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*ADMITTED IN NY ONLY

November 21, 1993

**FILED UNDER SEAL -- CONTAINS
"CONFIDENTIAL - RESTRICTED" MATERIAL**

The Honorable Jack B. Jacobs
Vice Chancellor
Court of Chancery
1000 King Street
Wilmington, Delaware 19801

BY HAND

Re: QVC Network, Inc. v. Paramount Communications
Inc., et al., Civil Action No. 13208

Dear Vice Chancellor Jacobs:

On behalf of defendant Viacom Inc. ("Viacom"), we respectfully submit this letter in accordance with the Court's direction. It is clear that the Paramount board's rejection of QVC's highly conditional "offer" was a fully informed and sound exercise of business judgment. The record developed concerning the November 15 meeting contains not a hint that the Paramount board was negligent, let alone grossly negligent -- the standard of conduct QVC must establish here to prevail -- in considering and rejecting QVC's offer. And in this case, unlike in the cases upon which QVC relies, Van Gorkom and Technicolor, plaintiffs seek to have this Court make a finding of gross negligence on a preliminary injunction record.

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At the outset, we note the highly unusual and self-created posture of QVC's application for preliminary relief. Apparently recognizing the weakness of its position at the time it filed its opening brief, QVC conditionally raised its "offer" at 5:29 p.m. on November 12, after all discovery had closed and QVC had filed its opening brief. Under the federal securities laws, this action by QVC required that the Paramount board meet after the initial record in this case had closed.

Yesterday, QVC announced and advised the Court by letter that it had secured bank financing for its tender offer and extended the offer until November 29th -- a gambit discussed further toward the end of this letter. Despite QVC's claim in the letter to this Court that its offer "is now fully financed," one has to turn to the press release issued by QVC (but apparently not provided to the Court) to learn that "it is not waiving the conditions to its offer," including the financing conditions. (We attach hereto a copy of the press release.) Thus, the financing of the tender offer, like the tender offer itself, continues to be just as ephemeral as it was when Paramount's board last met on November 15th, since it remains subject to all of the conditions of the tender offer, including the condition that there be an order by this Court preliminarily enjoining Viacom's contractual termination fee and stock option. Indeed, the banks' commitment to fund QVC's tender offer remains subject to a number of conditions, including

the banks' performance of due diligence. For this reason alone, even today there is no real QVC offer for the Paramount board to consider.

If anything, QVC's scramble to create an appearance that it had shored up its offer, while at the same time declining to waive its conditions, is strong confirmation that the Paramount board's judgments that QVC's November 12 proposal was not "a bona fide offer," Schloss Dep. 136, and was inferior to a strategic combination with Viacom, Pattison Dep. 122, were well founded. Those judgments -- which were supported by analyses and advice (both written and oral) by Paramount's outside counsel and financial advisors, see, e.g., Schloss Dep. Exs. 1 and 3 -- were sound, fully informed and hardly the product of gross negligence.

First, the Paramount board had ample basis for concluding that QVC's highly conditional offer was "weak" and provided little or no assurance that it could close on a timely basis -- if at all. See Fischer Dep. 48; Rattner Dep. 75-76 ("QVC had a long list of conditions that needed to be satisfied and . . . there could be no assurance as to how long it would take QVC to satisfy those conditions"). QVC's conditions went well beyond those customary in an offer and merger agreement. Among other things, the Paramount board was provided with a summary of the numerous conditions to QVC's offer, Schloss Dep. Ex. 1, which included (and continues to include) the following:

- Financing conditions. In addition to conditioning its offer on obtaining bank financing, QVC had reserved the right to terminate its November 12 offer if (i) it cannot consummate equity financing commitments of certain existing and new investors, and (ii) BellSouth (QVC's newest investor) does not or cannot proceed with its equity commitment as set forth in a non-binding memorandum of understanding (which has apparently been superceded by an allegedly "firmer" commitment letter which remains subject to definitive documentation), a "commitment" that itself is dependent on regulatory (including Hart-Scott-Rodino antitrust clearance and issues relating to the AT&T break-up decree) and other conditions. And, with respect to bank financing, as of November 15, "it was not on the table." Schloss Dep. 104.¹
- "Lock-up" condition. QVC's November 12 offer was conditioned on the invalidation of Viacom's termination fee and stock option. As we pointed out in our answering brief, this condition was introduced only after discovery had closed and QVC had filed its opening brief. Nonetheless, as presented to the board on November 15, QVC's new offer was conditioned on the invalidation of a binding contract which the board does not have the power to rescind. That remains true today.
- Back-end condition. QVC had reserved the right to change the terms of the second-step merger consideration to be offered to Paramount's shareholders, a fact that makes any meaningful evaluation of the November 12 offer virtually impossible. Fischer Dep. 76 ("The backend of the QVC offer in my opinion is very iffy and soft. I can't put a price tag on it."); Schloss Dep. 20.
- Numerous other conditions. QVC's November 12 offer

¹ Although Steven Rattner of Lazard Freres testified that on a pro forma basis QVC's offer was theoretically "financeable," Lazard Freres "did not speak to the question of the basis on which bank commitments specifically might or might not be obtained, the likelihood of the equity shareholders negotiating definitive [] documentation" and other conditional features of QVC's proposed financing. Rattner Dep. 87-88.

contains a number of regulatory and other conditions as well as "make whole" agreements with its current and new equity investors "[t]he consequences [of which] to a combined Paramount/QVC enterprise . . . could be adverse." Schloss Dep. Ex. 1 at 1, 2.

The Paramount board also considered the fact that "the various delays associated with the QVC Offer leave Paramount stockholders subject to significant market risk." Schloss Dep. Ex. 1 at 3; Schloss Dep. 171 (market risk "was a major reason for us to reject the QVC tender offer"); Fischer Dep. 29. In this regard, the Paramount board was concerned that, even if QVC could satisfy the numerous conditions to its offer, "[t]he addition of BellSouth as a bidder with respect to the QVC Offer may require that the QVC Offer be re-commenced," in which case the offer "could not be consummated until December 10 at the earliest. Schloss Dep. Ex. 1 at 3; Schloss Dep. 93.

In short, the Paramount board reached a rational and informed judgment that QVC's November 12 offer was not "a proper bid [] because there were too many contingencies in it." Schloss Dep. 26.

Second, and of great importance, the Paramount board unanimously determined that "long term, Viacom was a much better choice for Paramount than QVC." Schloss Dep. 152; Pattison Dep. 46. In addressing this question, the board had its long-standing knowledge of Paramount's businesses and its long-standing search for a fitting strategic partner. Pattison Dep. 46, 122. It was

also provided with a written presentation prepared by Lazard Freres which (i) discussed current stock market values of the consideration to be paid pursuant to the Viacom merger agreement and QVC's November 12 offer; (ii) summarized the views of Booz Allen & Hamilton regarding the considerably greater synergies and revenue enhancement opportunities presented by a Paramount/Viacom combination (as opposed to a Paramount/QVC combination, which in addition necessarily entails asset dispositions required for regulatory and other reasons); and (iii) contained a "theoretical, nonpredictive" short-term valuation analysis based on weighted averages of trading multiples of Viacom's and QVC's stock.² Rattner Dep. 43; Schloss Dep. Ex. 3.

Armed with this information and experience, the Paramount board concluded that, notwithstanding the current stock market differential in the Viacom and QVC proposals, the Paramount/Viacom combination is in the best interests of

² In the Lazard Freres presentation to the board, Schloss Dep. Ex. 3 at 10, the weighted average multiple analysis implied that from a short-term perspective the value of the QVC offer, if genuine and unconditional, would be approximately \$3.69 to \$5.72 higher than the value of the Viacom offer and merger. Lazard Freres later discovered computer errors in its weighted average multiple analysis and revised its analysis. Rattner Dep. 22-25; Rattner Dep. Ex. 6. Although not shown to the Paramount board, Lazard Freres' revised analysis implies that the value of the QVC offer may be, even in the short term, less than the value of the Viacom offer and merger and, under certain circumstances, no greater than \$1.48 higher than the value of the Viacom offer and merger. Rattner Dep. 30; Rattner Dep. Ex. 6 at 10.

Paramount stockholders. For example, the board recognized that current market values change from day to day; a more significant issue is "if that price will exist on the consummation date going forward." Schloss Dep. 150-51; Pattison Dep. 45 ("[t]he variations [in the stock market] of today or this week or last month really [were] not and [are] not in my view the way to look at this kind of situation"). Furthermore, Lazard Freres provided the board with historical trading data with respect to both Viacom and QVC which demonstrated that Viacom's stock had historically traded in a relatively narrow range of market values, whereas QVC's stock had exhibited substantially greater volatility. Rattner Dep. 39.

Most importantly, the Paramount board determined that Viacom was a "better fit" than QVC. Schloss Dep. 150. No factor could be more central in assessing the long term risks and benefits of a strategic combination. As director Schloss explained:

I did feel that on a long-term basis . . . that the synergies were greater with Viacom than they were [with] QVC, and that because of the extreme volatility, you could not really tell how you looked at values. . . . [The QVC offer] was not so great [] long term [] for the Paramount shareholders.

Schloss Dep. 139, 156. Indeed, the directors well knew that QVC's bid, dependent on one man as opposed to real business synergies and a broad-based management team, was far riskier for

its shareholders. Pattison Dep. 119 (board discussed "the importance of Barry Diller and his reputation," noting that "a lot depended on his heartbeat or the man himself and what would happen if something happened to Barry Diller").

In assessing risk, opportunity and valuation, the Paramount board concluded that the Viacom merger agreement was certain and superior to the QVC offer. As Rattner explained, there "was a very lengthy discussion involving many questions and many comments" regarding Viacom's "ability to complete its tender offer as scheduled on November 22nd." Rattner Dep. 75-76. On the other hand, given the many conditions attached to QVC's offer, "there could be no assurance as to how long it would take QVC to satisfy those conditions." Id.

On this record, QVC cannot come close to carrying the heavy burden of proving that the Paramount board was grossly negligent in rejecting QVC's November 12 offer. The board's determination was based on thoughtful and well-focused written materials prepared by sophisticated financial and legal advisors, and was well informed and considered. Indeed, the Paramount board engaged in precisely the sort of analysis of "the nature of the takeover bid and its effects on the corporate enterprise" required under Unocal Corp. v. Mesa Petroleum Co., Del. Supr., 493 A.2d 946, 955 (1985). In doing so, the board properly focused on issues raised by the QVC offer that the Unocal court

itself deemed significant, including the "nature and timing of the offer, questions of illegality, . . . the risk of nonconsummation, and the quality of securities being offered in the exchange." Id. at 955.

Under the circumstances, the Paramount board has responsibly discharged its duties for the benefit of its continuing stockholders. See Paramount Communications Inc. v. Time Inc., Del. Supr., 571 A.2d 1140, 1154 (1989) ("[d]irectors are not obliged to abandon a deliberately conceived corporate plan for a short-term shareholder profit unless there is clearly no basis to sustain the corporate strategy"). A finding of negligence, and certainly gross negligence, is unwarranted on this preliminary injunction record. QVC's and the Class Plaintiffs' motions for preliminary injunctive relief should be denied in all respects.

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We have previously expressed our view to the Court that QVC's November 12th conditional "bump" to \$90 -- coming after all discovery had concluded and it had become clear that QVC could not make out a "due care" case against Paramount's directors -- amounted to an effort to manipulate the Delaware courts' processes. Paramount's board on November 15th and this Court

thereafter have been diverted to "consider" a putative offer that was apparently made and timed for litigation purposes alone.

Yesterday, the Court received a new packet of materials from QVC -- this time after the new round of discovery had effectively concluded and it had become clear that in the November 15th board meeting Paramount's directors acted responsibly and conscientiously. That the timing of this unsworn submission was contrived is evidenced by the fact that the materials are all dated November 19th, and apparently were held back for release to this Court until November 20th.

Whereas QVC tells the Court that "its offer is now fully financed," the press release issued to the marketplace makes plain that QVC is in fact waiving none of the conditions of its earlier highly conditional offer, including the financing condition. Unlike Viacom, which has obtained all financing and has waived any financing condition, the availability of QVC's equity financing, for example, remains highly conditional and subject to regulatory approval.³ Each of BellSouth, Advance and Cox still requires Hart-Scott-Rodino clearance before any alleged equity investment can be made. In addition, BellSouth must comply with the highly technical and complicated AT&T break-up decree. Furthermore, even though weeks have passed since QVC's

³ Viacom's passive equity participations by NYNEX Corporation and Blockbuster Entertainment are finalized, closed and no longer conditional.

equity participants supposedly surfaced, their investments are still subject to negotiation and execution of definitive documentation. And, as was true on November 15, the tender offer and its financing are subject to all prior conditions, including the condition that there be an order by this Court preliminarily enjoining the contractual termination fee and stock option.

A court, of course, must act on a proper record. QVC's effort to alter the record at the eleventh hour whenever discovery is coming to an unhappy conclusion should be emphatically rejected. On the record before the Court, there exists no basis whatsoever to interfere with Viacom's contractual rights. And, on the record before the Court, there is no basis to conclude, preliminarily or otherwise, that Paramount's board has acted in bad faith or with gross negligence. Thus, on the record before the Court, there is no cognizable legal ground to take the unprecedented step of concluding that a board should be disqualified from managing its shareholder rights plan.⁴

⁴ In yesterday's letter to the Court, QVC repeated the argument that Viacom's tender offer should be enjoined, and QVC allowed to catch up, because Viacom's offer is allegedly coercive. As discussed in Viacom's Answering Brief (at 89-91), the record before the Court does not support this contention. A guaranteed back-end merger involving freely tradeable, quality securities (with tax advantages for those who do not tender) is not a coercive offer. Moreover, the primary reason the Viacom back-end is temporarily lower than the cash front-end is because Viacom's securities are trading based on arbitrageur expectation that the Paramount/Viacom merger will occur. See Miller Aff. (submitted with Viacom's Answering Brief). In any event, Paramount's board is under

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Paramount's board remains free, and should remain free, to evaluate Viacom's real offer (which is scheduled to close tomorrow), as well as such additional contrived modifications and machinations that have been or may hereafter be announced by QVC.

Respectfully submitted,



A. Gilchrist Sparks, III

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cc: David C. McBride, Esquire (By Hand)
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no legal obligation to slow down a certain offer to allow a conditional one to catch up. Viacom's Answering Brief at 86-88, 91-92.

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NEWS FROM QVC

QVC NETWORK, INC.
800 NEW CORPORATE PARK
WEST CHESTER, PA 19380
(610) 480-1000

For Immediate Release:

QVC SECURES FINANCING TO COMPLETE TENDER OFFER FOR PARAMOUNT COMMUNICATIONS

WEST CHESTER, PA., November 20, 1993 -- QVC announced today that it has secured the financing for its previously announced \$90.00 cash tender offer for 51 percent of the outstanding common shares of Paramount Communications Inc.

QVC said that a group of six banks has committed to lend \$3 billion to QVC to buy Paramount shares under the terms of QVC's tender offer. The banks had previously agreed to lend that sum to finance a merger between QVC and Paramount.

BellSouth Corporation has committed to purchase \$1.5 billion in QVC equity securities in support of QVC's tender offer. This consists of \$1 billion to purchase approximately 16.7 million shares of QVC common stock and \$500 million of QVC 6% convertible exchangeable preferred stock. BellSouth had previously signed a non-binding joint venture and equity investment agreement with QVC.

As part of the terms of BellSouth's commitment, in the event that BellSouth cannot purchase the equity at the time QVC's tender offer expires, then BellSouth would purchase \$1.5 billion in new stock issued by a newly formed, single purpose, wholly-owned

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subsidiary of QVC. That subsidiary would lend the proceeds from the BellSouth purchase of the new stock in the QVC subsidiary to QVC for the purpose of purchasing Paramount shares under the terms of the tender offer.

Combined with investments of \$500 million each from Advance Communications, Cox Enterprises and Comcast Corporation, today's commitments constitute all of the funding required for QVC's tender offer.

QVC also announced that while it is not waiving the conditions to its offer, none of those conditions would any longer be in its sole discretion or judgment.

As previously announced, QVC is offering approximately \$5.5 billion in cash for 61,008,240 Paramount common shares. QVC's offer, proration period and withdrawal rights will now expire at midnight on November 29, 1993, unless the offer is further extended.

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