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October 21, 1993

BY HAND

The Honorable Priscilla B. Rakestraw
Register in Chancery
Public Building
Wilmington, Delaware 19801

Re: QVC Network, Inc. v. Paramount Communications Inc.

Dear Ms. Rakestraw:

Enclosed please find the following: (i) the original complaint in the above-referenced action, along with the civil cover sheet, (ii) a motion for the appointment of a special process server, (iii) a copy of a cover letter to Chancellor Allen, and (iv) a check in the amount of $600 for the filing fee.

Once the special process server is appointed, we will be making service upon the two corporate defendants by serving their registered agents in Delaware. The individual defendants will be served pursuant to 10 Del. C. § 3114. We would appreciate it if you would prepare two summonses for ordinary service upon a corporation's registered agent, and eleven summonses for service pursuant to 10 Del. C. § 3114.

If you have any questions, please feel free to call upon me.

Respectfully,

Bruce L. Silverstein

S:D:REGISTER.40

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

QVC NETWORK, INC., Plaintiff, v. PARAMOUNT COMMUNICATIONS INC., VIACOM INC., MARTIN S. DAVIS, GRACE J. FLIPPINGER, IRVING R. FISCHER, BENJAMIN L. HOOKS, FRANZ J. LUTOLF, RONALD L. NELSON, JAMES A. PATTISON, IRWIN SCHLOSS, SAMUEL J. SILBERMAN, LAWRENCE M. SMALL, and GEORGE WEISSMAN, Defendants.	C.A. No. 13208

COMPLAINT

Plaintiff QVC Network, Inc. ("QVC"), by its undersigned attorneys, alleges for its complaint against defendants Paramount Communications Inc. ("Paramount"), Viacom Inc. ("Viacom"), Martin S. Davis, Grace J. Flippinger, Irving R. Fischer, Benjamin L. Hooks, Franz J. Lutolf, Ronald L. Nelson, James A. Pattison, Irwin Schloss, Samuel J. Silberman, Lawrence M. Small, and George Weissman, as follows:

NATURE OF THE ACTION

1. This action arises out of the ongoing bidding contest between plaintiff QVC and defendant Viacom for the acquisition of Paramount. QVC has today announced a tender offer for Paramount. As set forth below, Viacom and Paramount have conspired to obstruct a fair bidding process, and to seek to defeat or to impair QVC's plainly superior offer, through the use of "lockup" fee and stock option agreements worth more than $350 million -- the most unjustified, unreasonable, and burdensome "lockups" in recent financial history. By this lawsuit, QVC

seeks to restore a level playing field so that its newly announced $9.5 billion tender offer and merger proposal for Paramount -- which offers Paramount stockholders a premium of approximately $2 billion over Viacom's proposed merger as of the close of the stock market on October 20, 1993 -- can be considered by Paramount shareholders without the massive financial handicap imposed by the onerous Paramount-Viacom arrangements. At the current price of QVC's bid, the lockup would require a payment of more than $350 million to Viacom -- value that would be forever lost were the lockup allowed to stand. Restoration of a level playing field requires judicial invalidation of the unlawful mechanisms by which Paramount and Viacom have sought to "lock up" their deal.

2. This action seeks declaratory and injunctive relief against the enforcement of a Merger Agreement and "Stock Option Agreement" between defendants Paramount and Viacom. In the Merger Agreement, which was executed on or about September 12, 1993, Paramount and Viacom agreed that Paramount shareholders would receive a package of Viacom stock and cash, then valued together at a bargain price of $69.14 per share, in exchange for their Paramount shares. Because the price of Viacom's Class A and Class B stock has since dropped, as of the close of the market on October 20, 1993, the Viacom merger proposal was worth only $64.19. The Merger Agreement contains no "fiduciary out" entitling Paramount to terminate the Agreement, even if Paramount is presented with a superior offer (such as QVC's). If the Paramount/Viacom merger is consummated, the new entity will have a single controlling stockholder, Sumner M. Redstone, who will control 70 percent of the voting power of the combined company.

3. The Merger Agreement and the so-called "Stock Option Agreement" contain provisions (hereinafter the "Lockup Agreements") plainly designed to "lock up" the transaction for Viacom: if Paramount is acquired by a company other than Viacom, (a) Paramount will pay Viacom $100 million in cash; and (b) Viacom would have the right, at Viacom's election, either to purchase 19.9 percent of Paramount's outstanding stock (23,699,000 shares) at $69.14 per share, or to receive from Paramount in cash a sum equal to (i) the amount by which the successful acquiror's price exceeds $69.14 per share, multiplied by (ii) the number of shares given to Viacom under the Stock Option Agreement, a total that would equal 16.7 percent of the amount by which the higher bid exceeds $69.14 per share. The Lockup Agreements provide that Viacom may choose to exercise the stock option by paying in cash only the par value of the stock -- a mere $1.00 per share, compared to the exercise price of $69.14 -- in order to exercise the option. As for the bulk of the option price, the remaining $68.14 per share, the Lockup Agreements allow Viacom to pay with a senior subordinated note of a Viacom subsidiary, Viacom International, Inc.

4. The purpose and effect of the Lockup Agreements are plain: they were intentionally crafted to block bids other than Viacom's from succeeding. In fact, the chairman and chief executive officer of Viacom, Sumner M. Redstone, has told the press that only a "nuclear attack" could break up the Viacom-Paramount deal. The Lockups are designed to block competing bids by dramatically tilting the playing field in Viacom's favor: First, regardless of how they are exercised, the Lockups would impose a massive economic burden upon any competing offer, by

having Paramount give away $100 million plus 16.7 percent of the aggregate increase in price of offers that compete with Viacom's. If the Lockups are exercised, this value would forever be lost to anyone other than Viacom.

5. Second, by allowing Viacom to exercise its massive stock option by paying only a minimal amount of cash, the Lockups by their very existence threaten the value of any partial tender offer or stock-for-stock merger proposal that would compete with Viacom's merger proposal. Viacom is entitled under the Lockups to receive 23,699,000 shares of Paramount -- which (as of the market close on October 20, 1993) are now trading at roughly $76 per share -- without infusing any more than $1 per share of cash into Paramount to pay for it. This right allows Viacom to threaten, for example, to exercise the option for 23,699,000 Paramount shares, for less than $24 million cash, and then to tender the shares into a partial tender offer such as QVC's and receive the tender offer consideration (here $80 in cash per share) for a prorated portion of those shares. That would substantially reduce the aggregate amount of cash available to be paid to the public, non-Viacom stockholders of Paramount.

6. Alternatively, where a competing proposal involves a stock-for-stock exchange (such as is the case with QVC's proposed second-step merger), Viacom may exchange the 23,699,000 Paramount shares for the stock of the competing bidder (such as QVC), and then dump the competing bidder's stock into the open market -- thereby depressing the price of the competing bidder's stock. The mere threat that Viacom may do this would itself depress the value of the competing bidder's stock -- and would reduce the value of any stock-for-stock merger proposal that a

competing bidder might offer. In fact, it is precisely threats such as these that Paramount and Viacom hope will defeat and deter any and all competing offers.

7. Just as the design of the Lockups is plain, so too is Paramount's motive in agreeing to them: the Lockups are a critical component of a plan to assure Paramount's incumbent chief executive of continued tenure at the helm of a major entertainment company. As explained below, Paramount's chief executive officer, Martin S. Davis, knew that Paramount was vulnerable to takeover attempts, and has long claimed to have sought candidates for a preemptive business combination. But he has apparently always insisted that he remain in control of any company that would result from a combination with Paramount. Davis came to the conclusion that Viacom was the merger candidate most likely to render his company takeover-proof and to permit his continuance in office. If the Paramount/Viacom merger is consummated, Viacom's controlling shareholder, Redstone, who has agreed that Davis will serve as chief executive of the combined company, will control 70 percent of that company. This will guarantee Davis's position so long as he and Redstone remain allies. In connection with Davis's efforts to entrench himself through the Viacom merger, Paramount's directors failed adequately to inform themselves of the relevant facts and circumstances. As a result, Davis was able to secure the approval of Paramount's directors for the Lockup Agreements in breach of the directors' fiduciary duties.

8. QVC seeks to purchase Paramount and is willing and able to pay substantially more than Viacom had agreed to pay. Paramount, through Davis, has known of QVC's interest in Para-

mount for some time. In the Summer of 1993, well before the Viacom merger agreement, Davis told QVC that as a result of reports he had received from many sources, he believed that QVC was exploring the possibility of making an unsolicited acquisition proposal to Paramount. Davis stated flatly that Paramount was not for sale.

9. Even though it believed that QVC wished to make an acquisition offer, Paramount secretly negotiated a deal with Viacom without even contacting QVC. And when the Viacom deal was announced on September 12, 1993, Davis pretended that he thought no other bidders would be interested. At the press conference announcing the deal, he asserted that "[w]e don't expect to receive" any competing offers. But one of his financial advisors was more candid, and told The New Yorker that of course "[w]e recognize that we're opening the door to other bidders. No question." And the advisor was quoted as stating that the most likely bidder was Barry Diller, the chairman and chief executive of QVC.

10. Apparently confident that the Lock-Up Agreements would block any competing bid, Viacom proceeded to make -- and Paramount decided to accept -- what was plainly a lowball bid. Analysts had been valuing Paramount's assets at more than $70 per share, yet Viacom agreed to pay Paramount stockholders consideration that was valued at a mere $69.14 per share -- all but $9.10 per share of it in Viacom stock, most of which is to be non-voting stock. And even this figure overstates the value of the Viacom proposal: at the time of the Paramount-Viacom merger announcement, Viacom's stock was trading at values artificially inflated by large open market purchases by Viacom's controlling

stockholder, Sumner M. Redstone. These manipulative purchases inflated the trading price of Viacom stock by nearly 50 per cent.

11. That Viacom's bid was a lowball bid was confirmed by QVC's immediate willingness to pay approximately $2 billion more than what Viacom had agreed to pay. On September 20, 1993, only eight days after the signing of the Paramount-Viacom merger agreement, QVC formally proposed to Paramount to negotiate an acquisition valued at approximately $80 per share ($9.5 billion). Despite the manifest superiority of QVC's proposal, however, Paramount has refused to open good-faith negotiations with QVC, and has steadfastly maintained that it will pursue its merger plans with Viacom. Paramount has made only a pretense, in an effort to placate its critics, of asking its advisors to obtain further information from QVC.

12. Given Paramount's unwillingness to open serious negotiations with QVC despite QVC's stated desire and ability to pay approximately $2 billion more in value than Viacom, QVC has today announced a tender offer for Paramount shares. The price QVC will pay in such tender offer is $80 in cash for 51 percent of the Paramount shares outstanding; to be followed by the acquisition of the remaining Paramount shares in a second-step merger. The QVC tender offer is even more attractive than QVC's September 20 proposal -- the aggregate cash consideration has been increased by approximately $1.2 billion. At stock market closing prices on October 20, 1993, the value of the proposed second-step stock-for-stock merger is $80.71 per Paramount share, and the aggregate value of the QVC tender offer and merger proposal is approximately $9.5 billion -- approximately $2 billion in excess of the Viacom deal.

13. The QVC tender offer will be conditioned upon the nonexercise of the Lockups. If the Lockup provisions are carried out, more than $350 million in value will be handed over to Viacom. In effect, the Lockup Agreements would require any buyer other than Viacom to pay hundreds of millions in excess of the value of the Paramount assets it will receive.

14. As set out below, the Lockup Agreements are unlawful because they were entered into in breach of the fiduciary duties owed by Paramount's directors to Paramount's stockholders. Paramount's board had a duty not to act unreasonably in response to any concern about Paramount's independence, and to fully inform itself -- which it did not do -- before agreeing to any such stock option; to determine whether there was a reasonable basis to believe the Viacom offer was the best available; and not unreasonably to deter or obstruct other, higher bids for Paramount, particularly where the Viacom transaction would result in the combined Viacom/Paramount company being under the total control of a single individual, Sumner Redstone. Unlike stock option agreements in other acquisitions, the Viacom Lockups cannot be justified as needed to induce a bidder to make an offer for the company; cannot be justified as needed to secure an enhanced price in an ongoing bidding contest; and cannot be said to impose only a scant burden on other bidders. Paramount entered into the Lockups (a) despite knowing that potential acquirors other than Viacom (including QVC) were interested in making offers to acquire Paramount; (b) after refusing to obtain indications whether such alternative buyers would offer terms more attractive to stockholders than Viacom; (c) without being under any necessity to agree to the Lockup Agreement in order to

induce a buyer to agree to acquire Paramount; and (d) despite knowing that the Viacom deal would end the public market's control of Paramount and instead hand total control of the combined company to Redstone, making the combined company completely "takeover-proof."

15. The unreasonableness of the Lockup Agreements is further demonstrated by their structure. They not only punish higher competing bids; they actually reward Viacom for having made a lowball bid and deter it from making a higher one. Because the Lockups were designed to reward Viacom with a percentage of any value obtained above the announced value of <u>its</u> initial offer, they initially encouraged Viacom to offer as <u>low</u> a price as possible in order to increase the size of the spread between its bid and the topping bid that would determine its payoff. Beyond this, the Lockups plainly create a massive disincentive for Viacom to make a higher bid. In fact, according to the <u>Wall Street Journal</u>, Viacom's financial advisors have "put out the word that [Viacom] wouldn't necessarily enter a costly bidding war, but might just sit back and collect the proceeds of the QVC offer [that is, exercise the Lockup] rather than raise [its] bid." Thus, from the standpoint of Paramount stockholders, the Lockups are doubly perverse, even apart from their massive size: the more a competing bid offers to Paramount stockholders, the more that bid is penalized. And the lesser the value initially offered by Viacom, the more Viacom eventually stood to receive.

16. In view of the foregoing, the Lockup Agreements are a breach of the fiduciary duties of Paramount's directors, and are unreasonable, unlawful, and unenforceable.

PARTIES AND JURISDICTION

17. Plaintiff QVC is a Delaware corporation with its principal place of business in West Chester, Pennsylvania. QVC operates the nation's largest television shopping channel, with annual revenues of $1.1 billion. QVC is the beneficial owner of 1000 shares of Paramount.

18. Defendant Paramount is a Delaware corporation with its principal place of business in New York, New York. There are approximately 118.5 million Paramount shares outstanding. Paramount is a diversified communications, entertainment, and publishing company.

19. Defendant Viacom is a Delaware corporation with its principal place of business in Dedham, Massachusetts. Viacom is a diversified communications and entertainment company.

20. Defendant Martin S. Davis is chairman, chief executive officer and a director of Paramount.

21. Defendants Grace J. Flippinger, Irving R. Fischer, Benjamin L. Hooks, Franz J. Lutolf, Ronald L. Nelson, James A. Pattison, Irwin Schloss, Samuel J. Silberman, Lawrence M. Small, and George Weissman are each directors of Paramount and, along with defendant Davis, constitute a majority of Paramount's board of directors.

BACKGROUND OF THE ACTION

22. The investment community has identified Paramount as a potential takeover target since late 1990 when Universal Studios' parent, MCA INC., was purchased by a Japanese corporation. That acquisition left Paramount as the last major publicly-held company that was virtually a pure motion picture

and television production studio. With the tremendous growth of programming delivery systems such as cable television, the libraries of existing programming owned by studios and the ability of such studios to create new programming "software" have been seen as critically important assets that every major communications company must have. As one of Paramount's own financial advisors was quoted after the Viacom-Paramount deal was announced, "[Paramount] is the last studio play."

23. In addition to these factors, other circumstances unique to Paramount made it vulnerable to a takeover in 1993. Paramount's CEO, Martin S. Davis, had for a number of years publicly maintained that Paramount was seeking a major acquisition but had never delivered on that promise. According to published reports, one of the factors that kept Paramount from combining with another company was Davis's steadfast insistence that he remain in control.

24. In addition, over the past five years, Paramount had steadily lost market share in motion pictures. Its earnings have essentially been flat for several years, and its stock price had declined from the mid-$60s per share to the low $40s less than a year ago -- a time when analysts were valuing Paramount's assets at well over $70 per share. In 1992, Paramount's stock underperformed Standard & Poor's 500-stock index by approximately 40 percent; and, according to a chart in Paramount's own proxy statement for its 1993 annual stockholders' meeting, Paramount substantially underperformed the S&P 500 by approximately 65 percent over the past five years. And Paramount's quarterly earnings for the third quarter of 1993 were expected by Paramount's management to be highly disappointing.

25. All of these factors have created pressure upon Davis from Paramount's stockholders and have no doubt made stockholders more receptive to any hostile offer that might be made. Major stockholders of Paramount publicly have expressed their disappointment with Paramount's poor performance and have complained that the compensation of Paramount executives has borne little relation to their performance: in 1992, despite Paramount's 40-percent underperformance against the S&P 500, five Paramount executives received bonuses totalling $8 million; and Davis himself received total compensation of $3.6 million, an increase of approximately 30 percent from the $2.8 million he received the year before. One prominent compensation consultant was prompted to observe in the <u>Wall Street Journal</u> that "[w]hat shareholders are noticing is that Mr. Davis gets his bonuses no matter how the company's share price does."

26. Earlier in 1993, various reports appeared in the press stating that QVC or others were contemplating the possibility of making an offer to acquire Paramount. In the Summer of 1993, disturbed that QVC might propose to acquire Paramount, Davis invited the chairman and chief executive officer of QVC, Barry Diller, to lunch at Paramount's headquarters. During the lunch meeting, Davis said that he had received detailed information indicating that QVC was, in fact, readying a proposal to acquire Paramount. Davis told Diller flatly that Paramount was not for sale.

27. In or about June 1993, Davis instructed Paramount's investment bankers at Lazard Freres & Co. to begin discussions with Viacom. One of the conditions of Paramount's willingness to be acquired by Viacom, which Viacom agreed to, was

that Davis be appointed chief executive of the combined company. Among the attractions of a deal with Viacom, from Davis's point of view, were that Viacom was firmly controlled by 70-year old Sumner Redstone, who controls 85 percent of Viacom's voting stock. Davis could reasonably expect, as he did, that Redstone's support after a merger with Viacom would make Davis's position invulnerable and his tenure secure. After the deal was announced, Redstone was publicly quoted as saying that "[h]e'll [Davis will] have a good time with this, because I've never acted like a boss in my life."

28. The Paramount/Viacom deal was structured so that, after consummation, Redstone -- a single individual -- will control approximately 70 percent of the voting power of the new company. Control of Paramount would pass from the public market to the hands of one man. Accordingly, Davis's purpose -- to "lock up" his position as chief executive -- would be accomplished.

The Viacom Merger and Lockup Agreements

29. Under the Paramount-Viacom merger agreement (the "Merger Agreement"), Paramount is to be merged into Viacom. The surviving entity will be named Paramount Viacom Inc. ("Paramount Viacom"). Each share of Paramount Common Stock is to be converted into the right to receive (a) one-tenth of a share of Viacom Class A Common Stock, (b) nine-tenths of a share of non-voting Viacom Class B Common Stock, and (c) $9.10 in cash.

30. Section 8.05 of the Merger Agreement provides for the $100 million "fee" that is part of the Lockup arrangement. As a general matter, this "fee" is to be paid if the Merger Agreement is terminated either because of a competing bid or trans-

action, or because of a failure to obtain from Paramount stockholders the necessary approval of the Merger Agreement as a result of a competing bid. Specifically, the $100 million "fee" is payable upon termination, among other circumstances, when

(a) the termination is the result of a willful breach of a representation or warranty of Paramount, and Paramount (i) has had, after the date of the Merger Agreement, discussions with someone other than Viacom about a possible business combination, and (ii) the discussions lead to a business combination within nine months of the termination;

(b) the termination occurs because the shareholders of Paramount have disapproved the Merger Agreement at a time when (i) there has been a business combination involving Paramount and a third party, or sale of 15 percent of the assets of Paramount to a third party; (ii) a tender offer for more than 15 percent of Paramount's shares has been made; (iii) a third party has acquired 15 percent of Paramount shares; or (iv) a third party has proposed any of these transactions; or

(c) termination arises because (i) the Paramount board withdraws its recommendation of the Merger Agreement to shareholders in the face of a competing bid; (ii) the Paramount board recommends that stockholders accept a competing bid or tender offer; or (iii) a third party acquires more than 15 percent of Paramount shares.

31. When they entered into the Merger Agreement, Paramount and Viacom entered into the so called "Stock Option Agreement," which Paramount and Viacom described as purportedly necessary "in order to induce Viacom to enter into the Merger Agreement." Under the Lockup stock option agreement, Paramount granted Viacom an "irrevocable option" to purchase up to 23,699,000 shares of Paramount stock -- 19.9 percent of Paramount -- at a purchase price of $69.14 per share.

32. The option becomes exercisable when the conditions for payment of the $100 million "fee" are met, and may be exercised, at Viacom's discretion, "in whole or in part, at any time or from time to time" thereafter. At its discretion, Viacom may choose either to pay for the stock under the Lockup in cash, or to pay the par value ($1.00 per share) in cash and the remainder ($68.14 per share) with a senior subordinated note of Viacom International, Inc., the operating company owned by Viacom.

33. Viacom may also choose -- within 30 days of the consummation of, or the execution of an agreement for, a competing transaction (called a "Put Event") -- to receive a cash payment in lieu of exercising the stock option. The value of the option is calculated by multiplying the number of shares subject to the option by the difference between (a) the average closing price of Paramount stock during the five days preceding the Put Event, and (b) the option price, $69.14. The operation of this provision is to allow Viacom to collect in cash -- on approximately 16.7 percent of Paramount's then outstanding shares -- any premium resulting from a higher takeover bid. In short, as already explained above, the Lockups were plainly designed to

defeat and to deter any and all competing offers. Indeed, even before QVC's merger proposal was announced, Paramount and Viacom issued a press release stating that no "hostile takeover bid" "will be permitted to obstruct" the Paramount-Viacom merger, apparently regardless of the terms of such a bid.

The QVC Acquisition Proposal and Tender Offer

34. On September 20, 1993, QVC hand-delivered a letter to Paramount and defendant Davis proposing a combination of QVC and Paramount on terms substantially more attractive than those previously offered by Viacom. Specifically, the letter stated that:

> The QVC Board of Directors has authorized a combination of our two companies in a merger in which each of Paramount's outstanding common shares would be converted into .893 shares of QVC common stock and $30 in cash (which, based on the September 20, 1993 QVC closing market price, would have a value of $80 per Paramount share). Our proposal represents a premium of approximately 14.9% over the $69.625 closing market price of Paramount common stock today, and 26.6% over the $63.175 value of the Viacom transaction today.

The letter added that QVC's financial advisors had assured QVC that "all of the financing for our proposal is readily available," and concluded by stating that "[w]e and our advisors are available to meet with you and your Board and advisors at any time to discuss our proposal and to answer any questions you may have."

35. Paramount responded to the QVC offer by scheduling a board meeting for September 26, 1993.

36. Before the Paramount board meeting scheduled for September 26, 1993, QVC delivered a letter to defendant Davis and the directors of Paramount informing them unequivocally of the availability of financing for QVC's tender offer. The letter stated that:

> The QVC offer is not subject to any condition with respect to financing. QVC will enter into a merger agreement that does not contain any condition with respect to financing. There is no question as to the financing of the QVC offer. We have commitments for $1 billion in new equity. We have the assurance of Allen & Company that the financing for our offer is available. Indeed the financial markets show that there are no doubts about our offer -- QVC shares have risen from $56.00 when we made our offer to $60.75 on Friday [September 23]. At Friday's price, our offer is worth $84.25 for each Paramount share.

The QVC September 26 letter concluded by making the following commitment:

> We are prepared to meet with you, your board and your advisors to answer any questions you may have. We are prepared to enter into a customary merger agreement without any contingencies that would make the terms of our offer less favorable to Paramount than the agreement you entered into with Viacom.

37. **Paramount discussed the QVC offer at a board meeting on September 26, 1993 in New York City, a meeting reported in the press to have been "difficult." Davis apparently sought to persuade the Paramount board to delay talks with QVC, even though Paramount's financial and legal advisors told the board that it could in fact begin discussions with QVC. The Paramount board, or at least some members of the board, are reported to have resisted Davis's entreaty.**

38. In the end, however, after a five-hour debate, Davis prevailed. Paramount announced that it would refuse to consider the merits of the QVC offer, to enter into negotiations about it, or even to discuss it with QVC -- for the supposed reason that "satisfactory evidence of financing" for the QVC offer had not been presented. According to Paramount, this meant that QVC had to obtain formal lending commitments from banks before talks could proceed. Yet Paramount -- as well as the financial world -- full well knew that bank financing was in fact available to QVC. Indeed, Davis was quoted on September 28 as saying that "I would expect that [QVC would obtain financing]. They are professional people." From the standpoint of the interest of Paramount's stockholders, there was nothing to be lost by holding discussions with QVC even in the absence of written evidence of financing. In short, the only purpose to be served by Paramount's statement would be to create delay and to require QVC to incur substantial costs in commitment fees to its banks.

39. After Paramount refused to open discussions with QVC, QVC proceeded to pay for and obtain bank financing commitments. QVC has paid substantial amounts for these commitments. On October 5, 1993, QVC informed Paramount that it had obtained committed financing. QVC once again asked that merger negotiations begin.

40. But Paramount, at Davis's behest, continued to stall. It invented and imposed a new condition for merger talks to begin: After another board meeting, on October 13 Paramount demanded that QVC respond to a lengthy series of questions concerning QVC's business, finances, sources of funds, and other items. On its face, this strategy was an effort by Davis and

Paramount to play for time -- to delay any serious consideration of QVC's offer in the hope that the investment community would view QVC's offer as doomed by Paramount's intransigence, and in the hope that QVC would accordingly give up.

41. Nonetheless, in what proved to be the vain hope that Paramount would consider the best interests of its stockholders and negotiate with QVC (as it had been stating publicly), on Wednesday, October 20, QVC answered the questions propounded by Paramount. Paramount had not signed a confidentiality agreement to protect the QVC information it had demanded until that same day, although Paramount had previosly required QVC to sign such an agreement covering information Paramount might supply to QVC. That same day, QVC delivered to Paramount a letter informing Paramount that representatives of QVC were available for negotiations at any time on Wednesday, Thursday, and Friday, October 20 through 22, and asking Paramount to confirm that Paramount was prepared to enter into good-faith negotiations and to arrange a meeting as soon as possible. The letter asked Paramount's directors to fulfill their fiduciary duties, and to allow market forces to bring Paramount's shareholders the best price for their equity. Paramount's response was to stonewall QVC further and to avoid a good-faith response.

42. Given, among other things, the need for regulatory approvals for any acquisition of Paramount, the effect of Paramount's and Viacom's attempts first to preempt and then to stall any competing bid for Paramount has been to impair the ability of QVC (or any other potential competing bidder) to acquire Paramount. For example, the acquisition of Paramount by either Viacom or QVC requires approval of the Antitrust Division

of the United States Department of Justice or the Federal Trade Commission under the Hart-Scott-Rodino Antitrust Improvements Act of 1976. But a would-be acquiring firm cannot apply for that approval until it has launched a tender offer, entered into an agreement-in-principle for a merger, or has embarked upon a program of open-market stock purchases that would exceed certain statutory limits. There are similar constraints under the Communications Act of 1934. So by entering into the Viacom Merger Agreement, and by engaging in a campaign of protracted delay with respect to QVC's competing offer, Paramount and Viacom have sought to tilt the playing field even more in Viacom's favor.

43. In light of Paramount's continuing efforts to stonewall rather than to negotiate, QVC has determined to make a tender offer for Paramount shares. As publicly announced on October 21, 1993, QVC will offer Paramount shareholders $80 in cash for approximately 51 percent of Paramount shares, and 1.42857 shares of QVC voting common stock for each remaining share.

IRREPARABLE INJURY TO QVC

44. If QVC's efforts to acquire Paramount are impeded by the breaches of duty described herein, QVC will lose the opportunity to have its tender offer and merger proposal considered on their own merits -- that is, considered without the massive economic burden imposed by the Lockup. It will lose forever the opportunity to have its offer fairly considered by the Paramount directors and stockholders and lose the irreplaceable opportunity to create a new combined QVC/Paramount entity

with unique business strengths. Damages for these losses cannot readily be calculated and, in any event, could not compensate for the unique loss that would have been suffered by QVC.

FIRST CLAIM FOR RELIEF
(Against the Paramount Defendants)

45. Plaintiff repeats and realleges the allegations of paragraphs 1 through 44 of the Complaint as if fully set forth herein.

46. In agreeing to be acquired by Viacom, Paramount determined to cease its independent corporate existence. The nature of the Viacom transaction was such that control of Paramount shifts from the public to Redstone personally, and the merged company would be "takeover proof" for the same reason. Because of these factors, before agreeing to "lock up" the agreement with Viacom through the option mechanism employed here, Paramount's directors had a duty to determine if the bid made by Viacom offered the best available price and other terms, and to make this decision after obtaining current information about such matters as to the state of the acquisition market for its shares, and whether more valuable bids were actually or likely to be available.

47. The fact that QVC made a bid $2 billion better than Viacom's -- and that it did so only eight days after the Viacom deal was announced -- demonstrates clearly that Viacom's offer was a lowball bid, and that Paramount's directors acted in breach of their duties by immediately accepting it and allowing Viacom to lock it up. Despite Paramount's belief that QVC desired to make an acquisition proposal to Paramount, and Paramount's lack of knowledge as to whether Viacom's proposal was

more valuable than QVC's potential offer, Paramount entered into a Merger Agreement with no true "fiduciary out" and Lockups now worth $350 million with the purpose and intent of foreclosing or unreasonably burdening any higher bid (by QVC or anyone else). By entering into the Merger and Lockup Agreements without a proper base of knowledge and information to reasonably conclude that Viacom's bid was the best available offer, Paramount's directors breached their duties under applicable law, and the Merger and Lockup Agreements are thereby unenforceable.

48. Plaintiff has no adequate remedy at law.

SECOND CLAIM FOR RELIEF
(Against the Paramount Defendants)

49. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 48 of this Complaint as if fully set forth herein.

50. The directors of defendant Paramount were and are under a duty not to act unreasonably in response to threats to Paramount's independence as a corporate entity. By virtue of the facts set forth above, and specifically by entering into the Merger and Lockup Agreements when there was no reasonable basis for doing so; by agreeing to Lockup Agreements that would obstruct higher bids for acquisition of Paramount; by agreeing to an unreasonably large potential payment to Viacom; by allowing the Lockup stock option to be exercised through the use of a subordinated note; by structuring the Lockups to motivate Viacom to make a lower rather than a higher bid; by agreeing to a Merger Agreement without a true "fiduciary out"; and by using the Lockups to ensure the transfer of control from the public to a single individual, the Paramount directors have breached their

fiduciary duties. The Merger Agreement and Lockups are accordingly invalid and unenforceable.

51. Plaintiff has no adequate remedy at law.

THIRD CLAIM FOR RELIEF
(Against the Paramount Defendants)

52. Plaintiff repeats and realleges the allegations of paragraphs 1 through 51 of the Complaint as if fully set forth herein.

53. In considering the Viacom merger, which involves a change in control, the Paramount directors were required to act in accordance with their fundamental duties of care and loyalty. Accordingly, they were required to act reasonably under the circumstances. In treating different bidders unequally, the directors could comply with their duties only if their conduct was reasonably related to achieving the best price available to stockholders.

54. Here there was no basis for a disinterested and well-motivated Paramount director to conclude that, if the transaction contemplated in the Viacom merger agreement were to close, it would represent the best available alternative for Paramount and its shareholders. Here there was and is no basis for a Paramount director to conclude that the unequal treatment of QVC and Viacom is or was reasonably related to achieving the best price available. The fact that no such basis existed is amply demonstrated by (among many other facts):

-- the nature, structure and massive size of the Lockups and the burden they place on competing bids;

-- the fact that Paramount and its directors made no effort to contact QVC about a possible transaction with Paramount, even though Paramount had been told of QVC's interest in such a transaction;

-- the fact that the Viacom offer was very low, as shown by QVC's willingness to pay $2 billion more for Paramount;

-- the fact that Paramount nonetheless agreed to transfer control from the public to a single individual, through a Merger Agreement that has no true "fiduciary out";

-- numerous statements, in announcements accompanying the execution of the merger agreement and elsewhere, that no "hostile" bid would be entertained and that it would be impossible, for any alternative bid to succeed; and

-- Paramount's continuing refusal to engage in any serious negotiations about QVC's plainly superior offer.

In view of these facts, the execution of the Lockup Agreements was a violation of the fiduciary duties of care and loyalty owed by the Paramount directors, and the Merger and Lockup Agreements are thereby unenforceable. For the same reasons, the other measures Paramount has taken in treating QVC and Viacom unequally are breaches of duty.

55. Plaintiff has no adequate remedy at law.

FOURTH CLAIM FOR RELIEF
(Against the Paramount Defendants)

56. Plaintiff repeats and realleges the allegations of paragraphs 1 through 55 as if fully set forth herein.

57. The directors of Paramount were and are fiduciaries owing fiduciary duties of care and loyalty to all the stockholders of Paramount, including but not limited to the obligation to consider and fairly evaluate all reasonable offers for control of Paramount from third parties, not unfairly to favor one offer for control over another offer, and not to put the self-interest or personal considerations of any officer or director of Paramount ahead of the interests of the stockholders.

58. The directors of Paramount have breached their duties of care and loyalty by, among other actions:

-- approving the Viacom Merger and Lockup Agreements without making any attempt to determine whether those agreements, as opposed to any other offer or potential offer for control of Paramount, was in the best interests of the stockholders;

-- approving a transaction designed to preclude any other proposal for acquisition of Paramount, without determining or evaluating what other proposals were available;

-- failing adequately to inform themselves of, or adequately to consider, potential transactions available to Paramount before voting upon and approving the Viacom merger and Lock-Up Agreements; and

-- failing adequately to inform themselves, or adequately to consider, the effect of the merger and Lock-Up Agreements upon Paramount's ability to obtain better offers and upon the interests of Paramount's stockholders.

59. Accordingly, the execution of the Lock-Up Agreements violated the Paramount directors' fiduciary duties of loyalty and care, and the Lock-Up Agreements are thereby unenforceable.

60. Plaintiff has no adequate remedy at law.

FIFTH CLAIM FOR RELIEF
(Against Defendant Viacom)

61. Plaintiff repeats and realleges the allegations of paragraphs 1 through 60 of the Complaint as if fully set forth herein.

62. Defendant Viacom knowingly aided and abetted Paramount's directors in the breach of their duties described hereinabove and in plaintiff's First, Second, Third and Fourth Claims for Relief. Viacom had knowledge of the fact that other bidders were potentially interested in making a higher bid for Paramount, and had the intention to block or forestall such offers. Viacom accordingly aided and abetted the Paramount defendants in structuring a transaction that it knew was unreasonable, and in breach of the duties of Paramount's officers and directors, in that the Lockup Agreements would either result in Viacom acquiring Paramount at a bargain-basement price (if the Lockup Agreements successfully prevented other bids from emerging) or (if higher bids did prevail) give Viacom an enormous financial windfall for having done nothing more than agree to buy

Paramount at a giveaway price. The Merger and Lockup Agreements are accordingly unenforceable.

63. Plaintiff has no adequate remedy at law.

WHEREFORE, plaintiff QVC Network, Inc. prays for judgment against defendants as follows:

A. Declaring and decreeing that the Viacom Lockups are unlawful and were entered into in breach of the fiduciary duties of the Paramount directors;

B. Enjoining, temporarily, preliminarily and permanently, the exercise of the Viacom Lockups or any payment of money or issuance of stock by Paramount pursuant to the terms of the Lockups;

C. Declaring and decreeing that Paramount's refusal to negotiate in good faith with QVC toward the execution of a merger agreement with QVC is a breach of the fiduciary duties of the Paramount directors, and declaring and decreeing that any action taken or to be taken by Paramount with the intent or effect of impeding the acceptance of a better offer than Viacom's is a breach of the fiduciary duties of the directors of Paramount;

D. Enjoining, temporarily, preliminarily and permanently, any action taken or to be taken by Paramount with the intent or effect of impeding the operation of market forces in an open bidding contest for the acquisition of Paramount;

E. Requiring Paramount and its directors to take all steps necessary to provide plaintiff a fair and equal opportunity to acquire Paramount;

F. Declaring and decreeing that any rights purportedly acquired by Viacom in the Viacom Merger Agreement or Viacom Lockups were procured by aiding and abetting a breach of fiduciary duty, and that the Viacom Merger Agreement is null and void and of no further effect;

G. Enjoining, temporarily, preliminarily and permanently, any further conduct by Viacom intended to cause, or having the effect of causing, Paramount to forego the opportunity to enter into an economically more favorable transaction than the Viacom Merger Agreement;

H. To the extent that the Viacom Merger or Lockups are performed or consummated prior to the entry of this Court's final judgment, rescinding such transaction or transactions and declaring and decreeing such transaction or transactions to be null and void;

I. Declaring and decreeing that the consummation of the proposed Viacom Merger is unlawful and in breach of the fiduciary duties of the Paramount directors;

J. Enjoining, preliminarily and permanently, the consummation of the proposed Viacom Merger;

K. If the Viacom Merger or Lockups are performed or consummated prior to the entry of this Court's final judgment, awarding plaintiff damages in an amount to be determined at trial;

L. Awarding plaintiff the costs and disbursements of this action, including reasonable attorneys' fees; and

M. Granting such other and further relief as the Court may deem just and proper.

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