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, JAMES A. PATTISON, IRWIN SCHLOSS, SAMUEL J. SILBERMAN, LAWRENCE M. SMALL, and GEORGE WEISSMAN, Defendants.	)	C.A. No. 13208

FIRST AMENDED AND SUPPLEMENTAL COMPLAINT

Plaintiff QVC Network, Inc. ("QVC"), by its undersigned attorneys, alleges for its first amended and supplemental 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, James A. Pattison, Irwin Schloss, Samuel J. Silberman, Lawrence M. Small, and George Weissman, as follows:

NATURE OF THE ACTION

1. Paramount, a public and widely-held Delaware corporation, is for sale. Twice in the past seven weeks, its board of directors has agreed that Paramount be merged into Viacom on terms that will result in the combined company having

a single controlling stockholder, Sumner M. Redstone. Twice in the past seven weeks, Paramount's board has agreed and recommended that Paramount's separate existence be dissolved, and that its public stockholders should give up the entirety of their equity stakes in Paramount -- first for a package consisting overwhelmingly of nonvoting stock of Viacom; and now for a package made up in roughly equal portions of cash and stock, such stock again being largely non-voting.

2. Paramount is indeed for sale -- but not to the highest bidder, and not for the highest price. There are two bidders; yet from the outset the Paramount board has firmly resolved to deal with only one. The favored bidder, Viacom, has twice been allowed to negotiate definitive agreements to buy Paramount -- once for a bargain price that was swiftly topped by QVC's first offer, and then later for a price that did not even top that second bid. QVC has not even been allowed to talk to Paramount. The favored bidder, Viacom, has twice been granted enormous "lockup" fee and stock option agreements from Paramount worth more than <u>$350 million</u> -- even though it never made a superior bid. The other bidder, QVC -- even though it offered $2 billion more than Viacom's initial bid -- has received nothing more than a letter from Paramount saying that Paramount would "be in touch."

3. This action seeks declaratory and injunctive relief against the enforcement of an Amended and Restated Merger Agreement (the "New Merger Agreement") and a "Stock Option Agreement" between Paramount and its favored bidder, Viacom, and against other impediments defendants have imposed to block any QVC bid. The New Merger Agreement represents an attempt by Paramount and Viacom to match QVC's unsolicited $80-per-share ($9.5 billion) cash and stock tender offer to acquire Paramount. As set forth below, the New Merger Agreement is the product of a process that is impermissible under the standards of Delaware law -- a process designed not to achieve the best available transaction for stockholders, but rather one singlemindedly crafted from the outset to deliver Paramount at all costs into the hands of Viacom and Redstone, who have in turn agreed to make Paramount's current Chief Executive Officer the CEO of the merged company.

4. Thus, while QVC time and again has sought to meet with Paramount to discuss a merger with QVC, Paramount has consistently refused to do so -- even though, <u>as Paramount's own SEC Schedule 14D-9 attests</u>, "discussions [with QVC] were <u>necessary for the [Paramount] Board to comply with its fiduciary duties</u>." These fiduciary duties notwithstanding, Paramount never once agreed to begin, or even to schedule, discussions with QVC. Paramount refrained from contacting QVC before the original Viacom Merger Agreement

("Original Merger Agreement") was signed -- even though Paramount's chief executive firmly believed that QVC wished to acquire Paramount. Paramount further refused to talk to QVC after it executed the Original Merger Agreement and QVC was offering $2 billion more than what Viacom was willing to pay. Nor did Paramount contact QVC before entering into the New Merger Agreement, when Viacom was still offering to pay only the equivalent of what QVC was offering. Nor has Paramount since responded to QVC's continued and current requests for a negotiation.

5. Despite the fact that Viacom's first bid was made at what has been proved to be an extremely inadequate price, and its second bid (reflected in the New Merger Agreement) was not superior to QVC's, Paramount's board has consistently acted not only to forestall, but to foreclose, further bids from QVC. Both the initial and amended agreements between Paramount and Viacom contain provisions (the "Lockup Agreements" or "Lockups") clearly designed to "lock up" the transaction for Viacom. Worth today at least $350 million to Viacom, the Lockups were not only retained but actually enhanced in the amended Paramount/Viacom deal -- even though the Lockups did not extract from Viacom a bid even a nickel better than QVC's.

6. The only purpose served by these huge and unjustified Lockups is plain: to block bids other than Viacom's from succeeding by imposing a massive economic burden upon any competing offer, and thereby tilting the playing field dramatically in Viacom's favor. And just as the effect of the Lockups is plain, so is Paramount's motive in agreeing to them: the Lockups are a critical component of a plan to assure Paramount's chief executive, Martin S. Davis, of continued tenure at the helm of a major entertainment company, a tenure that Davis has long feared could end in the wake of a hostile takeover bid. For the Paramount/Viacom deal is meant to ensure Davis's continued employment; Viacom's controlling shareholder, Sumner M. Redstone, has agreed that Davis will serve as the chief executive of the combined company if Viacom and Paramount are merged. By contrast, Davis has stated that he would resign if Paramount were ever acquired by QVC.

7. Paramount and Viacom have conspired to have Paramount's directors not simply ignore, but actually to invert, the duties owed by directors who sell a Delaware company. Paramount's board had a duty not to act unreasonably in response to any concern about Paramount's independence; a duty to fully inform itself before agreeing to either Merger Agreement or to the Lockups; a duty not to deter or obstruct other, higher bids for Paramount when the sale of the company is occurring; a duty to determine upon a reasonable and fully

informed basis that the Viacom transaction was the best available to stockholders; and a duty to make full and fair disclosure to its stockholders about all of these matters. Each of these duties has been breached by the Paramount board. For these reasons and others set out below, the New Merger Agreement, the Stock Option Agreement and the Lockups are unreasonable, unlawful, and unenforceable, and should be enjoined.

PARTIES AND JURISDICTION

8. 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.

9. 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.

10. Defendant Viacom is a Delaware corporation with its principal place of business in Dedham, Massachusetts. Viacom is a diversified communications and entertainment company. As of September 12, 1993, approximately 85.2 percent of

Viacom's Class A common stock -- its voting stock -- and 69.2 percent of its Class B stock -- nonvoting stock -- was owned by National Amusements, Inc. ("NAI"). Sumner M. Redstone, the chairman and chief executive officer of Viacom, owns 91.7 percent of the stock of NAI.

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

12. Defendants Grace J. Flippinger, Irving R. Fischer, Benjamin L. Hooks, Franz J. Lutolf, 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

Events Leading to the Original Viacom Merger Agreement

13. 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 largely 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."

14. 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.

15. 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.

16. 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. They 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 Wall Street Journal that "[w]hat shareholders are noticing is that Mr. Davis gets his bonuses no matter how the company's share price does."

17. 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.

18. Even though it thus believed that QVC wished to make an acquisition offer, Paramount secretly negotiated a deal with Viacom without even contacting QVC. In or about June 1993, Davis instructed Paramount's investment bankers at Lazard Freres & Co. to begin discussions with Viacom, and in July, Viacom and Paramount entered into a confidentiality agreement that enabled the parties to exchange nonpublic information in merger negotiations. One of the conditions of Paramount's willingness to be acquired by Viacom, to which Viacom agreed, 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. Indeed, 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."

19. Meanwhile, for a period spanning almost four months in the spring and summer of 1993, Sumner Redstone and NAI embarked upon a massive effort to bid up the price of Viacom's voting Class A stock and its nonvoting Class B stock -- the securities that were to be the critical part of the ultimate consideration offered for Paramount shares. Through these purchases, the price of Viacom's Class A stock was inflated from a low of roughly $41 per share in May (when Redstone began his purchases) to almost $65 in August (one month after Viacom and Paramount had entered into an agreement for the exchange of nonpublic, confidential information, and at least one month after merger talks had begun). During the same period of time, Redstone's purchases drove up the price of Viacom's Class B nonvoting stock from less than $39 per share to more than $59 per share. Redstone was purchasing Viacom stock as late as three weeks before the Original Merger Agreement with Paramount was executed.

20. According to Viacom's Offer to Purchase (disseminated in connection with its current tender offer), negotiations between Paramount broke off in July 1993, started up and broke off again in August, and started up once more in early September. In just <u>four</u> days in early September, according to Viacom's offer, Viacom and Paramount "exchanged financial and legal due diligence materials, conducted due diligence, and negotiated the Original Merger Agreement, the Original Stock

Option Agreement, and [a related] Voting Agreement." On the fifth day, September 12, 1993, the Paramount and Viacom boards met and gave their approval to the Original Merger Agreement and the Stock Option Agreement. The Original Merger Agreement was structured so that, after consummation, Redstone -- a single individual -- would control approximately 70 percent of the voting power of the new company. Paramount agreed that 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.

21. 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.

22. The bid made by Viacom and accepted by Paramount was, as events would show, plainly a grossly inadequate bid. Analysts had been valuing Paramount's assets at more than $70 per share, yet Paramount agreed that Viacom would pay Paramount stockholders consideration that was valued at $69.14 per share.

All but $9.10 per share of this consideration consisted of Viacom stock, most of it non-voting. Even the $69.14 figure overstated the value of the initial Viacom proposal, since Viacom stock was still trading at values artificially inflated by Redstone's large open market purchases. The inadequacy of Viacom's initial bid was made clear by the next turn of events -- QVC's $80 per share merger proposal.

The Original Viacom Merger and Lockup Agreements

23. Under the original Paramount-Viacom merger agreement, Paramount was to be merged into Viacom in a single step, with the surviving entity to be named Paramount Viacom International Inc. 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 all of their Paramount shares. (Because the price of Viacom's Class A and Class B stock later dropped, the Viacom merger proposal was worth only $64.19 on October 20, 1993, the day before QVC commenced its tender offer for Paramount.) Under the Original Merger Agreement, each share of Paramount Common Stock was 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 nonvoting Viacom Class B Common Stock, and (c) $9.10 in cash. The Original Merger Agreement obligated Paramount to amend its "poison pill" to allow the

merger to proceed, and required Paramount to use its best efforts to secure stockholder approval for the Merger Agreement. Paramount also agreed to withdraw its other structural defenses in connection with the Viacom merger, agreeing to exempt the transaction from the provisions of 8 Del. C. § 203 and Article XI of Paramount's certificate of incorporation, which contains requirements for supermajority voting approval of certain transactions. The Original Merger Agreement contained no "fiduciary out" entitling Paramount to terminate the Agreement, even if Paramount were to be presented with a superior offer (such as QVC's turned out to be).

24. The Original Merger Agreement, and the so-called "Stock Option Agreement" executed with it, contain provisions (the Lockup Agreements) that were plainly designed to "lock up" the transaction for Viacom. The critical provisions of these Lockups are also incorporated in the new Lockups Paramount granted in the second Viacom merger agreements. They provide that, if Paramount is acquired by a company other than Viacom, (a) Paramount would 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 provided 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.

25. Specifically, Section 8.05 of the Original Merger Agreement provided for the $100 million "fee" that is part of the Lockup arrangement. This "fee" provision was retained in the New Merger Agreement and remains in effect to this day. As a general matter, the "fee" is to be paid if the Merger Agreement is terminated either because of a competing bid or transaction, or because of a failure to obtain from Paramount stockholders the necessary approval of the Merger Agreement as a result of a competing bid. 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.

26. As for the lockup stock option contained in the Stock Option Agreement, it 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 own 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.

27. Under the Stock Option Agreement, 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. (As will be described below, this provision was later amended to make it even <u>more</u> beneficial to Viacom.) The operation of this provision would 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.

28. The purpose and effect of the Lockup Agreements are plain: they were intentionally crafted to block bids other than Viacom's from succeeding. 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. Sumner Redstone put it somewhat more bluntly, telling the press that only a "nuclear attack" could break up the Viacom-Paramount deal.

29. 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 initial offer. If the Lockups are exercised, this value would forever be lost to anyone other than Viacom.

30. 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 any proposal from Viacom. 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 by paying less than $24

million in 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.

31. 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 bids.

32. Just as the design of the Lockups is plain, so too is Paramount's motive in agreeing to them: the Lockups are intended to assure Paramount's chief executive, Martin S. Davis, of continued tenure at the helm of a major entertainment company. Davis has long known 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. In particular, Davis has announced that he would quit if Paramount were ever acquired by QVC.

33. 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, will control 70 percent of the voting power of the combined company; and Redstone has agreed that he will make Davis chief executive. That, of course, 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.

34. 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. 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 convey total control of the combined company to Redstone, making the combined company completely "takeover-proof." No reasonable basis existed for a Paramount director to conclude that Lockups would achieve for stockholders the highest price for their Paramount shares.

35. To the contrary, the very structure of those Lockups makes clear that they encourage just the opposite: The Lockups not only punish higher competing bids; they actually reward Viacom for having made a lowball bid and deter it from making a superior 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 low 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 superior bid. In fact, according to the Wall Street Journal, 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.

The QVC Acquisition Proposal and Tender Offer

36. That Viacom's September 12 bid was grossly inadequate 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) -- terms substantially more attractive than those previously offered by Viacom. Specifically, in a letter hand delivered to Paramount and Davis, QVC 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."

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

38. Paramount discussed the QVC offer at its September 26 board meeting 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.

39. Following the meeting, 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 for QVC's proposal. 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.

40. After Paramount refused to open discussions with QVC, QVC proceeded to 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.

41. But Paramount, at Davis's behest, continued to stall. It invented and imposed a brand new condition for merger talks to begin: After another board meeting, Paramount demanded on October 13 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.

42. Indeed, the nature of Paramount's stalling tactic is confirmed by a Paramount SEC Schedule 14D-9 filed in response to Viacom's tender offer. That Schedule 14D-9 expressly admits that, by October 13, Paramount's board had made findings that

> (i) the QVC Proposal was not subject to any material financing contingency and (ii) that discussions [with QVC regarding the QVC Proposal] were necessary for the Board to comply with its fiduciary duties to the Paramount stockholders.

Paramount's board thus conceded that its fiduciary duties required it to talk with QVC.

43. Yet Paramount refused to comply with these duties and continued to stall. On October 13, when it made its request for information from QVC, Paramount delivered to QVC a form of confidentiality agreement that would protect Paramount's confidential information from disclosure. QVC promptly executed and returned the confidentiality agreement, and sent Paramount a reciprocal and virtually identical form agreement for QVC's benefit, an agreement that would enable QVC to provide confidential information to Paramount. Paramount -- the

same company that had investigated, negotiated and executed the Original Merger Agreement in five days -- did not return the simple form confidentiality agreement until October 20, thereby creating yet more delay.

44. 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 it would do), QVC answered the questions propounded by Paramount on Wednesday, October 20, that very same day. Also that 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. Yet again Paramount stonewalled and avoided a good-faith response. QVC's 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. But all Paramount would say was that it would "be in touch."

45. Given, among other things, the need for regulatory approvals for any acquisition of Paramount, defendants' efforts to stall any competing bid for Paramount has impaired 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 even apply for such approval until it has launched a tender offer, entered into an agreement-in-principle for a merger, or 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. By engaging in a campaign of protracted delay with respect to QVC's competing offer while the federal approval periods were running with respect to Viacom's original offer, Paramount and Viacom have sought to tilt the playing field even more in Viacom's favor.

46. In light of 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 on Thursday, October 21, 1993 announced a tender offer for Paramount shares. QVC announced that it would offer $80 in cash for 51 percent of the Paramount shares outstanding, and that this would 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 cash portion of the consideration was <u>increased</u> 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 was $80.71 per Paramount share, and the aggregate value of the QVC tender offer and merger proposal was approximately $9.5 billion -- approximately $2 billion in excess of the initial Viacom deal.

47. The QVC tender offer is 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. The QVC Offer is also conditioned on removal of the impediments to an acquisition of Paramount created by Paramount's rights plan, supermajority voting provisions and 8 Del. C. § 203.

48. In announcing its tender offer, QVC expressed its frustration at Paramount's refusal to engage in discussions with QVC. QVC noted that

> **Since the time of our offer, Paramount management has neither met with QVC nor rescheduled any substantive meetings. Incredibly, in light of Viacom's refusal to improve its offer, the only actions taken by Paramount management and its board of directors have been designed to demean the value of our company or create potential regulatory obstacles to make our superior offer unavailable to its shareholders. One of the purposes of our tender is to empower the shareholders of Paramount to make their displeasure evident to their board of directors regarding their actions with respect to our offer**

> We had hoped Paramount would agree to create a level playing field out of a sense of corporate responsibility. Yesterday, we requested they agree to commence direct negotiations. They responded they would be "in touch[.]" Our patience has been misinterpreted and is now at an end.

49. Since QVC announced its tender offer, Paramount has continued to refuse to talk with QVC. Instead, Paramount hurriedly chose to lock itself into a new offer made by Viacom. Still having never spoken with QVC, Paramount commenced negotiations with Viacom on Saturday morning, October 23. By Sunday, October 24, Paramount and Viacom had reached a new deal. The new agreement offered Paramount shareholders equivalent or lesser value to QVC's announced tender offer. The Paramount board approved the New Merger Agreement, under which Viacom would acquire Paramount in a two-step transaction to be commenced by a tender offer at 51 percent at $80 per share. Even though his company had never spoken with QVC to see how much more QVC might offer his stockholders, and even though Viacom offered his stockholders no more value than had been offered by QVC, Davis's public statements on October 25 treated the New Merger Agreement as a great victory. On October 26, a picture of Davis and Redstone at a press conference appeared in <u>The New York Times</u>, their hands clasped and raised in triumph.

The New Merger Agreement and Lockups

50. Under the New Merger Agreement, Viacom agreed to commence a tender offer (the "Viacom Tender Offer") for 60,437,023 shares (approximately 51 percent of the outstanding shares) of Paramount at a price of $80 per share -- the same price QVC had announced it would offer. Consummation of the Viacom Tender Offer is to be followed by a second-step merger of Paramount into Viacom, with Viacom being the surviving entity. In the second-step merger, Paramount's common stock would be converted into the right to receive (a) 0.20408 shares of Viacom Class A Common Stock, (b) 1.08317 shares of nonvoting Viacom Class B Common Stock, and (c) 0.20408 shares of a new series of Viacom convertible exchangeable preferred stock. (If the Viacom Tender Offer is not consummated before the merger is closed, then Paramount stockholders will be allowed to elect, subject to proration, whether they wish to receive cash or the package of stock.) According to Paramount and Viacom, the per share value of this package of stock was $80 as of the close of the stock market on Friday, October 22, 1993. Like the Original Merger Agreement, the New Merger Agreement binds Paramount to use its best efforts to secure stockholder approval for the Merger Agreement, and requires Paramount to amend its "poison pill" and remove other structural defenses so that the Viacom Tender Offer and merger may proceed.

51. The Paramount board also on October 24 granted Viacom lucrative lockups that would impede competing bids -- even though Viacom offered Paramount's stockholders a transaction no better than that offered by QVC. Thus, the new Viacom merger agreement still contained the $100 million "fee" provision -- payable upon termination under the same circumstances under which the "fee" was payable under the Original Agreement, and under certain additional circumstances.

52. Likewise, Paramount once again granted Viacom a massive stock option. The new stock option has actually been enhanced from Viacom's standpoint: the topping bid price that would determine Viacom's payoff if it were to opt to receive cash instead of the option stock is now the greater of either (a) a five-day average price of Paramount stock or (b) the offer price in any competing tender offer (such as QVC's) for Paramount stock. This amendment guarantees to Viacom that, if it does not become entitled to exercise its lockup stock option before the consummation of a competing tender or exchange offer, it may still reap the benefit of such an offer.

53. Thus, the Paramount board has once more locked up a deal with Viacom -- even though it has never discussed QVC's proposals with QVC, and even though Viacom offered no more than QVC. The playing field thus remains greatly skewed.

Indeed, by consistently stonewalling QVC's overtures while hurriedly negotiating with Viacom, Paramount has greatly enhanced Viacom's regulatory and timing advantage. In the words of one arbitrageur quoted in the New York Times, "Time is on Viacom's side. If the offers are roughly the same, I would tender to Viacom."

54. In its SEC Schedule 14D-9 responding to the Viacom Tender Offer, Paramount stated that the New Merger Agreement reflected "the best available alternative for Paramount, its stockholders and its constituencies." This statement impliedly represented that the Paramount board had an informed basis upon which to reach this conclusion. The Paramount board plainly did not have such an informed basis, having never engaged in discussions with QVC, and having never made any investigation as to whether QVC could or would in fact offer a better alternative that of Viacom's new bid. Beyond this, in stating that Viacom's bid was the best available alternative, Paramount stated in its Schedule 14D-9 that its "Board [had] reviewed and considered, to the extent of available information, the QVC Proposal and the QVC Offer. This statement, too, was misleading, since more information about QVC's bid clearly was "available" -- it was Paramount's for the asking if Paramount negotiated in good faith.

55. On Wednesday, October 27, 1993, QVC commenced its previously announced $80 tender offer for 51 percent of Paramount's outstanding shares. In making its tender offer, QVC reaffirmed its readiness to meet with Paramount representatives to discuss the terms of a merger.

IRREPARABLE INJURY TO QVC

56. 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 Lockups and other Paramount breaches. 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. Absent relief from this Court, Viacom and Paramount may succeed in causing a merger to be consummated that is less favorable than an alternative transaction currently available, and one that is the product of the gross abuse of the duties of the individual defendants. 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)

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

58. 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 would shift from the public to Redstone personally, and the merged company would be "takeover proof" for the same reason. Because of these factors, before twice agreeing to lock up the agreement with Viacom through the lockup option mechanisms employed here, Paramount's directors had a duty to determine if the bids 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.

59. 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 initial offer was grossly inadequate, and that Paramount's directors acted in breach of their duties by immediately accepting it and allowing Viacom to lock it up. And the fact that

Paramount so swiftly accepted Viacom's second bid, without even engaging in discussions with QVC, demonstrates that Paramount's directors failed to take steps to ensure that Paramount's stockholders would receive the best possible transaction for their shares. Despite Paramount's knowledge that QVC was a publicly-announced competing bidder for Paramount, and Paramount's lack of knowledge as to whether Viacom's October 23 proposal represented the best possible transaction, Paramount entered into a New Merger Agreement and Lockups with the purpose and intent of foreclosing or unreasonably burdening any higher bid (by QVC or anyone else). By entering into the New Merger Agreement and Lockups without a proper base of knowledge and information to reasonably conclude that Viacom's bid was the best available offer, and by impeding QVC's bid by refusing to agree to remove the rights plan, supermajority and Section 203 structural defenses for QVC's bid on the same basis they had done so for Viacom, Paramount's directors breached their duties under applicable law, and the New Merger Agreement and the Lockups are thereby unenforceable.

60. Plaintiff has no adequate remedy at law.

<u>SECOND CLAIM FOR RELIEF</u>
(Against the Paramount Defendants)

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

62. 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 New Merger Agreement and the Lockups 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 refusing to agree to remove the impediments to QVC's bid that exist by virtue of the rights plan, supermajority and Section 203 structural defenses; by refusing to talk to QVC; 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 New Merger Agreement and the Lockups are accordingly invalid and unenforceable.

63. Plaintiff has no adequate remedy at law.

THIRD CLAIM FOR RELIEF
(Against the Paramount Defendants)

64. Plaintiff repeats and realleges the allegations of paragraphs 1 through 63 of the Complaint as if fully set forth herein.

65. 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 in all the ways stated above, the directors could comply with their duties only if their conduct was reasonably related to achieving the best price available to stockholders.

66. Here there was no basis for a disinterested and well-motivated Paramount director to conclude that, if the transaction contemplated in the New 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 existence of QVC as a serious, bona fide bidder attempting to negotiate an alternative transaction, and Paramount's refusal to attempt to determine (through good faith discussions) whether QVC would offer a transaction superior to Viacom's;

-- 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 bid accepted by Paramount did not exceed QVC's;

-- the fact that Paramount made no effort to see if QVC (or anyone else) would make another bid;

-- the fact that Paramount nonetheless agreed to transfer control from the public to a single individual;

-- 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 discussions with QVC.

In view of these facts, the execution of the New Merger and Lockup Agreements was a violation of the fiduciary duties of care and loyalty owed by the Paramount directors, and those agreements are thereby unenforceable. For the same reasons, the other measures Paramount has taken in treating QVC and Viacom unequally, including with respect to the rights plan, supermajority provision and Section 203, are breaches of duty.

67. Plaintiff has no adequate remedy at law.

<u>FOURTH CLAIM FOR RELIEF</u>
(Against the Paramount Defendants)

68. Plaintiff repeats and realleges the allegations of paragraphs 1 through 67 as if fully set forth herein.

69. 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.

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

-- approving the New 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, including QVC's September 20 proposal and October 21 tender offer, 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 New Merger and Lockup Agreements; and

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

71. Accordingly, the execution of the New Merger and Lockup Agreements violated the Paramount directors' fiduciary duties of loyalty and care, and those agreements are thereby unenforceable.

72. Plaintiff has no adequate remedy at law.

FIFTH CLAIM FOR RELIEF
(Against the Paramount Defendants)

73. Paramount's directors have at all times been under a duty to ensure that their statements to Paramount stockholders are true and complete in all material respects and not materially misleading. The Paramount directors have breached this duty by misleadingly stating that the Amended Merger Agreement represented the "best available alternative" for Paramount and its stockholders, when in fact it had no informed basis to make such a statement; and by misleadingly

stating that it had considered the QVC proposal and tender offer "to the extent of available information," when in fact Paramount had not sought to obtain all available information. Accordingly, the Amended Merger and Lockup Agreements are breaches of fiduciary duties of the Paramount directors, and those agreements are unenforceable.

74. Plaintiff has no adequate remedy at law.

SIXTH CLAIM FOR RELIEF
(Against Defendant Viacom)

75. Plaintiff repeats and realleges the allegations of paragraphs 1 through 74 of the Complaint as if fully set forth herein.

76. 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 transactions that it knew were 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 Amended Merger and Lockup Agreements are accordingly unenforceable.

77. 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 New Merger Agreement is unlawful and was entered into in breach of the fiduciary duties of the Paramount directors;

B. Enjoining, temporarily, preliminarily and permanently, any steps to carry out the New Merger Agreement or to consummate the Viacom merger, unless and until the Lockups are either invalidated or waived by Viacom and the other impediments to QVC's proposals (such as the Paramount rights plan, supermajority provisions and Section 203) are invalidated, made inapplicable, or waived;

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

D. 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;

E. 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;

F. 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;

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

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

I. 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 New Merger Agreement;

J. 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;

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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CERTIFICATE OF SERVICE

I, Bruce L. Silverstein, Esquire, hereby certify that I caused two copies of the within documents to be served by hand delivery on October 29, 1993 upon the following attorneys of record:

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