner with respect to the refinancing of indebtedness of VTR GlobalCom Spa ("VTR GlobalCom"), a subsidiary of Liberty Global, and certain of its affiliates and the related public offering of 6.875% Senior Secured Notes due 2024 (aggregate principal amount $1,400,000,000) by VTR Finance B.V. in January 2014; as joint bookrunner with respect to the public offering of 5.500% Senior Secured Notes due 2025 (aggregate principal amount of $425,000,000), 5.500% Senior Secured Notes due 2025 (aggregate principal amount £430,000,000) and 6.250% Senior Secured Notes due

2029 (aggregate principal amount £225,000,000) by Virgin Media Secured Finance PLC ("Virgin Media Secured Finance") (acquired by Liberty Global in June 2013) in March 2014; as joint bookrunner with respect to the public offering of 4.000% Senior Secured Notes due 2025 (aggregate principal amount £1,000,000,000) and 5.000% Senior Secured Notes due 2025 (aggregate principal amount $550,000,000) in December 2014 by Unitymedia Hessen GmbH & Co. KG and Unitymedia NRW GmbH (units of Liberty Global); as joint bookrunner with respect to the public offering of 3.45% Senior Notes due 2025 (aggregate principal amount of $300,000,000) in February 2015 by Discovery; as bookrunner with respect to public offering of 5.25% Senior Secured Notes due 2026 (aggregate principal amount $500,000,000) and 4.875% Senior Secured Notes due 2027 (aggregate principal amount £525,000,000) in March 2015 by a subsidiary of Virgin Media Inc.; as bookrunner with respect to the public offering of 5.250% Senior Secured Notes due 2026 (aggregate principal amount of $500,000,000) in April 2015 by a subsidiary of Virgin Media Inc.; and as joint global coordinator in connection with a, 8 year term loan (aggregate principal amount of €800 million) made to Telenet in May 2015.

122. Goldman has also provided financial advisory services for the Stockholder Defendants. It was financial advisor to Liberty Global in its acquisition of a 6.400% stake in ITV plc in July 2014; as financial advisor to Liberty Global with respect to a redemption of certain Senior Secured Notes due 2019 and the public

offering of 6.375% Senior Secured Notes due 2024 (aggregate principal amount £300,000,000) and 6.000% Senior Secured Notes due 2024 (aggregate principal amount $500,000,000) in October 2014 and as financial advisor to Liberty Global in its acquisition of certain outstanding shares of VTR GlobalCom and VTR Wireless SpA in March 2014; as sole bookrunner with respect to the public offering of 6.250% Senior Secured Notes due 2029 (aggregate principal amount £175,000,000) by Virgin Media Secured Finance in April 2014.

123. In addition to acting as bookrunner and as a financial advisor on numerous occasions, Goldman has also entered into financing deals alongside the Liberty family of companies. For example, it was a co-financier with Liberty Media of a round of financing for Sling Media, Inc., best known for its product the Slingbox.

124. With the exception of a $2.5 million offset for services previously performed in connection with the Comcast Divestment Transactions, Goldman's ***entire*** $42.5 million fee for the TWC Transaction and $15 million fee for the Bright House Transaction, a combined $57.5 million, is contingent upon the consummation of the Transactions, giving it an enormous incentive to provide whatever advice was necessary to ensure that the Transactions are completed.

3. The Fairness Opinions Of The Board's Financial Advisors Failed To Consider The Benefits To The Stockholder Defendants

125. The Board obtained separate fairness opinions from both LionTree and Goldman opining on both of the Transactions. However, in addition to having been conducted by conflicted advisors, these opinions fail to examine all of the benefits flowing to the Stockholder Defendants.

126. LionTree's fairness opinion for the Bright House Transaction states that LionTree was not "asked to, nor [did it], offer any opinion as to (i) the terms of the transactions between Liberty and its affiliates, on the one hand, and the Company and its affiliates, on the other hand, that are contemplated by the Agreements, [or] (ii) the terms of the Stockholders Agreement or any of the other Transaction Documents (as defined in the BH Agreement)."

127. Similarly, Goldman's opinion on the Bright House Transaction does not opine on the fairness of the Bright House Liberty Share Issuance or the Voting Proxy.[8] Goldman states that its opinion:

> addresses only the fairness from a financial point of view to the Company, as of the date hereof and taking into account, among other things, the Issuance and the Tax Receivables Payments, of the Aggregate Consideration to be paid by Charter Holdco and New Charter for the Bright House Business pursuant to the Agreement. We

[8] Goldman's opinion takes the Issuance "into account" in calculating the fairness of the overall consideration paid for Bright House, but does not consider the fairness of the Bright House Liberty Share Issuance as a stand-alone transaction.

> do not express any view on, and our opinion does not address, any ongoing obligations of the Company, New Charter, Charter Holdco, any allocation of the Aggregate Consideration, any other term or aspect of the Agreement or the BH Transaction or any other agreement or Instrument contemplated by the Agreement or entered into or amended in connection with the BH Transaction, including, the fairness of the BH Transaction to, or any consideration received in connection therewith by, the holders of any class of securities, creditors, or other constituencies of the Company

128. Similarly, both LionTree and Goldman provided separate fairness opinions regarding the TWC Transaction. Again, neither opinion evaluated the unique benefits received by the Stockholder Defendants.

129. LionTree's fairness opinion regarding the TWC Transaction states that:

> This opinion addresses only the fairness from a financial point of view to the Company, as of the date hereof, of the TWC Consideration to be paid by the Company for the TWC Common Stock pursuant to the TWC Agreement.
>
> …
>
> [W]e have not been asked to, nor do we, offer any opinion as to (i) the terms of the transactions between Liberty and its affiliates, on the one hand, and the Company and its affiliates, on the other hand, that are contemplated by the Agreements, [or] (ii) the terms of the Stockholders Agreement or any of the other Transaction Documents (as defined in the BH Agreement).
>
> …
>
> Based upon and subject to the foregoing, it is our opinion that, as of the date hereof, the TWC Consideration to be paid for the TWC Common Stock pursuant to the TWC Agreement is fair, from a financial point of view, to the Company.

130. Goldman Sachs' TWC fairness opinion is similarly limited, stating:

> This opinion addresses only the fairness from a financial point of view to the holders (other than the Liberty Related Entities and TWC and their respective affiliates) of Shares, as of the date hereof and taking into account the TWC Acquisition, of the Charter Exchange Ratio pursuant to the Agreement. We do not express any view on, and our opinion does not address, any other term or aspect of the Agreement or Transaction or any term or aspect of any other agreement or instrument contemplated by the Agreement or entered into or amended in connection with the Transaction, including, the fairness of the Transaction to, or any consideration received in connection therewith by, the holders of any class of securities, creditors, or other constituencies of Charter; nor as to the fairness of the amount or nature of any compensation to be paid or payable to any of the officers, directors or employees of Charter, New Charter, or TWC, or any class of such persons in connection with the Transaction, whether relative to the Charter Exchange Ratio pursuant to the Agreement or otherwise.
>
> …
>
> Based upon and subject to the foregoing, it is our opinion that, as of the date hereof and taking into account the TWC Acquisition, the Charter Exchange Ratio pursuant to the Agreement is fair from a financial point of view to the holders (other than the Liberty Related Entities and TWC and their respective affiliates) of Shares.

131. Thus, despite employing two financial advisors, the Board did not receive ***any*** advice as to the fairness of the transaction with the Stockholder Defendants in connection with the TWC Transaction.

I. The Terms Of The Transactions Unfairly Enrich The Stockholder Defendants At The Expense of Public Shareholders

132. The Stockholder Defendants stand to reap unfair, material benefits from the Transactions. As set forth above, the Liberty Share Issuance in the Bright House

Transaction was below the then-market price.[9] The Liberty Share Issuance in the TWC Transaction was at the then-market price.

133. The prices of the Liberty Share Issuances in both Transactions, however, were significantly lower than the projected value of Charter/New Charter at the time that the Transactions close, as determined by the analyses of the Company's advisors, Goldman and LionTree. This information was certainly available to Malone and the other Liberty Broadband designees, as Charter directors—but not to Charter's ordinary public stockholders at the time the Transactions were announced.

134. According to the Definitive Proxy, LionTree's Discounted Cash Flow ("DCF") analysis in connection with the Transactions resulted in an estimated *pro forma* (*i.e.,* for the combined company) per-share value of between $176.22—$244.45. LionTree's DCF analysis estimated Charter's per-share stand-alone value as between $169.84—$217.39. Goldman Sach's DCF analysis in connection with the Transactions resulted in a *pro forma* (*i.e.,* for the combined company) per-share

[9] Even using Charter's own analysis of the value of the share payments to Advance/Newhouse set out in the Definitive Proxy, the Company estimates a "per share price of $179.15, the closing share price of Charter's Class A common stock on June 1, 2015." Using that price as a reference, the economic loss by suffered by ordinary shareholders for the Liberty Share Issuance in the Bright House Transaction is approximately $25 million.

value of $181-$243. Goldman's DCF analysis calculated Charter's stand-alone per-share value as $177-$220.

135. The value of Charter shares available on the open market after the Transactions were announced was depressed by the risk of a $2 billion reverse termination fee—over 10% of Charter's current market capitalization—that Charter will have to pay if antitrust regulators block the TWC Transaction. As the Comcast/TWC Transaction demonstrates, this was a substantial risk.

136. The Liberty Share Issuance, however, will not occur until the time that the Transactions have received all regulatory approvals and ultimately close. Thus, the additional shares that Liberty Broadband receives will be *more valuable* than the Charter shares that were available on the open market after the Transactions were announced because they will not be subject to the significant risk of a multi-billion-dollar reverse termination fee.

137. In addition to the unfair terms of the Liberty Share Issuances, the Bright House Transaction also provides Liberty Broadband with a five-year irrevocable proxy for 6% of the outstanding voting equity of Charter (capped at 7%).[10] The Voting Proxy is designed to bring Charter's voting rights back up to approximately 25% after the dilutive effects of the Bright House Transaction, making it the ***only***

[10] The Voting Proxy can rise as high as 7.0% of the outstanding voting power of New Charter, if necessary to sustain Liberty Broadband's voting power at 25.01%.

shareholder not to suffer a substantial watering down of its voting rights. The Voting Proxy also includes a right of first refusal granted to Liberty Broadband to purchase certain shares from Advance/Newhouse in the event that Advance/Newhouse decides to dispose of such shares.

138. The Voting Proxy is an egregious transfer of value and voting power from Charter's public shareholders to Liberty Broadband. Liberty Broadband is paying ***no additional consideration*** for this valuable benefit, worth 6% (or as high as 7%) of the voting power of New Charter.

139. Although the Voting Proxy will nominally be assigned to Liberty Broadband by Advance/Newhouse, the voting power that it represents is currently in the hands of Charter's public stockholders. In substance, if not form, the Voting Proxy is being transferred from Charter's public stockholders to Liberty Broadband because the value of this benefit, a concession from Advance/Newhouse, could have been realized and shared by all stockholders of the Company and not just the Stockholder Defendants. Instead of either distributing the 6% proxy *pro rata* to ***all*** pre-existing Charter stockholders, or allowing Advance/Newhouse to retain its full voting power in exchange for more favorable transaction terms, the Board allowed its controlling stockholder to accrue this valuable corporate asset for no consideration whatsoever.

140. The Liberty Share Issuance and the Voting Proxy represent the expropriation of economic value and voting power from Charter's public stockholders to Liberty Broadband. In addition, as the Original Shareholders' Agreement could have led to the Stockholder Defendants losing their automatic representation on the Board as soon as January 2016, the Bright House Transaction allows the Stockholder Defendants to maintain a measure of control over the Company for a guaranteed period of several more years.

J. The Board Issues An Incomplete and Misleading Proxy With Regard To The Transactions

141. Charter stockholders were asked to vote on the Liberty Share Issuances and the Voting Proxy. Thus, the Defendants had a duty to disclose all material facts about those transactions. They failed to do so.

142. As alleged above, Zinterhofer is deeply conflicted vis-à-vis the Stockholder Defendants by virtue of Searchlight's joint ventures with Liberty Global. Yet, the Definitive Proxy repeatedly described Zinterhofer as "independent," without disclosing anything about Searchlight or its joint ventures with Liberty Global:

- "The **independent** directors resolved to form a working group comprising Eric L. Zinterhofer, Chairman of Charter, John D. Markley Jr. and Lance Conn to meet as necessary to consider and negotiate the potential transaction. Because LionTree advised the Charter board of directors that they had a substantial historic and ongoing relationship with Liberty, the **independent** directors of the Charter board of

directors negotiated and considered the transactions with Liberty without the participation of LionTree."

- "Later that day, the **independent** directors of Charter's board of directors met to receive an update from Mr. Zinterhofer and Wachtell Lipton regarding the Liberty Broadband investment, including the ongoing discussions regarding the aggregate amount of the investment and the per share price."

143. This was misleading. *Sonet v. Plum Creek Timber Co., L.P.*, 1999 Del. Ch. LEXIS 49, at *34-35 (Del. Ch. Mar. 18, 1999) (misleading to describe Committee members as independent of general partner where those Committee members had other business relationships with general partner).

CLASS ACTION ALLEGATIONS

144. Plaintiff, a stockholder in the Company, brings this action (a) individually, and (b) as a class action pursuant to Rule 23 of the Rules of the Court of Chancery of the State of Delaware on behalf of itself and all stockholders of Charter (except the Defendants herein, and any person, firm, trust, corporation or other entity related to or affiliated with any of the Defendants) to redress the Defendants' breaches of fiduciary duties and other violations of law.

145. This action is properly maintainable as a class action.

146. A class action is superior to other available methods of fair and efficient adjudication of this controversy.

147. The Class is so numerous that joinder of all members is impracticable. As of June 30, 2015, the Company had over 112 million common shares outstanding. Consequently, the number of Class members is believed to be in the hundreds of thousands and are likely scattered across the United States. Moreover, damages suffered by individual Class members may be small, making it overly expensive and burdensome for individual Class members to pursue redress on their own.

148. There are questions of law and fact which are common to all Class members and which predominate over any questions affecting only individuals, including:

a. whether the Director Defendants fulfilled, and are capable of fulfilling, their fiduciary duties to the Plaintiff and the Class;

b. whether the Director Defendants have breached and continue to breach their fiduciary duties to Charter stockholders; and

c. whether the Class is entitled to damages.

149. Plaintiff's claims and defenses are typical of the claims and defenses of other class members and Plaintiff has no interests antagonistic or adverse to the interests of other class members. Plaintiff will fairly and adequately protect the interest of the Class.

150. Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature.

151. Defendants have acted in a manner that affects Plaintiff and all members of the Class alike, thereby making appropriate injunctive relief and/or corresponding declaratory relief with respect to the Class as a whole.

152. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for Defendants; or adjudications with respect to individual members of the Class would, as a practical matter, be dispositive of the interest of other members or substantially impair or impede their ability to protect their interests.

DERIVATIVE/DEMAND-FUTILITY ALLEGATIONS

153. Plaintiff's claims include an alleged breach of loyalty resulting in dilution in favor of an insider. In *Calesa Assocs., L.P. v. Am. Capital, Ltd.*, the Court suggested that such claims should be treated as "a dual-natured claim with aspects that are both derivative and direct"; "derivative for purposes of Rule 23.1 and the doctrine of demand, but as direct for purposes of determining whether sell-side investors can continue to pursue the claim after a merger." 2016 Del. Ch. LEXIS 41, *29 (Del. Ch. Feb. 29, 2016) (quoting *In re: El Paso Pipeline Partners Derivative Litigation*, 2015 Del. Ch. LEXIS 295 (Del. Ch. Dec. 2, 2015)).

154. Plaintiff wishes to preserve his right to argue that his direct claims should not be subject to a demand analysis or the particularized pleading standard of Rule 23.1, but is amending the complaint to plead his claims as both direct and derivative claims.

155. To the extent Plaintiff's claims are subject to a demand requirement, demand would be futile because the Board is incapable of making an independent and distinterested decision to prosecute this action. As set forth above, a majority of Board members are conflicted by virtue of their relationships with the Stockholder Defendants and are therefore not disinterested.

a) Malone, Maffei, Huseby, and Nair are all Liberty Broadband designees. Malone is the controlling shareholder and Chairman of the Board of Liberty Broadband. Maffei is an officer of Liberty Broadband. Nair is an officer of Malone-controlled Liberty Global. Huseby got his start in the cable industry as CFO of AT&T Corp. when Malone sat on its board and was appointed CEO of Barnes & Noble at a time when Liberty Media was a major activist stakeholder.

b) Zinterhofer and Jacobson have extensive current business relationships with Malone. During the time that the Transactions were being considered and negotiated, Zinterhofer's fund, Searchlight, was closing on a second several hundred million joint investment in a Puerto Rico cable operator

with Malone-controlled Liberty Global. Jacobson is a co-founder of New Form Digital Studios, a joint venture with Discovery, Brian Grazer, and Ron Howard. Malone serves on the board of directors of and has a 28.9% voting interest in Discovery. Jacobson also sits on the Board of Expedia—in which Malone-controlled Liberty Interactive is a large investor.

c) Rutledge, Charter's CEO is not independent because, as the New York Times, wrote "[i]t pays to work for John C. Malone." That is, "C.E.O.s at the companies [Malone] oversees are routinely among the best compensated managers on the planet." Maffei and Zinterterhofer are two of the three members of the Company's Compensation & Benefits Committee, it is no surprise that Rutledge—who is a full-time Charter employee and thus depends on the Company for his livelihood—would feel loyalty to Malone and his controlled companies for his outsize pay.

156. Moreover, this action challenges actions taken by sitting board members for which they face a substantial risk of liability. The presence of a controlling shareholder on both sides of the transaction means that the entire fairness standard applies to the claims against the directors and demand is therefore excused under the second prong of the *Aronson* test. *Parfi Hldg. AB v. Mirror Image Internet, Inc.*, 794 A.2d 1211, 1231 n.47 (Del. Ch. 2001) (Strine, V.C.) ("The complaint pleads particularized facts that suggest that the entire fairness standard of review—

rather than the business judgment rule—would apply to the Transactions and that the Transactions might not have been fair. As a result, the complaint satisfies the second prong of *Aronson*."), *rev'd on other grounds*, 794 A.2d 1211 (Del. 2002).

COUNT I

Individual and Class Claim for Breach of Fiduciary Duty Against Director Defendants

157. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

158. The Director Defendants owe Plaintiff and the Class the utmost fiduciary duties of candor, due care, and loyalty.

159. By reason of the foregoing, the Director Defendants have breached and continue to breach their fiduciary duties. In particular, the Director Defendants have violated their fiduciary duties of care, loyalty, and candor (which is, in this context, a subset of the duty of loyalty) by, among other things, (i) agreeing to the Liberty Share Issuances and the Voting Proxy which will unfairly expropriate and transfer voting and economic power from Charter's public shareholders to the Stockholder Defendants; and (ii) failing to disclose all material facts necessary for shareholders to cast an informed vote on, amongst other things, whether to enter into the Transactions and issue the shares contemplated thereunder.

160. As a result of the foregoing, Plaintiff and the Class have been harmed.

COUNT II

Individual and Class Claim for Breach of Fiduciary Duty Against Stockholder Defendants

161. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

162. The Stockholder Defendants are *de facto* controlling shareholders of Charter and, as such, owe Plaintiff and the Class the utmost fiduciary duties of due care and loyalty.

163. By reason of the foregoing, the Stockholder Defendants have breached their fiduciary duties and continue to breach their fiduciary duties. In particular, the Stockholder Defendants have violated their fiduciary duties by, among other things, causing the Board to agree to the Liberty Share Issuances and Voting Proxy which will unfairly expropriate and transfer voting and economic power from Charter's public shareholders to the Stockholder Defendants.

164. As a result of the foregoing, Plaintiff and the Class have been harmed.

COUNT III

Derivative Claims On Behalf of Charter for Breach of Fiduciary Duty Against Director Defendants

165. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

166. The Director Defendants owed Charter the utmost fiduciary duties of due care and loyalty.

167. By reason of the foregoing, the Director Defendants have breached and continue to breach their fiduciary duties. In particular, the Director Defendants have violated their fiduciary duties of care, loyalty by, among other things, agreeing to the Liberty Share Issuances and the Voting Proxy which will unfairly expropriate and transfer voting and economic power to the Stockholder Defendants for an unfair price.

168. As a result of the foregoing, Charter has been harmed.

COUNT IV

Derivative Claims On Behalf of Charter for Breach of Fiduciary Duty Against Stockholder Defendants

169. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

170. The Stockholder Defendants are *de facto* controlling shareholders of Charter and New Charter and, as such, owed Charter the utmost fiduciary duties of due care and loyalty.

171. By reason of the foregoing, the Stockholder Defendants have breached their fiduciary duties and continue to breach their fiduciary duties. In particular, the Stockholder Defendants have violated their fiduciary duties by, among other things,

causing the Board to agree to the Liberty Share Issuances and Voting Proxy which will unfairly expropriate and transfer voting and economic power to the Stockholder Defendants for an unfair price.

172. As a result of the foregoing, Charter has been harmed.

PRAYERS FOR RELIEF

WHEREFORE**,** Plaintiff demands judgment and preliminary and permanent relief, including injunctive relief, in his favor, in favor of the Class, and/or in favor of Charter and against all Defendants as follows:

A. providing equitable relief to remedy the unfair transfer of the Voting Proxy to the Stockholder Defendants;

B. directing that Defendants account to Charter, and/or Plaintiff and the other members of the Class for all damages caused by them and account for all profits and any special benefits obtained as a result of their breaches of their fiduciary duties;

C. awarding Plaintiff the costs of this action, including a reasonable allowance for the fees and expenses of Plaintiff's attorneys and experts; and

D. granting Charter and/or Plaintiff and the other members of the Class such further relief as the Court deems just and proper.

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Dated: April 22, 2016

CERTIFICATE OF SERVICE

Melissa N. Donimirski, Esquire, hereby certifies that on April 22, 2016, copies of the foregoing Verified Amended Class Action Complaint were served electronically upon the following counsel:

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