



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

HOLLYWOOD FIREFIGHTERS'
PENSION FUND, WEST PALM
BEACH FIREFIGHTERS' PENSION
FUND, and SHEET METAL
WORKERS' LOCAL UNION NO. 80
PENSION TRUST FUND, on behalf of
themselves and all others similarly
situated,

Plaintiffs,

v.

JOHN C. MALONE, GREGORY B.
MAFFEI, GREGG L. ENGLER,
RONALD A. DUNCAN, DONNE F.
FISHER, and RICHARD R. GREEN,

Defendants.

C.A. No. 2020-0880-SG

SECOND AMENDED VERIFIED CLASS ACTION COMPLAINT

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Plaintiffs Hollywood Firefighters’ Pension Fund, West Palm Beach Firefighters’ Pension Fund, and Sheet Metal Workers’ Local Union No. 80 Pension Trust Fund (each a “Plaintiff,” and together “Plaintiffs”) submit this Second Amended Verified Class Action Complaint (the “Second Amended Complaint”) directly on behalf of themselves and all other similarly situated public stockholders of GCI Liberty, Inc. (“GCI Liberty” or the “Company”) against the individual defendants named herein for breaches of fiduciary duty in their capacity as directors, officers, and/or controlling stockholders of the Company (the “Action”). The

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allegations in this Second Amended Complaint are made upon Plaintiffs' knowledge as to themselves, and, as to all other matters, upon information and belief, including the investigation of counsel, the review of publicly available information, the review of certain books and records produced by the Company in response to Plaintiffs' demands made under 8 *Del. C.* § 220 (the "220 Demand"), and discovery taken to-date in this Action.

NATURE OF THE ACTION

1. Many people can infer that holding a large bloc of super-voting stock in a public corporation may contain the keys to extract value for personal benefit. Dr. John C. Malone ("Malone") not only recognized this potential side benefit of holding super-voting stock, he turned this concept into a multi-decade practice of converting super-voting shares into billions of dollars of personal benefits not shared with public investors. Whether, in any given circumstance, Malone's financial engineering reflects genius or breaches of duty for which he should be held to account, his strategy is clear.

2. This case is the latest example of Malone using his super-voting stock—which gave him *de facto* control over GCI Liberty and Liberty Broadband Corporation ("Broadband")—to push through a merger on unfair terms providing him improper side benefits. As explained below, the transaction being challenged in this Action (the "Merger"): (a) improperly and unfairly perpetuated the control

group's voting control over the combined entity; (b) irreversibly and unfairly stripped GCI Liberty Series A ("GCI Series A") holders of 100% of the voting power of their shares; and (c) deprived GCI Liberty stockholders of fair economic consideration for their shares.

3. Malone, together with his second-in-command, Gregory Maffei ("Maffei"), controlled approximately 35% of GCI Liberty's voting power despite owning less than 7% of its economic interests. Thus, their collective control stake was not assured for the future, since new issuances for capital raising or acquisitions would diminish their voting power. The solution to that problem was to combine GCI Liberty and Broadband.

4. After years of watching Malone leverage his own super-voting stock in multiple companies, Maffei finally saw in GCI Liberty and Broadband the chance to parlay voting power into a massive payday. Maffei holds modest economic stakes in both companies but had accumulated GCI Class B shares and options convertible to Class B shares representing about a 10% voting bloc in GCI Liberty.

5. As long as he could partner with Malone to effect the merger of GCI Liberty and Broadband, he could turn his GCI Liberty super-voting position into a large Broadband super-voting stake. The two would thus achieve an absolute majority stake in Broadband, which they could leverage for personal benefits when

Charter Communications, Inc. (“Charter”) inevitably acquires the combined GCI Liberty-Broadband company.

6. In November 2019, however, Maffei saw his plan at risk. The “at market” exchange ratio of GCI and Broadband had turned too far in GCI Liberty’s favor. Maffei took matters into his own hands. Specifically, during the 2019 “Investor Day” at which management of many of the Liberty Media-affiliated entities report to stockholders, Maffei stated that GCI Liberty’s discount-to-Charter had decreased substantially from 2018 and that Broadband’s discount-to-Charter had increased.

7. Maffei specifically (and misleadingly) told the market that this dynamic reflected GCI Liberty stock becoming overpriced relative to Broadband because it had enjoyed “a heck of a run” driven by “speculation.” GCI Liberty’s stock price reaction (and the decline in the at-market exchange ratio) was prompt and pronounced.

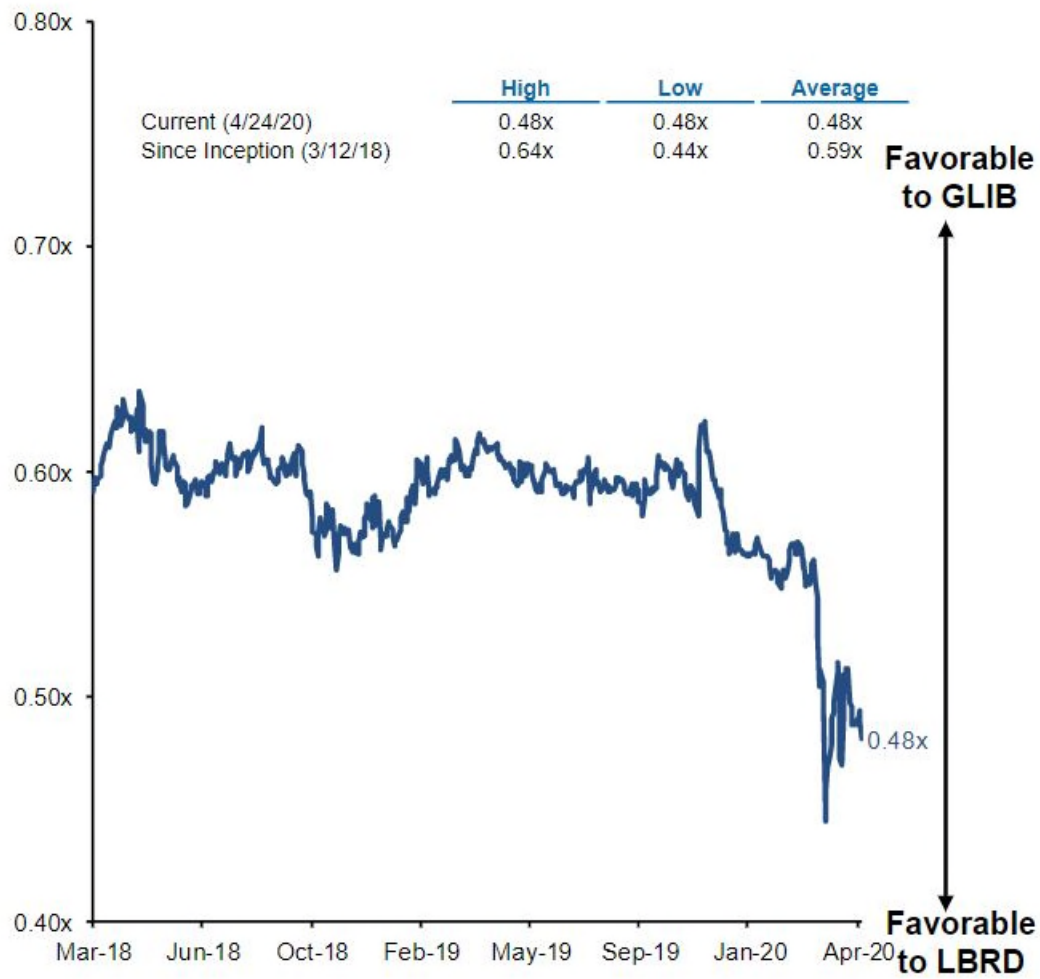
8. As Plaintiffs uncovered in discovery, Maffei’s attribution of GCI Liberty’s relative strength to investor speculation was not only wrong, it was affirmatively misleading. In fact, GCI secretly adopted a “New Approach” to calculating its discount to Charter, leading to a narrower publicly reported discount than under the “Legacy Approach.” Unwitting investors, with no way of independently re-creating GCI Liberty’s reported discount-to-Charter because of

various non-public components and assumptions needed to do that calculation, were misled by Maffei's misdirection and concealment that GCI Liberty secretly changed its math.

9. With the two companies trading back in line with Maffei's plan to combine them, Maffei met with his close friend and long-time M&A banker, Anthony Magro ("Magro") of Evercore Group ("Evercore"). They tracked GCI Liberty and Broadband's stock movements and potential valuations and (likely while on a ski vacation to Maffei's home in Vail) strategized on the deal.

10. In March 2020, the COVID-19 pandemic hit, causing an unprecedented cratering of GCI Liberty's stock price and a more modest decline in Broadband's stock price. As illustrated by the chart below, the already-tainted "at market" exchange ratio hit an all-time low, favoring Broadband and representing a disastrous time for GCI Liberty to even consider a deal. It thus presented the perfect time for Malone and Maffei to push through their desired deal.

Exchange Ratio based on Market Value¹



11. On March 22, 2020, Broadband management sent Maffei slides illustrating how opportunistic a merger amidst the Covid market collapse could be. Maffei forwarded the slides to Malone. The next day, Broadband management sent Maffei a draft Broadband board deck. As Maffei testified, he would not bring a proposal to either of his boards unless he first discussed it with Malone. Shortly

thereafter, Maffei and management recommended that the Broadband board create a special committee.

12. On April 21, 2020, the GCI Liberty Board received an Indication of Interest (“IOI”) from the Broadband special committee, conditioned on satisfaction of the *MFW* factors. The next day, GCI Liberty’s Board created a two-member special committee. Its membership was curious, to put it mildly. One member was Gregg Engles (“Engles”), a self-proclaimed long-time “close friend” of Maffei. The two are not just golfing buddies, fellow members of exclusive social clubs, and active together as Dartmouth alumni, they (and their respective wives) vacation together (including in 2020 at Maffei’s home in Cabo San Lucas, Mexico). Engles is also a close friend of Magro.

13. Engles and Maffei withheld their close relationship from the rest of the GCI Liberty Board. Engles likewise withheld his close friendship with Magro from his co-special committee member. And while Engles hinted of his friendship with Magro to the GCI Special Committee’s lawyers when they retained Evercore, Engles neither disclosed Maffei’s relationship with the GCI Special Committee’s chosen banker, nor disclosed his own incredibly close relationship with Maffei, one of the two people whose interests in a potential deal required the committee’s creation in the first place. With the lawyers unaware of these conflicts, this *MFW* committee was tainted from the outset.

14. Creating a conflicted committee that hired a conflicted banker, however, was still not enough. The process extended into June. With the broader markets stabilizing, GCI Liberty's stock price bounced back more rapidly than Broadband's, putting time on the GCI Liberty Class A investor's side. Moreover, GCI's Special Committee (hereafter sometimes referred to as the "Special Committee") was contemplating pursuing an exchange of GCI Class A shares for Broadband Class A shares, which would leave the Class A holders of the combined company with a 60%+ voting stake in the resulting entity.

15. At this point, Malone's lawyers stampeded any semblance of an independent process. They told the special committees that Malone – supposedly needing liquidity – adopted a Rule 10b5-1 trading plan requiring him to disclose either final deal terms or the then-current bid and ask by July 1. Accepting the absurd notion that Malone – a multi-billionaire – needed liquidity and had to trade *Broadband's* stock to achieve it, the GCI Special Committee ignored the process leaks through which Malone knew the exact status of the deal process. Moreover, while Malone insisted that he suffer no dilution in any deal, he also insisted that Maffei be permitted to convert all of his GCI Class B options into Broadband Class B options (thus blocking the committee from cashing out Maffei's options to free up value for Class A holders).

16. Any independent negotiator would tell an arms'-length bidder creating a false deadline to stand down or see negotiations terminate. Instead, the GCI Special Committee accepted the rushed timing imposed by Malone, accepted his demand that he not suffer dilution, and accepted a paltry 0.58x Broadband for GCI Liberty exchange ratio—lower than the average exchange ratio between the time of GCI Liberty's inception in March 2018 and the GCI Special Committee's formation.

17. Perhaps reflecting Malone's time pressure, the Special Committee did not bother to specify the form of consideration Class A holders would receive. Malone and Maffei quickly filled that breach. While the two started out with about 35% of GCI Liberty's voting power and 49% of Broadband's voting power, it took just a few days for them to leverage a deal that would give them 61% of Broadband's voting power in the future and allow them to exercise (and profit from) 66 2/3% in any future change of control transaction.¹

18. The key to this windfall for Malone and Maffei was the GCI Special Committee agreeing to a transaction under which the former GCI Class A holders –

¹ As described in detail, *infra*, after securing expedition and a preliminary injunction hearing from this Court, Plaintiffs litigated vigorously and eventually agreed that Malone and Maffei's abandonment of the super-voting stock that they were to receive in the deal mooted the Section 203 claim and otherwise benefitted GCI Liberty stockholders. All other claims continue, however, including, centrally, Plaintiffs' claim that the merger exchange ratio was unfair and unfairly stripped GCI Class A stockholders of 100% of their vote in the combined company.

who collectively held a majority of GCI's voting power – would be forced to accept non-voting Class C Broadband shares, at an unfair exchange ratio. Whatever premium is available when Charter buys Broadband will come, first and foremost, to Malone and Maffei, and second to the pre-existing Broadband stockholders.

19. To obtain stockholder approval of the Merger, GCI Liberty issued a materially misleading Proxy.² Among other things, the Proxy omitted that (i) Maffei manipulated the GCI Liberty-Broadband exchange ratio downward in order to make a potential transaction more favorable to Broadband and (ii) Engles and Maffei failed to disclose their conflicts to the GCI Liberty Board, which caused the Board to form a conflicted Special Committee and the conflicted Special Committee to retain a conflicted financial advisor.

PARTIES AND RELEVANT NON-PARTIES

I. Plaintiffs

20. Plaintiff Hollywood Firefighters' Pension Fund has held shares of GCI Liberty Series A common stock at all times relevant hereto.

21. Plaintiff West Palm Beach Firefighters' Pension Fund has held shares of GCI Liberty Series A common stock at all times relevant hereto.

² "Proxy" refers to, collectively, the October 30, 2020 GCI Liberty definitive merger proxy and the November 24, 2020 GCI Liberty 8-K.

22. Plaintiff Sheet Metal Workers' Local Union No. 80 Pension Trust Fund has held shares of GCI Liberty Series A common stock at all times relevant hereto.

II. Defendants

23. **Malone**: Defendant Malone served as Chairman of the GCI Liberty Board since the Company began trading in March 2018. Malone directly or indirectly controls a complex of corporate entities and ownership interests in some of the largest media companies in the world. At the time of the Merger, Malone held approximately 27.5% of GCI Liberty's voting power, primarily through his ownership of approximately 90% of the Company's super-voting GCI Series B stock. His beneficial ownership of more than 96% of Broadband's super-voting B shares provided him with approximately 49% of the voting power in Broadband. Malone additionally holds the largest voting stake in Liberty Media, over 30% of the vote in Liberty Global, the largest international cable company, and approximately 28% of the vote in Discovery Communications. In the last few decades, his Liberty complex has swallowed up Virgin Media, QVC, Lionsgate, Starz, the Game Show Network, Formula One, Tele-Communications, Inc. ("TCI"), and more companies.

24. **Maffei**: Defendant Maffei was the President, chief executive officer ("CEO"), and a director of both GCI Liberty and Broadband. He was therefore a dual fiduciary in connection with the Merger. He has also served as CEO, President, and a director of Liberty Media since May 2007, CEO and Chair of Liberty

Interactive, now Qurate Retail, Inc., and, as seen in the table below, in numerous other executive or board positions throughout the Malone complex:

Table 2: Selected Maffei Positions in Malone/Liberty Complex

| COMPANY | POSITION | TIME SERVED IN POSITION |
|---|--------------------------------|--------------------------------|
| Liberty Media Corporation | President and CEO | 2005 to Present |
| | Director | May 2007 to Present |
| Liberty Interactive Corporation (now Qurate Retail, Inc.) | Director | 2005 to Present |
| | President and CEO | Feb. 2006 to March 2018 |
| | Executive Chairman | March 2018 to Present |
| Live Nation Entertainment | Director | Feb. 2011 to Present |
| | Chairman | 2013 to Present |
| Starz | Chairman | Jan. 2013 to Dec. 2016 |
| Charter | Director | May 2013 to Present |
| SiriusXM Holdings | Chairman | 2013 to Present |
| Liberty TripAdvisor | Chairman, President, and CEO | July 2013 to Present |
| Broadband | President and CEO | June 2014 to Present |
| | Director | |
| Pandora Media | Chairman | Sept. 2017 to Present |
| GCI Liberty | President and CEO and Director | March 2018 to Merger |

25. At the time the parties agreed to the Merger, Maffei held approximately 10% of GCI Liberty's voting power and a 2.2% equity interest in the Company.³ He also held approximately 1.1% of Broadband's voting power and 1.8% of its equity interests. Maffei was the sole holder of options to purchase GCI Liberty Series B shares. As described further below, Maffei has also received handsome compensation for his services as CEO and/or director in various Malone entities.

26. An alumnus of Dartmouth College, Maffei has served as a member of the school's Board of Trustees since 2014. He also sits on Dartmouth College's Council on Foreign Relations.

27. **Engles:** Defendant Engles was a director of GCI Liberty from its inception in March 2018. On July 17, 2020, Engles joined the board of Chipotle Mexican Grill, Inc., after receiving references in support of his candidacy from both Maffei and Hamilton. Maffei had previously recommended that Engles be nominated as a director of Liberty Expedia Holdings, Inc., leading to Engles' service on that board from November 2016 to July 2019.

28. Like Maffei, Engles is an alumnus of Dartmouth College. For years Engles served with Maffei on Dartmouth's President's Leadership Council and its Board of Trustees.

³ This assumes Maffei exercises his stock options, in which case Malone would hold 25.4% of the vote in GCI Liberty.

29. Maffei and Engles consider one another close friends.

30. Additionally, Engles benefited from the closing of the Merger, as he was appointed to the combined company's board of directors.

31. **Duncan**: Defendant Ronald A. Duncan ("Duncan") was a director of GCI Liberty from its inception in March 2018 through the closing of the Merger. Duncan is co-Founder of GCI and currently serves as CEO of the Alaskan GCI subsidiary. GCI Liberty was founded with financial support from TCI, then headed by John Malone, and existed for several years as a wholly-owned subsidiary of TCI before it went public. Duncan owes his career as CEO of the Alaska GCI to Malone. Duncan also serves on the board of Malone-founded thinktank CableLabs.

32. **Fisher**: Defendant Donne F. Fisher ("Fisher") was a director of GCI Liberty from its inception in March 2018 through the closing of the Merger. Fisher served as director of Broadband from November 2014 to June 2015, and as director of Liberty Media from September 2011 to June 2015. Fisher's ties to Malone and Maffei are deep—previously he was a director of Liberty Media International from May 2004 to June 2005, a director of Qurate Retail, Inc. from October 2001 to September 2011, and a director of Starz from 2011 to 2013. Fisher also served in various positions at TCI from 1968 to 1996, including as an EVP from 1994 to 1996, and a consultant to TCI and its successors AT&T Broadband from 1996 to December 2005.

33. **Green:** Defendant Richard R. Green (“Green”) was a director of GCI Liberty from its inception in March 2018 through the closing of the Merger. Green was formerly the CEO of Malone-founded thinktank CableLabs, from its 1988 founding until his retirement in 2008. Following his 2008 retirement, Green served with Malone and Maffei as a director of Liberty Global. He has served as a director of Broadband since November 2014. He was therefore a dual fiduciary in connection with the Merger.

34. Defendants Malone, Maffei, Engles, Duncan, Fisher, and Green are referred to herein as the “Director Defendants.”

III. Relevant Non-Parties

35. GCI Liberty operated and owned interests in a broad range of communications businesses. As described further below, GCI Liberty was created after Liberty Interactive Corporation agreed to combine its tracking stock asset group Liberty Ventures with Alaska-incorporated General Communications, Inc. (“GCI Alaska”). The merger and subsequent split-off gave Liberty Ventures, later GCI Liberty, an operating business that diversified its pre-existing holdings in Charter and Broadband.

36. In May 2018, GCI Liberty reincorporated in Delaware. At the time the parties agreed to the Merger, the Company’s principal assets consisted of (a) its 100% owned subsidiary, GCI Alaska, which is the largest telecommunications

provider in Alaska and (b) 2%, 24%, and 27% equity interests, respectively, in Charter, Broadband, and LendingTree, Inc.⁴

37. Broadband is a Delaware corporation. During May 2014, the Board of Directors of Liberty Media and its subsidiaries authorized management to pursue a plan to spin off to its stockholders the common stock of a wholly owned subsidiary, Liberty Broadband. The Broadband spin-off was completed on November 4, 2014. Pursuant to proxy agreements with GCI Liberty and Advance/Newhouse Partnership, Broadband controls 25.01% of the aggregate voting power of Charter. Broadband also has a wholly owned subsidiary, Skyhook Holding, Inc., which focuses on the development and sale of device-based location technology.

38. Evercore is a global investment banking advisory firm with headquarters in New York City and nearly thirty other offices around the world. Evercore served as the GCI Special Committee's financial advisor on the Merger. Magro, the Senior Managing Director who led the GCI Special Committee engagement team, is a Dartmouth College alumnus who presently serves as a member of the college's Board of Visitors of the John Sloan Dickey Center.

⁴ In November 2020, GCI Liberty announced that it agreed to sell its stake of LendingTree, Inc. The gross proceeds of the sale were expected to be just over \$1 billion.

39. Non-party Sue Ann Hamilton (“Hamilton”) served as the second member of the GCI Special Committee. Hamilton was a director of GCI Liberty from its inception in March 2018 through the closing of the Merger. She joined the GCI Liberty Board in response to Maffei’s direct invitation. Previously, Hamilton served as Executive Vice President (“EVP”) of Programming for Charter from 2003 to 2007 and held numerous management positions at AT&T Broadband and its predecessor, TCI, from 1993 through 2002. Liberty Interactive (now Qurate Retail, Inc.) appointed Hamilton to the board of FTD Companies, Inc. (“FTD”), where she served as director from December 2014 to August 2019. During that period, Liberty Interactive (now Qurate Retail, Inc.) held up to 35% of FTD’s shares. Post-Merger, Hamilton, too, was rewarded with a position on the Broadband board of directors.

40. Non-party Renee L. Wilm (“Wilm”) has served as Chief Legal Officer of GCI Liberty, Broadband, Liberty Media, Qurate Retail, and Liberty TripAdvisor and since September 2019. Previously, Wilm was a senior partner with the law firm Baker Botts L.L.P., where she represented GCI Liberty, Broadband, Liberty Media, Qurate Retail, Liberty TripAdvisor, and their predecessors for over twenty years, specializing in mergers and acquisitions, complex capital structures and shareholder arrangements, as well as securities offerings and matters of corporate governance and securities law compliance.

41. Non-party Albert E. Rosenthaler (“Rosenthaler”) served as GCI Liberty’s Chief Corporate Development Officer from the Company’s inception in March 2018 through the closing of the Merger. He has served in the same role for Broadband, Qurate Retail, Liberty Media, and Liberty TripAdvisor since October 2016. He additionally served in that role for Liberty Expedia from October 2016 until July 2019. Previously, he was the Chief Tax Officer for the Liberty umbrella of companies from January 2016 to September 2016 and a Senior Vice President at Liberty companies dating back to April 2002.

SUBSTANTIVE ALLEGATIONS

I. Malone’s Pattern of Self-Dealing and Cultivation of Loyal Followers

42. John Malone is a giant in the cable television and media industry—a “mogul’s mogul.” Having “play[ed] the long game in an industry that has consolidated over the past three decades,” Malone is famous for deals with “fiendishly complex structure aimed at delivering the maximum amount of influence and tax savings” for himself.⁵ After over two decades as CEO of TCI, Malone sold TCI to AT&T in 1999. He joined AT&T’s Board of Directors post-transaction,

⁵ Matthew Garrahan, *Charter’s deal for Time Warner Cable is classic John Malone*, FIN. TIMES (May 26, 2015), <https://www.ft.com/content/e6af298c-03bf-11e5-8585-00144feabdc0>.

while retaining control of former-TCI subsidiary Liberty Media, which he filled with \$600 million of TCI assets in the form of cable systems and programming stakes.

43. With the 2001 split-off of Liberty Media from TCI's successor AT&T, Malone began building out a complex of Liberty entities and amassing interests in myriad other media companies. Over time, and with ruthless zeal, Malone "achieved as much control in the media industry as anyone ever had," becoming, in the eyes of some, the "piper you have to pay":

His complex deals and arrangements were based on a simple, thug-like formula (the other moguls were also impressed by the thuggishness). He used his control over distribution (at its height, TCI controlled one of every four cable homes) to make you give him a piece of your business (minority shares in TBS, QVC, BET, AMC, Court TV, and Discovery, among others). Ultimately, there were few cable stations that the great John Malone hadn't grabbed a piece of.⁶

44. Malone has a pattern of structuring deals to ensure that he would receive a premium for super-voting shares. In 1993, Bell Atlantic agreed to a later-aborted deal to purchase TCI and Liberty that would have given Malone a ten percent premium on his super-voting shares.⁷ A later deal in which AT&T bought TCI and Liberty again ensured that super-voting Class B stock received an approximately 10% premium to the public holders. Allan Sloan of *The Washington Post* called this

⁶ Michael Wolff, *The Best of Enemies*, VANITY FAIR (April 10, 2008), <https://www.vanityfair.com/culture/2008/04/wolff200804>.

⁷ Mark Robichaux, *CABLE COWBOY: JOHN MALONE AND THE RISE OF THE MODERN CABLE BUSINESS*, at 201 (2002).

move “pretty tacky . . . even in the moment of his greatest triumph, Malone can’t resist creaming off about \$170 million of extra goodies for himself at the expense of most of TCI’s other shareholders.”⁸

45. After the passing of TCI founder and Malone mentor Robert Magness, Malone cut a deal that TCI would pay him \$150 million for the first refusal rights over his class B super-voting shares, an arrangement one stockholder called “an unearned and unwarranted windfall for defendant Malone . . . [that] cements Malone’s domination and control of the company, with TCI’s money.”⁹ In 2009, Malone tried to pull a similar stunt, attempting to increase his personal super-voting shares in DirecTV by 50% from a split-off, which appeared to give Malone a premium worth \$240 million, over and above other shareholders. *See In re The DirecTV Group, Inc. Shareholder Litigation*, Consol. C.A. No. 4581-VCP (Del. Ch.).

46. In conducting feats of financial engineering, “Malone routinely combines or reshuffles his assets as streaming and telecom technologies evolve. . . . [Smaller-than-control] stakes [in certain companies] may be able to give [Malone and his team] learnings about related companies through board seats *or relationships*

⁸ Cable Cowboy, at 239, 300.

⁹ Cable Cowboy, at 227.

built with management. Sometimes they build stakes and end up moving to control.”¹⁰

47. By cultivating the talent in his ambit, Malone has also developed a network of senior executives of directly and indirectly affiliated companies who are indebted and devoted to him. Although Malone is no longer a CEO himself, the *New York Times* reported that Malone “still exerts sway from various boardrooms, and the C.E.O.s at the companies he oversees are routinely among the best compensated managers on the planet.” Journalists have observed that Malone’s “real secret of success appears to be partnering with good people for a very long time.” As Malone noted, he breeds loyalty by ensuring his executives are “heavily incentivized to succeed. That’s what I believe in.” He elaborated:

If you’re successful, of course, then you don’t have problems with churn. Bob [Magness, TCI co-founder] and I would say you couldn’t name anybody at the company that’s ever left. In recent years, we’ve had to add, ‘that left alive.’ The only way we lose anyone is mortality. We have octogenarians on the board. . . . ***It’s great to know the people running the boards. You have complete faith and trust in them. You’re close personal friends because you’ve been together for 30 to 40 years.***

¹⁰ Etan Vlessing & Georg Szalai, *John Malone’s Liberty Global Plays Long Game with Univision Stake Bid*, HOLLYWOOD REPORTER (Jan. 29, 2020), https://www.hollywoodreporter.com/news/john-malone-plays-long-game-univision-stake-bid-1273579?utm_source=headtopics&utm_medium=news&utm_campaign=2020-01-29.

(Emphasis added.)¹¹

48. Malone in fact is known for ensuring that “his executives [are] richly rewarded, sometimes through a nifty little bit of self-dealing that gave them sweetheart deals on” related-party transactions.¹² In that vein, Malone has often had understandings with the CEOs of Liberty entities that each may have a right to purchase Malone’s super-voting shares when he passes.

49. Maffei is a perfect example of a decades-long “Malone loyalist.” Described once as “the terrier at [Malone’s] pant leg,” Maffei has been well rewarded for his fidelity. After Malone scouted him away from Oracle Corporation in 2005, Maffei quickly took on multiple hats across the Malone complex. As described above, Maffei now “oversees the Liberty family of companies as they compete in the digital era,” and holds lucrative CEO positions across multiple Malone institutions: Liberty Media (where he also sits on the board); Broadband (where he sits on the board); and Liberty TripAdvisor (where he is also chairman).

50. According to Maffei, he and Malone are “like minded” having “worked together for 15 years.”

¹¹ Tamara Chuang, *National Western Stock Show Citizen of the West John Malone known for loyalty, can-do Western spirit*, DENVER POST, Jan. 8, 2017, <https://www.denverpost.com/2017/01/08/national-western-stock-show-citizen-of-the-west-john-malone/>.

¹² See CABLE COWBOY at 79.

51. Maffei has also publicly observed that “John [Malone] is [a] very [] loyal guy” and believes in “long-term partnership.” As Maffei further stated,

One of the reasons why all these guys came back to Denver [Malone’s home base] is because John has been a great partner through the years. ***It’s why people want to work with him. John makes money and everyone participates....*** He does great deals and he’s fair [to his executives]. That’s his M.O.¹³

(Emphasis added.)

52. Malone has been more than fair to Maffei. As the current CEO of Liberty Media and other Liberty entities, Maffei has received hundreds of millions in compensation over the fifteen years that he has worked for Malone, regularly appearing on lists of the nation’s highest paid CEOs. The *Wall Street Journal* reported that Maffei received pre-tax compensation of \$87.1 million in 2009, making him that year’s highest paid CEO of the 456 largest U.S. public companies. The *Motley Fool* reported that in 2012, Maffei made \$391 million, and was the third-highest paid CEO in the United States. The *New York Times* calculated that Maffei was paid twice in 2014, earning \$41.3 million as CEO of Liberty Media and \$32.4 million as head of then-Liberty Interactive.

¹³ Chuang, *National Western Stock Show Citizen of the West*, *supra*.

53. As of December 2019, Maffei’s new long-term employment contract with Liberty Media locks him in as president and CEO through December 31, 2024 and guarantees him:

[A]n aggregate annual base salary of \$3 million (with no contracted increase), an aggregate one-time cash commitment bonus of \$5 million, an aggregate annual target cash performance bonus of \$17 million, aggregate annual equity awards of \$17.5 million and aggregate equity awards granted in connection with his entry into his new agreement of \$90 million (the “upfront awards”).¹⁴

54. As explained below, Malone’s relationship with Maffei is so close that he forced the GCI Liberty and Broadband Special Committees to accept Maffei as his chosen successor and the future recipient of Malone’s super-voting shares in Broadband. Malone views Maffei as heir apparent to Liberty Media and Broadband, and has expressed a desire to transfer this stock to Maffei.

55. This desire is not merely theoretical—in conjunction with Maffei’s new employment agreement, entered into in December 2019, the two discussed transactions where Maffei would trade his non-voting shares for Malone’s voting shares in Liberty Media and Broadband. Six months later, Malone expressly preserved his ability to transfer Broadband Series B stock to Maffei under the (now defunct) Exchange Agreement. Indeed, Maffei said he was not surprised that Malone bargained for this right.

¹⁴ Liberty Broadband, Annual Report (Form 10-K) (Feb. 27, 2020), at I-2 – I-3.

II. Malone and Maffei Control Both GCI Liberty and Broadband

56. By virtue of his super-voting shares and influence over the respective boards, Malone had *de facto* control over both GCI Liberty and Broadband. In the alternative, Malone and Maffei controlled each company together.

A. *Malone had such formidable voting power at GCI Liberty and Broadband that neither company would even move forward with a stockholder vote without his support*

57. GCI Liberty had two classes of common stock and one class of preferred stock: GCI Series A (ticker: GLIBA), which was entitled to one vote per share, GCI Series B (ticker: GLIBB), which was entitled to ten votes per share, and one class of preferred stock (“GCI Preferred”), which was entitled to one-third of a vote per share. Notably, GCI Liberty did not have a class of non-voting stock.

58. Broadband has three classes of common stock: Broadband Series A common stock (ticker: LRBDA), which is entitled to one vote per share; Broadband Series B common stock (ticker: LRBDB), which is entitled to ten votes per share, and Broadband Series C common stock (ticker: LRBDK), which is non-voting. As long as Malone could use Broadband Series C as currency for acquisitions, his control over Broadband would not face serious challenge. But to the extent Broadband used voting stock as consideration for any acquisitions or similar strategically useful transactions, Malone’s effective control (described below) faced an ongoing threat from dilution.

59. The one-vote Series A shares in both companies were largely owned by stockholders unaffiliated with Malone. In addition, Broadband Series C stock is also largely owned by unaffiliated stockholders. As seen below, as of approximately June 30, 2020, Broadband Series C comprised the majority of Broadband's equity (while holding no votes), while GCI Series A comprised the majority of the Company's equity and voting shares:

Tables 3 and 4: Broadband and GCI Liberty Capital Structures

| Liberty Broadband Pre-Merger | | | | GCI Liberty Pre-Merger ¹⁵ | | | |
|------------------------------|------------------------|-----------------|---------------------------|--------------------------------------|------------------------|-----------------|---------------|
| Series | No. of Shares Out (mm) | % Common Equity | % Vote | Series | No. of Shares Out (mm) | % Common Equity | % Vote |
| Broadband Series A | 26.5 | 14.6% | 51.9% | GCI Series A | 101 | 95.8% | ~62.9% |
| Broadband Series B | 2.45 | 1.3% | 48.1% | GCI Series B | 4.5 | 5.4% | 35.6% |
| Broadband Series C | 153 | 84.1% | -- | Non-Voting | -- | -- | -- |
| Preferred | 0.0 | -- | -- | GCI Preferred | 7.2 | -- | 1.6% |
| Malone Holdings | | 3.6% | 48.8%¹⁶ | Malone Holdings | | 4.1% | 25.4% |
| Maffei Holdings | | 1.8% | 1.1% | Maffei Holdings | | 2.2% | 9.9% |
| Malone / Maffei Total | | 5.4% | 49.9% | Malone / Maffei Total | | 6.3% | ~35.4% |

¹⁵ Note that these pre-Merger voting percentage calculations assume that Maffei exercised certain stock options.

¹⁶ Engles understood that Malone's 48.8% ownership in Broadband effectively gave him negative control over the Merger.

60. Malone's effective control of Broadband and GCI Liberty arose primarily from his control of almost all of the super-voting Series B shares of each company.

61. As of June 30, 2020, Malone owned approximately 90% of the issued and outstanding GCI Series B stock and less than 1% the GCI Series A stock, cumulatively giving him approximately 27.5% of the Company's voting power. That mathematical fact, alone, gave him such great sway over the Company that the Board would not hold a stockholder vote without knowing that Malone was supportive.

62. The other significant owner of GCI Series B stock was Maffei. Assuming Maffei exercised certain stock options, he would control approximately 10% of the vote in GCI Liberty through holding approximately 1% of the GCI Series A stock and approximately 27% of the GCI Series B shares. In that scenario, Malone and Maffei would have held approximately 35% of the vote in the Company.

B. Malone's experience and reputation gave him outsized influence over GCI Liberty's board and management

63. Additional sources of Malone's control over GCI Liberty and Broadband are his immense stature in the industry and his long-standing practice of surrounding himself with loyal foot-soldiers. His long history of success and his

colleagues' financial ties enable him to bend his companies' executives and directors to his will.

64. Hamilton testified that Malone's voting stake gave him "substantial influence" over GCI Liberty. She further testified that reputation and experience also gave him "substantial influence" over GCI Liberty, more so than other members of the Board.

65. Engles similarly observed that Malone had substantial influence over GCI Liberty due to his voting power, position on the board, and experience and reputation. Indeed, Engles testified that Malone "would be an influential person" at GCI Liberty even if he didn't own a single GCI Liberty share and that Malone had influence over GCI Liberty's management as "chairman of the board of the corporation and an iconic figure in the telecommunications industry."

66. Maffei testified that Malone had managerial input at GCI Liberty due to his role as executive chairman and that Maffei *did not* have the power to override Malone's decisions as GCI Liberty's CEO.

67. The control wielded by Malone over GCI Liberty is grossly exacerbated by the fact that most of GCI Liberty's directors lack independence of Malone and/or Maffei. As discussed in, *inter alia*, ¶¶ 27-33, 74-77, 147, each of Engles, Duncan, Green and Fisher share affiliations with Broadband, Malone and/or Maffei that

disabled them from independently considering the merits of a potential fundamental corporate transaction between GCI Liberty and Broadband.

C. In the alternative, Malone and Maffei control GCI Liberty as a control group

68. GCI Liberty's directors and executives viewed Malone and Maffei as comprising a formidable unit. Engles, for example, has described Malone and Maffei as a "control group" or "control party." Hamilton identified them as the "Malone/Maffei group." Evercore's presentations similarly depict Malone and Maffei as a control group, showing their combined voting and economic interests in various slides throughout the process.

69. According to Maffei, the pair's lengthy shared work history has caused him and Malone to become "like-minded" in the operational decisions taken at the Company. Maffei, Hamilton, and Engles all describe the working relationship between Maffei and Malone as "collaborative." Engles testified, "I don't recall many instances, if any, in which Dr. Malone expressed a point of view with respect to strategy that was different than where the rest of the management team was."

70. Malone's and Maffei's similar viewpoints are attributable in part to their frequent communication. Maffei routinely consulted Malone in advance regarding any issue he considered bringing before the Board. Similarly, other members of Maffei's management team regularly apprised Malone regarding

transactions under development. Consequently, Malone is consistently well-informed about matters involving his companies.

71. The bond between Malone and Maffei extends to long-term considerations, as well. As discussed above, Malone views Maffei as his heir apparent and the two have discussed transactions where Maffei would trade his non-voting shares for Malone's voting shares in Liberty Media and Broadband.

72. Broadband's merger proposal recognized that Malone and Maffei control both GCI Liberty and Broadband. Cognizant of Malone's and Maffei's control, Broadband conditioned the Merger on GCI Liberty (i) establishing a special committee of independent directors and (ii) subjecting any merger to approval of a majority-of-the-minority stockholders. Hamilton recognized that the GCI Liberty Special Committee was formed to represent the interests of "minority" or "noncontrol" shareholders.

73. GCI Liberty, however, immediately violated the *MFW* conditions. The Board recognized that it was in the best interests of the Company that the Special Committee members be independent of Malone and Maffei. With Malone and Maffei present, the Board appointed Engles and Hamilton to the Special Committee. Engles knew that the Board was ignorant of the closeness of his friendship with Maffei. Engles and Maffei nevertheless sat by silently as the Board identified Engles as disinterested and independent for purposes of the Merger. Based on a consensus

view that other directors were even less qualified to serve on the Special Committee, the Board did not even consider the disinterestedness and independence of Duncan, Green, and Fisher.

D. The rest of the GCI Liberty Board lacks independence from Malone and Maffei

74. Duncan lacks independence from Malone and Maffei because he works as an executive for GCI Alaska, formerly a wholly owned subsidiary of GCI Liberty. Specifically, Duncan co-founded GCI Alaska in 1979 with funding and support from John Malone and TCI.¹⁷ Until 1986, GCI was a wholly-owned subsidiary of TCI. Duncan led GCI as CEO for over four decades, and he is indebted to Malone for funding his start. Duncan also serves as a director for CableLabs, the John Malone-founded thinktank regarding cable systems where Malone is still director emeritus.

75. Green also lacks independence from Malone. For two decades (from its founding to 2009), Green was the CEO of CableLabs. In 2008, Green became a director at Liberty Global, and in 2014 Green became a director at Broadband. He was a dual fiduciary in connection with the Merger.

¹⁷ Mike Farrell, *Why John Malone is Making Tracks to Alaska*, NEXTTV, Apr. 10, 2017, <https://www.nexttv.com/news/why-john-malone-making-tracks-alaska-412062>.

76. Fisher lacks independence from Malone because, like Duncan and Green, he has a long history of working with Malone and becoming very wealthy from that relationship. Fisher was TCI's CFO for many years. Fisher

started out in 1960 as TCI's head accountant in Bozeman and number cruncher who could recite TCI's various loans to the penny, Fisher helped Malone keep the lenders at bay, joining him in shuttle diplomacy to New York, where the two had to show up so often, hats in hand, that the company rented a tiny apartment in Midtown.¹⁸

77. After Fisher's retirement from TCI, he received \$475,000 a year as a consultant for TCI, reporting directly to Malone, and served as a TCI board member.¹⁹ Malone also, "in making sure everyone walked away happy," secured a settlement deal in which Fisher received \$1.5 million in 1998 for serving as the co-executor of Magness's estate. Thus Fisher is one of the "close personal friends" Malone described who people his boards of directors.

III. Maffei Deliberately Manipulates the Broadband-GCI Liberty Exchange Ratio to Set the Stage for a Broadband Offer

78. From GCI Liberty's inception, the market has speculated that GCI Liberty would be combined with Broadband.²⁰ Market participants expected that

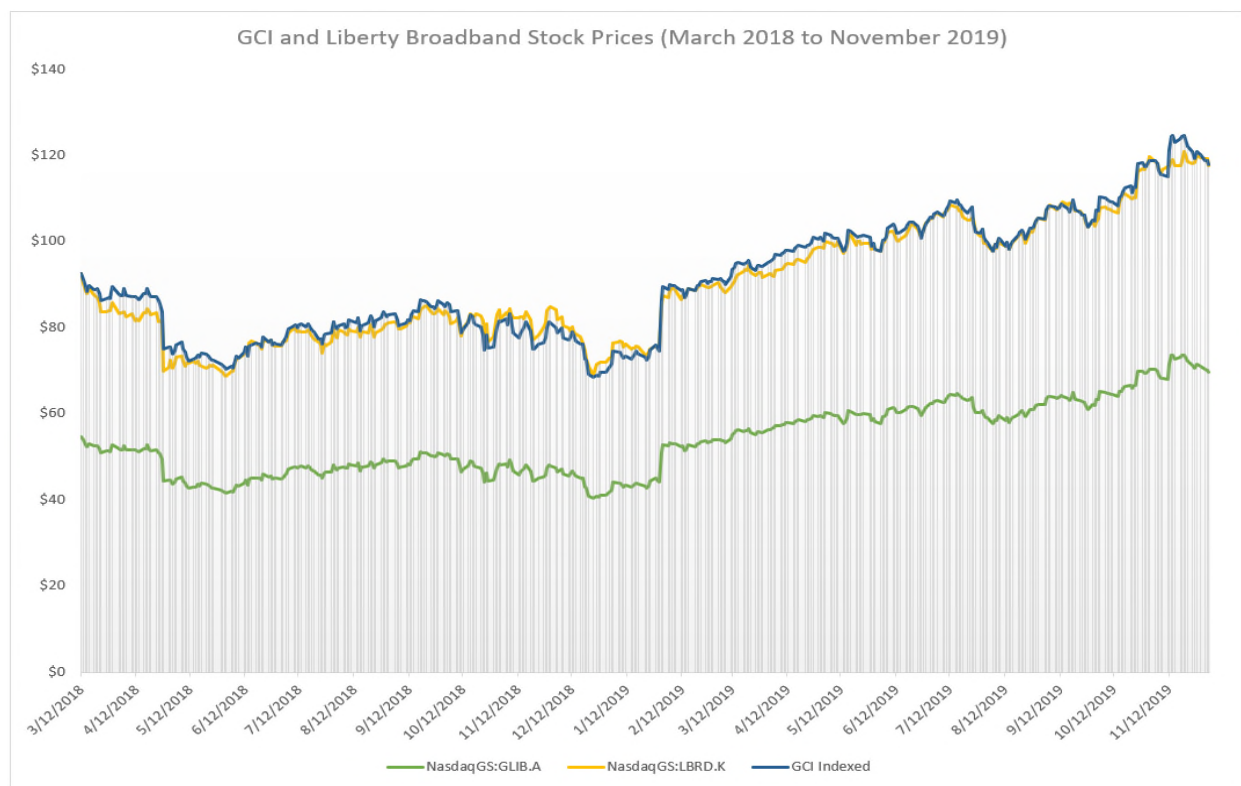
¹⁸ CABLE COWBOY, at 37; *see also* *id.* at 138 (calling Fisher one of the old cowboys who built the TCI empire with Malone).

¹⁹ CABLE COWBOY, at 200.

²⁰ *See, e.g.*, Jeffrey Wlodarczak, *Best CHTR Play; Reducing Target \$63 on More Conservative GCI Valuation*, PIVOTAL RESEARCH GROUP (November 12, 2018) ("We continue to believe . . . there is a high probability that GLIBA/LBRDK (BUY)

the expiration of a two-year tax seasoning window would occasion a GCI Liberty-Broadband merger.²¹

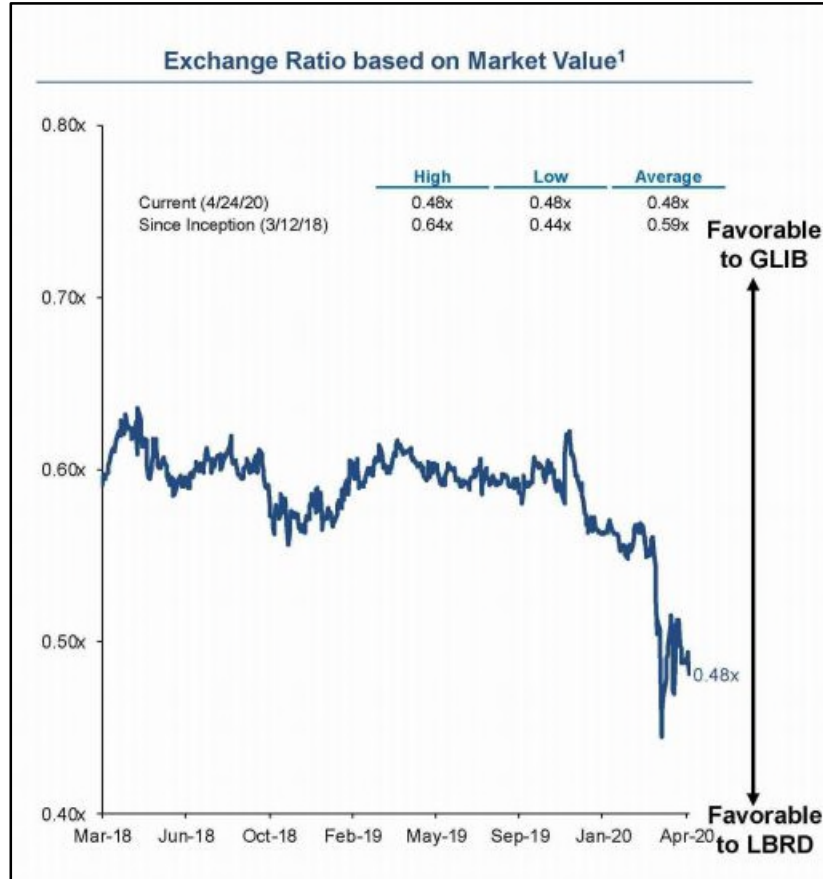
79. For most of its trading life, GCI Liberty’s stock moved in tandem with Broadband. The below graph indexes the prices of GCI Series A (in dark blue) across Broadband Series C’s stock price (in yellow).



could enter into an RMT merger with CHTR (BUY), in similar fashion to the '09 all stock RMT merger between DIRECTV (T, N/R) and Liberty Entertainment.”).

²¹ See Matthew Harrigan, *GCI Liberty, Inc.: Complicated Asset Portfolio, But Implicitly Buying Charter at Sub \$400 Price*, BENCHMARK (Oct. 28, 2019) (“Although no action is necessarily imminent, Liberty could combine Charter’s current ‘three tier Russian doll’ ownership structure (Charter/Liberty Broadband/GCI Liberty). This follows the 1Q19 first anniversary closure of GLIBA’s acquisition of the Alaska GCI asset.... Generally speaking, allowing further time to elapse from the deal close is favorable as far as fostering favorable IRS treatment.”).

80. Additionally, for the majority of GCI Liberty’s trading life, the ratio of the price of GCI Series A shares to the price of LBRDK shares exceeded 0.59:



81. Maffei did not believe that Broadband would make an offer for GCI Liberty at the prevailing exchange ratios—which averaged over 0.59 between GCI Liberty’s inception in March 2018 and November 2019 and exceeded 0.60 for much of that period—because Broadband would have to (but may be unwilling to) pay a premium to the exchange ratio. But he and Malone both wanted a merger to occur to facilitate a follow-on merger between Broadband and Charter. Thus, as discussed

below, Maffei acted to manipulate the exchange ratio downward to make his much-desired merger possible.

A. The market depended on guidance regarding discounts-to-Charter

82. Broadband and GCI Liberty both own Charter stock directly and GCI Liberty also owns Charter stock indirectly through its ownership of 24% of Broadband. For various reasons, the market does not ascribe full value to Broadband and GCI Liberty's Charter owned stock. Rather, Broadband and GCI Liberty stock prices each reflect a discounted value of its Charter holdings. The discount-to-Charter metric reveals how favorable an investor would find owning one share of Charter through Broadband or GCI Liberty rather than holding in Charter directly.

83. Calculating GCI Liberty's discount to Charter was more complicated than calculating Broadband's discount to Charter because GCI Liberty owned more assets than Broadband, and thus had more components to its net asset value ("NAV"). Besides its direct and indirect investments in Charter, GCI Liberty had two material assets that Broadband lacked – namely, its minority investment in LendingTree, a publicly traded corporation, and its private Alaska telecom operations, GCI Alaska. To calculate GCI Liberty's discount-to-Charter, an investor would need to know the value of GCI Alaska. That made calculating GCI Liberty's discount-to-Charter far more complex than calculating Broadband's discount-to-Charter—it needed to use non-public information. Accordingly, GCI Liberty

investors relied on the Company's guidance to understand GCI Alaska's value and to calculate the discount-to-Charter.

84. Because GCI Liberty's structure is more complex than Broadband's, its stock typically traded at a larger discount-to-Charter than Broadband's stock. In other words, one thing that made GCI Liberty's stock attractive to investors was that purchasing GCI Liberty stock was the cheapest way to purchase Charter stock. As an Evercore analyst noted on November 12, 2018, "[e]ach step [from Charter to Broadband to GCI] allows the purchase of Charter at a progressively larger discount, but at the cost of greater complexity and lower liquidity."²²

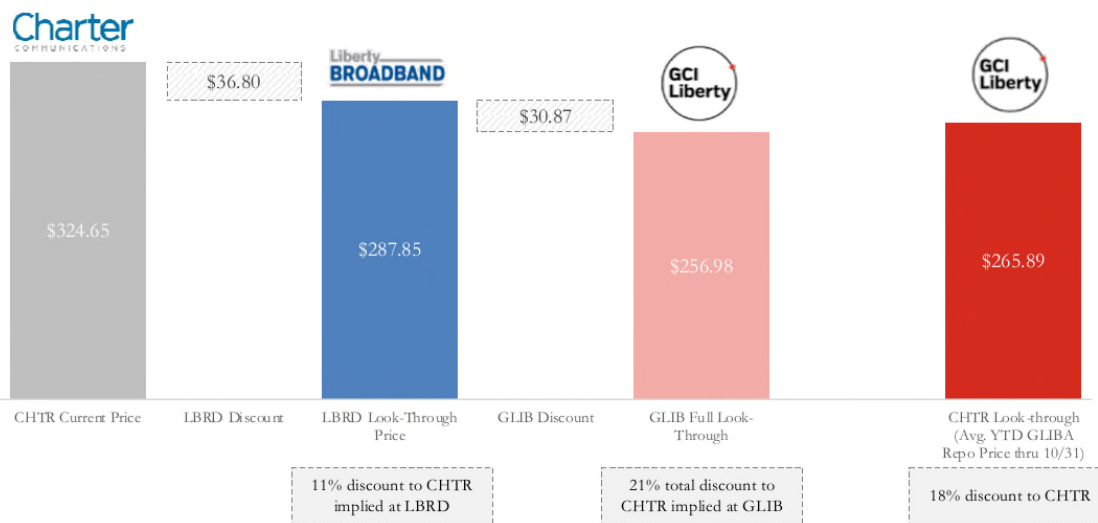
B. Maffei misleads the market about GCI Liberty's discount-to-Charter

85. In November 2018, at the annual Liberty Investor Day, Maffei presented the market for the first time with information regarding GCI Liberty's and Broadband's respective discounts-to-Charter.

86. The November 2018 Investor Day presentation showed that GCI Liberty's stock price reflected an approximately a 18%-21% total discount-to-Charter while Broadband's stock price reflected an approximately 11% discount-to-Charter.

²² Bary, *Liberty Broadband and GCI Stock Look Ready to Rise*, BARRON'S, Nov. 12, 2018, <https://www.barrons.com/articles/liberty-broadband-stock-and-gci-liberty-look-ready-to-rise-1542062370>.

GCI Liberty Continues to Represent Most Attractive Avenue to Charter...



Note: Market data as of 11/8/2018.

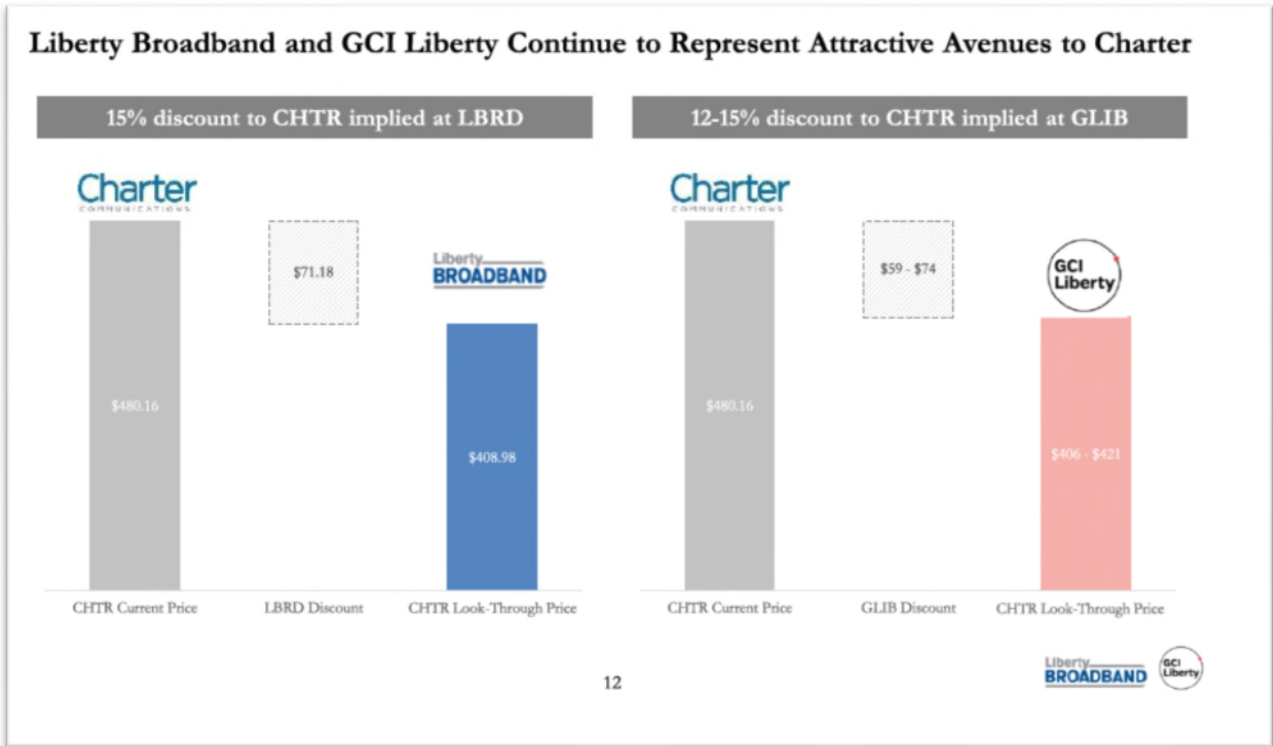
(1) Pre-tax market values of TREE and CHTR as of 11/8/2018; full discounts at LBRD and GLIB applied to LBRDK stake when calculating look-through at CHTR.



2018 Investor Day Presentation

87. The next year, Maffei made a similar presentation that suggested that the metrics had dramatically shifted in GCI Liberty’s favor—*i.e.*, that GCI Liberty’s discount-to-Charter had fallen significantly—when in fact that was not the case.

88. On November 21, 2019, at the annual Liberty Investor Day, Maffei showed the following slide:



2019 Investor Day Presentation

89. According to this slide, GCI Liberty’s discount-to-Charter had fallen to approximately 12-15% while Broadband’s discount-to-Charter had grown to approximately 15%.

90. Maffei attributed this change to speculation that Broadband would acquire GCI Liberty. Specifically, Maffei stated:

One thing that's interesting that's happened *in the last year is speculation*, perhaps, about combinations, which certainly haven't been planned or announced, have caused *the Charter discount -- excuse me, the Liberty Broadband discount to the underlying Charter to actually broaden and the GCI Liberty's stock [and, specifically, discount to underlying Charter], which has had a heck of a run, to tighten*. And that's a pretty tight spread today between those 2 that would -- we'll see where that eventually leads, but it is fascinating to watch how *the larger*

complexity of GCI Liberty has just been discounted away on the speculation.

(emphases added).

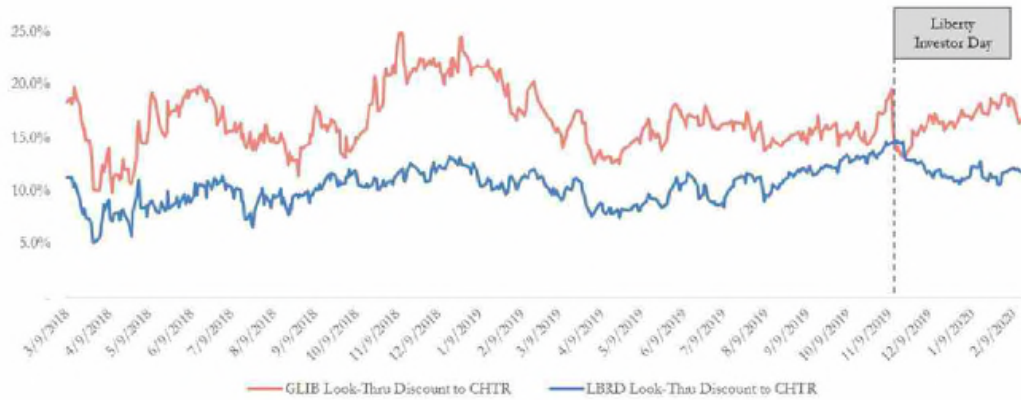
91. The obvious implication of Maffei's comments was that GCI Liberty's stock price was overvalued relative to Broadband's stock price.

92. After the November 21, 2019 presentation and as a result of Maffei's statements, two things occurred. First, as seen below, GCI Liberty's discount-to-Charter began to increase while Broadband's discount-to-Charter began to decrease. As a result, Broadband's stock price increased relative to GCI Liberty's and, therefore, the GCI Liberty-Broadband ratio fell.

93. This trend is visually depicted in Maffei's CEO Report to the Board in March 2020. That Report showed that shortly after the 2019 Investor Day, the discount-to-Charter at GCI Liberty and Broadband, which had apparently intersected, quickly sprung apart.

CHTR Look-Through Discount at GLIB and LBRD

- Historically, implied price of Charter at GCI Liberty **lower** than implied price at Liberty Broadband
- GLIB's implied price of Charter increased above LBRD's implied price for first time in Nov. '19
 - GLIB's implied price has since declined back below that of LBRD
 - Trading dynamic may have been driven by market speculation ahead of potential announcement at Investor Day

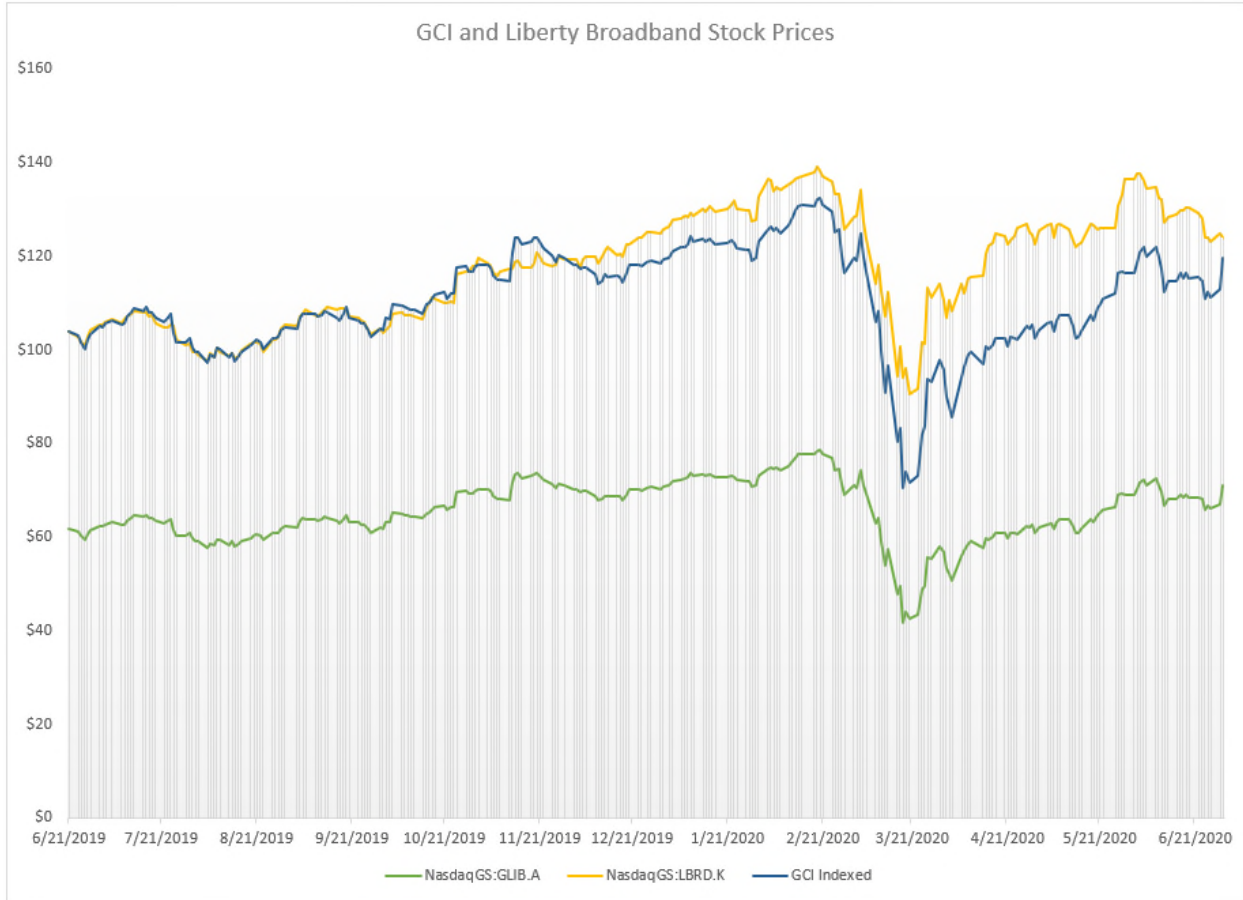


As of 2/20/20.

Note: Debt and preferred equity valued at market and cash balances as of 12/31/19. GLIB net asset value assumes (a) illustrative valuation on GCI of 9.0 - 10.0x normalized LTM EBITDA; (b) pre-tax market values for LBRDK and CHTR stakes; and (c) after-tax market value for TREE. Full discounts at LBRD and GLIB applied to CHTR and LBRDK stakes when calculating look-through at CHTR.



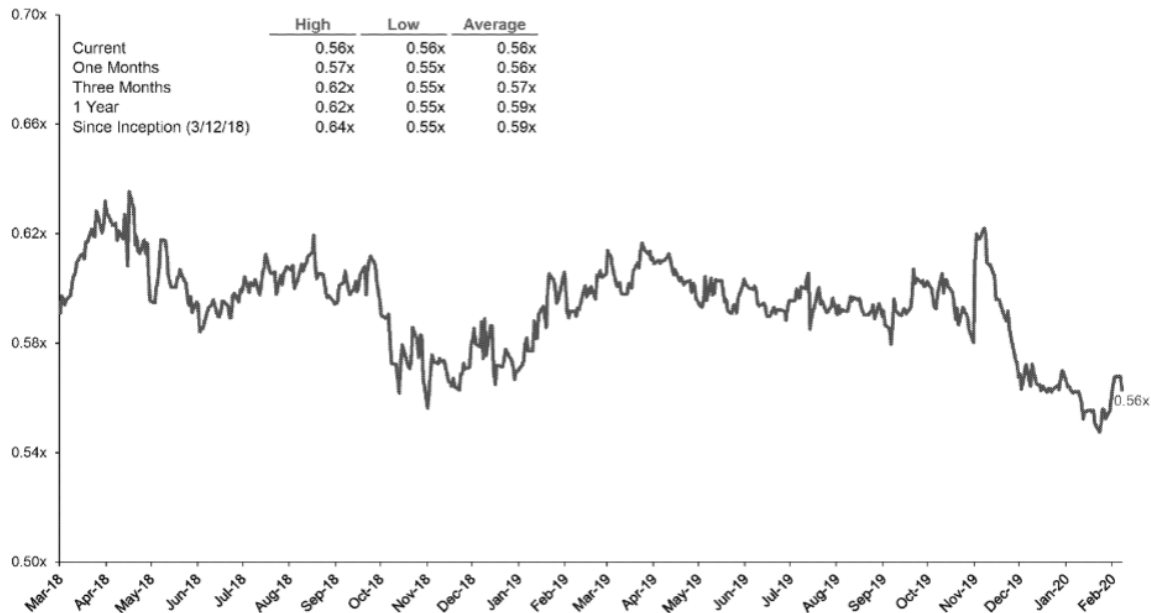
94. Second, GCI Liberty's stock price became increasingly decoupled from Broadband's stock price shortly after the 2019 Investor Day. The graph below shows GCI Liberty's stock price indexed to Broadband nonvoting shares from June 2019 to June 2020.



95. As a result, by February 2020, the implied exchange ratio had plummeted to all-time lows. An Evercore presentation from February 2020, extracted below, reveals this trend.

Exchange Ratio Analysis

Represents GCI Liberty Class A / Liberty Broadband Class C. Liberty Broadband held by GCI is equivalent to 20% GCI's equity value



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96. Maffei's guidance was factually incorrect for at least two reasons.

97. First, Maffei's comments ignored that the reason GCI Liberty's stock price increased relative to Broadband's in mid-November was that GCI Liberty reported "third quarter 2019 results that were quite strong relative to the prior year."²³ Benchmark analyst Matthew Harrigan noted that "GCI's Alaskan asset reported surprisingly good pro forma 3Q19 results, with top line advancing 3% and

²³ Robert G. Routh, *GLIB reports 2019 third quarter results....*, FBN Securities (Nov. 12, 2019), at 1.

concomitant Adjusted OIBDA (EBITDA) up 5%.”²⁴ In other words, the increase in the GCI Liberty-Broadband ratio was justified by the performance of GCI Liberty’s non-Charter assets.

98. Second, GCI Liberty’s stock was not actually trading at a significantly smaller discount to Charter than it had in the past. Rather, as outlined below, GCI Liberty changed its methodology for calculating its discount-to-Charter stock. That difference in methodology accounted for the vast majority of the move from an approximately 21% discount-to-Charter in 2018 to an approximately 12-15% in 2019. Neither Maffei nor the Company ever disclosed this change to the market.

99. The 2018 discount-to-Charter calculations used a method that the Company later called the “Legacy Approach.”

100. In preparation for the 2019 Investor Day, the Company used both the “Legacy Approach” and a “New Approach” to calculate GCI Liberty’s implied “lookthrough” price of Charter (that is, the price of one share of Charter if purchased through GCI Liberty) and accompanying discount-to-Charter.

101. The 12-15% discount-to-Charter at GCI shown to the public was based on the New Approach (yellow highlights added).

²⁴ Matthew Harrigan, GCI Liberty Inc.: Surprisingly Good GCI Holdings (Alaska) Results, BENCHMARK (Nov. 12, 2019), at 1.

| CHTR look-through (New Approach w/ TREE After-Tax) | | | | |
|---|--------------|------------------|-----------------|------------------|
| GCI @ 9.0x | <u>Price</u> | <u>Look-Thru</u> | <u>Disc. %</u> | <u>Disc. \$</u> |
| LBRD | \$480.16 | \$408.98 | (14.8%) | (\$71.18) |
| GCI | \$408.98 | \$421.37 | 2.6% | \$12.39 |
| Total | | | (12.2%) | (\$58.79) |
| GCI @ 10.0x | <u>Price</u> | <u>Look-Thru</u> | <u>Disc. %</u> | <u>Disc. \$</u> |
| LBRD | \$480.16 | \$408.98 | (14.8%) | (\$71.18) |
| GCI | \$408.98 | \$406.39 | (0.5%) | (\$2.60) |
| Total | | | (15.4%) | (\$73.77) |
| Bridge - GLIB | | | | |
| CHTR Current Price | | \$480.16 | | |
| GLIB Discount | | \$413.50 | \$66.66 | |
| GLIB Full Look-Through | | \$413.50 | | |
| GLIB full LT range | | \$406 - \$421 | \$59 - \$74 | |
| Low | | \$406.00 | (15%) | |
| High | | \$421.00 | (12%) | |
| GLIB discounts summary | | | | |
| | <u>Price</u> | <u>NAV</u> | <u>Discount</u> | |
| GLIB | \$73.57 | \$75.10 | (2.0%) | |
| GLIB w/ LBRD Fully Valued | \$73.57 | \$83.58 | (12.0%) | |
| LBRD | \$118.59 | \$139.68 | (15.1%) | |

2019 New Approach Calculation

102. By contrast, using the same Legacy Approach that was used in 2018 would have resulted in a discount-to-Charter of approximately 17.4 to 21.9 percent (yellow highlights added), right in line with GCI Liberty's discount-to-Charter in 2018.

| CHTR look-through (Legacy Approach) | | | | |
|-------------------------------------|----------|---------------|----------------|-------------------|
| GCI @ 9.0x | Price | Look-Thru | Disc. % | Disc. \$ |
| LBRD | \$480.16 | \$408.98 | (14.8%) | (\$71.18) |
| GCI | \$408.98 | \$396.45 | (2.6%) | (\$12.53) |
| Total | | | (17.4%) | (\$83.71) |
| GCI @ 10.0x | Price | Look-Thru | Disc. % | Disc. \$ |
| LBRD | \$480.16 | \$408.98 | (14.8%) | (\$71.18) |
| GCI | \$408.98 | \$375.11 | (7.1%) | (\$33.87) |
| Total | | | (21.9%) | (\$105.05) |
| Bridge - LBRD | | | | |
| CHTR Current Price | | \$480.16 | | |
| LBRD Discount | | \$408.98 | \$71.18 | |
| LBRD Look-Through Price | | \$408.98 | | |
| Bridge - GLIB | | | | |
| CHTR Current Price | | \$480.16 | | |
| GLIB Discount | | \$385.50 | \$94.66 | |
| GLIB Full Look-Through | | \$385.50 | | |
| GLIB full LT range | | \$375 - \$396 | \$84 - \$105 | |
| Low | | \$375.00 | (22%) | |
| High | | \$396.00 | (18%) | |

2019 Legacy Approach Calculation

103. The Legacy and New Approaches use all the same inputs or ranges thereof to calculate GCI Liberty's discount-to-Charter. These include the same high and low value for private GCI Alaska assets and the same value for GCI Liberty's LendingTree shares. The only material difference driving the disparity in the discounts-to-Charter is the *methodology* used to derive GCI Liberty's lookthrough price for Charter and the accompanying discount-to-Charter.²⁵

²⁵ Specifically, both methods use the same after-tax value of LendingTree.

104. The prior year's 18-21% discount-to-Charter had used the Legacy Approach. The discount disclosed in 2019 used the New Approach. If GCI Liberty disclosed this change in methodology and the 2019 figures derived from the Legacy Approach, stockholders would have concluded that GCI Liberty's discount-to-Charter had not actually "tightened."

105. But Liberty management never disclosed its change in methodology.²⁶ The market thus did not know that comparing GCI's old discount-to-Charter to its new discount-to-Charter was comparing chalk and cheese.

106. By this methodological sleight of hand, Maffei misled the market into thinking the GCI Liberty's stock was over-valued in comparison to Broadband's stock.

IV. Liberty Management Plans to Make a Bid

107. Though Maffei had publicly demurred, privately Malone and Maffei were tracking the exchange ratio to find an opportune time for Broadband to make an offer.

108. On or around January 22, 2020, with the exchange ratio between Broadband Series C and GCI Liberty Series A shares hovering around all-time lows

²⁶ The public disclosures did disclose that the Company started to use an after-tax value of its LendingTree shares. The tax treatment of TREE, however, does not account for the difference between the discounts-to-Charter.

of approximately 0.56, Malone asked Renee Wilm for an update on his and Maffei's beneficial ownership and voting interests in LBRD and GLIB. Wilm also sent this analysis to Maffei—indicating Wilm's own recognition that Maffei and Malone were working on the same project, should have the same information, and were likely speaking about the relationship of their equity and voting positions and the implied exchange ratio.

109. Maffei began to explore in earnest the GCI Liberty-Broadband merger.

110. On February 3, 2020, Maffei met with Magro and Daniel Mendelow of Evercore, the very same investment bankers eventually hired to advise the GCI Special Committee, to discuss the potential combination. As discussed above (but as was concealed when disclosure was required), Magro is a Dartmouth alumnus like both Maffei and Engles, and Maffei and Engles both have been good friends with Magro for decades.

111. A few weeks later, in late February 2020, Magro visited with and stayed at Maffei's house in Vail, Colorado, in connection with a Dartmouth event. Thereafter, Evercore's preparation work on a potential GCI Liberty-Broadband deal began to heat up. Maffei then let Magro use his house in Vail, Colorado again in early March 2020.

112. In March 2020, the coronavirus pandemic amplified the effect on the implied exchange ratio of Maffei's 2019 Investor Day comments. The exchange

ratio between Broadband and GCI Liberty dropped to under 0.50 for the first time ever. As Maffei recognized, the COVID-related dislocation of GCI's stock price provided a window of opportunity.

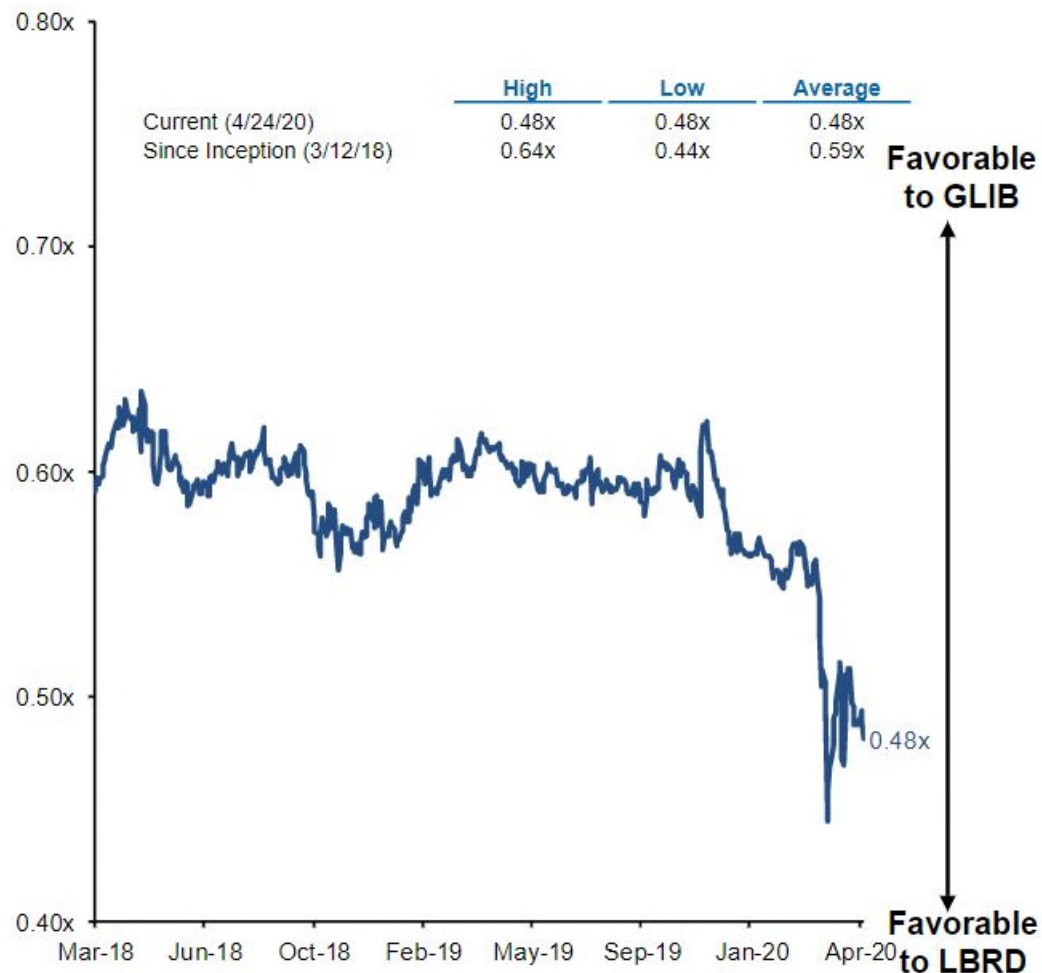
113. On March 19, 2020, Maffei and Rosenthaler, among others, received a graph summarizing the widening of GCI Liberty's discount-to-NAV upon the outbreak of the coronavirus pandemic.

114. On March 22, Maffei forwarded to Malone the graph which indicated the widening of the GCI Liberty discount. As Maffei's practice was to run major decisions by Malone for approval, they likely discussed making a pitch.

115. Malone was supportive of the deal. By March 23, Maffei and his team had prepared a draft deck for the Broadband Board regarding the formation of a special committee to consider a combination with GCI Liberty.

116. Soon thereafter, Maffei and the rest of the Broadband management team proposed the Merger to the Broadband Board. At this time, GCI Liberty was trading at an all-time low compared to Broadband. The exchange ratio had dropped significantly below 0.50:

Exchange Ratio based on Market Value¹



117. On March 26, 2020, the Broadband Board determined to establish a special committee (the “Broadband Special Committee”), which had exclusive authority to explore and negotiate a merger with GCI Liberty. The Broadband Special Committee engaged Perella Weinberg Partners L.P. (“PWP”) as its financial advisor and Debevoise & Plimpton LLP (“Debevoise”) as its legal counsel in early April 2020.

118. Around this time, Evercore converted work for Maffei into a Broadband Special Committee pitch, then to a GCI Special Committee pitch.

119. Thereafter, on April 10, 2020, the Broadband Special Committee met and determined that any merger with GCI Liberty would have to be (a) negotiated and approved by the special committees of each company and (b) subject to a non-waivable condition that the deal be approved by holders of a majority of the voting power excluding Malone and any other interested parties, including Maffei (together, the “*MFW* conditions”).


120. On April 12, 2020, Debevoise spoke with Sherman & Howard, LLC (“Sherman & Howard”), Malone’s legal advisor. Debevoise informed Sherman & Howard that Broadband was considering a combination with GCI Liberty and that any deal would need to be subject to the *MFW* conditions. On April 15, 2020, Sherman & Howard, on behalf of Malone, confirmed that Malone agreed that any transaction would be subject to the *MFW* conditions.

121. On April 17, 2020, the Broadband Special Committee held a meeting during which it instructed Debevoise to draft a letter to the GCI Liberty Board informing it about Broadband’s interest in a transaction and the formation of the Broadband Special Committee. Three days later, on April 20, 2020, the Broadband Special Committee sent the GCI Liberty Board an indication of interest (the “IOI”).

122. The IOI informed the GCI Liberty Board that the Broadband Board had formed the Broadband Special Committee to explore a potential merger of the companies, and that any transaction would need to be subject to the *MFW* conditions.

123. On April 22, 2020, the GCI Liberty Board met to discuss the IOI. It saw a presentation that clearly indicated GCI Liberty and Broadband's "Common Management/Ownership" by John Malone and Greg Maffei.

GCI Liberty Board Meeting - Indication of Interest from Liberty Broadband Corporation



Indication of Interest from Liberty Broadband Corporation (cont'd)

Common Management/Ownership

- John Malone
 - GLIB: Chairman of the Board; beneficially owns 27.6% of voting power and 4.1% of equity
 - LBRD: Chairman of the Board; beneficially owns 48.8% of voting power and 3.6% of equity
- Greg Maffei
 - GLIB: President/CEO and Director; beneficially owns 9.9% of voting power and 2.2% of equity
 - LBRD: President/CEO and Director; beneficially owns 1.1% of voting power and 1.8% of equity
- Executive Management Team
 - Shared by GLIB and LBRD
- Richard Green
 - Director of both LBRD and GLIB

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124. The GCI Liberty Board received advice on the implications under Delaware law of that common management/ownership. That Maffei's ownership

stakes were disclosed alongside Malone's is one indicator (of many) that the two comprise a control group.

125. At this meeting, the GCI Liberty Board determined to form the GCI Special Committee, comprised of Engles and Hamilton, which had exclusive authority to explore and negotiate a merger with Broadband.

V. GCI Forms a Conflicted Special Committee

126. Although the Proxy claims that the GCI Special Committee consisted "solely of independent and disinterested members of the GCI Liberty Board," Engles was *not* independent of Maffei.

A. Engles' relationship with Maffei

127. Engles described Maffei as a "good friend." Maffei considers Engles to be a friend.

128. Both Maffei and Engles attended Dartmouth College. They met over a decade ago, while serving on the college's President's Leadership Council. Thereafter, they served overlapping terms on the Dartmouth Board of Trustees and were members of its facilities and finance committees. Just before Engles reached his term limit on Dartmouth's Board of Trustees in June 2019, Engles donated \$10 million to the school. Maffei is still serving the second of his two permitted terms on the Board of Trustees.

129. Currently Engles and Maffei serve together on the executive committee for Dartmouth's capital campaign, "The Call to Lead."

130. In 2019, Engles and Maffei were both listed as featured guests at Dartmouth's 2019 "CarniVail" event in Vail, Colorado.

131. When traveling to Dartmouth for their various board and committee meetings, Maffei and Engles often provided one another transportation on their private "business aircraft."

132. Maffei and Engles live approximately one mile apart, in the same town, Cherry Hills Village, Colorado. Both are members of Cherry Hills Country Club and the two play golf together multiple times per year.

133. Engles and Maffei not only golf together at Cherry Hills Golf Club, they have taken trips together to play at some of the finest courses in the world. Engles and Maffei have played together at Shinnecock Hills Golf Club, National Golf Links of America, and the golf course at Dartmouth. They both attended golf outings at Seminole Golf Club and Pebble Beach Golf Links. Engles has also invited Maffei to play at Castle Pines Golf Club (in Castle Rock, Colorado).

134. In February 2020, over Super Bowl weekend, Engles played three rounds of golf with Maffei in Cabo San Lucas, where Maffei owns a home. Engles and his wife stayed with Maffei at his home during this trip. Engles traveled there in a Liberty private plane.

135. As a thank you gift for the Maffeis' hospitality, Engles and his wife sent Maffei and his wife a "lovely blanket, goodies and tequila," causing Engles to write "[s]oon enough, we will get to raise a glass of [tequila] to celebrate some birthdays . . . maybe in Mexico!"

136. In March 2020, Maffei's wife invited Engles to Pebble Beach for Maffei's birthday party, an invitation that he accepted. When the planned birthday celebration was ultimately postponed due to the pandemic, Maffei's wife included Engles on an email to the would-be partygoers and "copied Greg [Maffei] to let him know the *wonderful friends* he has that said YES!"

137. Maffei and Engles are also both members of the Tower Club, a Denver "lunch club" with 25 to 35 members that typically meets on the first Monday of every month. The exclusive Tower Club has a "Byzantine" process to become a member where prospects are asked to apply. Maffei recommended Engles as a member in 2016.

138. Also in 2016, Maffei recommended that Engles be nominated to serve as a director of Liberty Expedia Holdings, Inc. After an interview with Malone, Engles was appointed to that board and held the position from November 2016 to July 2019.

139. Engles and Maffei have numerous mutual friends, including from the Tower Club (where, before Maffei invited him to join, Engles already had “a number of friends who were members”) and from Dartmouth.

140. One of Engles’ and Maffei’s mutual friends is John Hickenlooper (former mayor of Denver, former governor of Colorado, and now United States Senator-elect). Engles, Maffei, and Hickenlooper have texted one another concerning social matters.

141. While Hickenlooper was Governor of Colorado, he introduced the Colorado Impact Fund, a “private equity fund designed to help solve Colorado’s environmental and social issues.” Both Engles and a representative of the Maffei Family Foundation served on that fund’s advisory council.

142. In 2017, Engles was the chairman of the Super PAC “Better Colorado Now,” to which Maffei not only contributed, but for which Maffei hosted a high-profile fundraising event at his Cherry Hills Village home.

143. Engles and Maffei also have at least one joint investment. Within the last year, Maffei brought an investment opportunity to Engles – an invitation to invest in a startup telehealth company. Engles has invested \$50,000 in the venture.

144. When the GCI Liberty Board formed the GCI Special Committee on April 22, 2020, the GCI Liberty Board purportedly found that Maffei and Hamilton had no “material conflicts or relationships that would prevent him or her from acting

in a disinterested and independent manner” and granted them exclusive authority to explore and negotiate a merger with Broadband.

145. That determination, while necessary to draw up Board minutes suggesting procedural order, was not based on any genuine inquiry. The Board did no further vetting, other than perhaps reviewing the standard annual board independence questionnaires. Notably, with respect to Maffei, Engles’ 2020 board questionnaire revealed only that Engles and Maffei both served on Dartmouth’s Board of Trustees and provided each other transportation to and from Dartmouth on private aircraft. It gave little to no indication that the two had numerous other close ties and were good friends.

146. When selected to serve on the Special Committee, Engles did not disclose – and the other Board members had no way of knowing about – the close relationship between Engles and Maffei. Even Hamilton was unaware that Engles and Maffei consider each other close friends.

147. The cozy relationship that had developed between Engles and Maffei over the years continued through the course of the Merger negotiations. Examples include:

- a. On May 17, 2020, Maffei invited Engles (and John Hickenlooper) on a “boys trip” to Cabo San Lucas.

- b. On May 29, 2020, Engles had to bow out of a trip to Bandon Dunes, another of America’s top golf courses.
- c. Maffei ***repeatedly*** proposed tee times to play golf with Engles throughout the Spring and Summer of 2020, during the deal process. Maffei appeared excited to play with Engles and, on one occasion when two players dropped from their foursome, Maffei texted Engles “I’m fine adding or going as a pair [i]f you are.”
- d. Maffei (and Hamilton) provided Engles with a reference in support of Engles’ candidacy for the Chipotle board of directors.
 - i. *Engles benefits from the Merger*

148. Engles benefitted from the closing of the Merger, as he was appointed to the combined company’s Board of Directors following the completion of the Merger.

B. Belated and Incomplete Inquiries into Engles’ Independence

149. On May 4, 2020, the Special Committee’s Delaware counsel stated it was “preparing a questionnaire to send to the [GCI Special] Committee members to ***confirm their independence***” for purposes of considering a potential Merger. In other words, the members of the Special Committee were chosen – and began working on the Merger – before their independence was vetted.

150. It was not until two weeks *after* the GCI Liberty Board formed the GCI Special Committee and *after* the GCI Special Committee had advised Broadband that it would comply with the requirements of *MFW* – on May 6, 2020 – that the Special Committee’s Delaware counsel first sent Hamilton and Engles an independence questionnaire related to the Merger. On May 7, 2020, Hamilton commented on or had questions about the questionnaire. Engles indicated to the Special Committee’s counsel that same day that he was “ready to discuss the independence disclosure form when you are” and apparently Engles and counsel went “through the questionnaire” together that same day.

151. The questionnaire contained such essential questions as:

1. Are the compensation (including equity compensation) and benefits you receive as a director of the Company material to you financially?

* * *

4. Do any companies for which you are a director, officer, employee or partner, or in which you have a material financial interest (whether in equity or by way of other business relationships), provide goods or services to, receive funds (whether in the form of compensation, benefits or otherwise) from, or otherwise do business with a Liberty Entity, John Malone, Greg Maffei or a Controlled Subsidiary?

* * *

8. Do you have any social or personal relationships with any of the directors, officers or other principals (including John Malone and Greg Maffei) of any Liberty Entity or any Controlled Subsidiary?

152. Neither Engles nor Hamilton provided written responses to this independence questionnaire.

153. Between the time that the Special Committee was formed on April 22, 2020 and when Engles and Hamilton first received the independence questionnaire on May 6, 2020, the GCI Special Committee:

- (a) met three times to interview potential counsel and financial advisors;
- (b) held at least two formal committee meetings (on May 1, 2020);
- (c) hired outside counsel and approved Delaware counsel's fee structure;
- (d) directed Delaware counsel to finalize its engagement letter with in-house Company counsel (who was in-house counsel for both GCI Liberty and Liberty Broadband);
- (e) provisionally determined to hire Evercore as its financial advisor; and
- (f) authorized Albert Rosenthaler – Chief Corporate Development Officer of GCI Liberty *and* Liberty Broadband – to negotiate Evercore's fee.

154. On May 8, 2020, the GCI Special Committee held a meeting at which the Special Committee's counsel reported the results of its private "discussions" with Engles and Hamilton concerning their answers to this independence questionnaire.

[T]he Committee members each confirmed his or her belief that each Committee member does not have any material conflicts or relationships that would prevent him or her from acting in a disinterested and independent manner and in the best interests of the stockholders of the Company other than John Malone, Greg Maffei, Ron Duncan, and other members of management of the Company and its subsidiaries.

155. While the minutes say that the Special Committee's Delaware counsel summarized its discussions with each of the Special Committee members, Hamilton testified that she had no idea about Engles' relationship with Maffei. Either Engles did not inform the Special Committee's counsel about his close friendship with Maffei or the Special Committee's counsel did not inform Hamilton about Engles' close friendship with Maffei. Either way, Hamilton remained in the dark that her co-Special Committee member obviously lacked independence of Maffei.

156. On May 12, 2020, the GCI Special Committee approved hiring Evercore.

157. During a Special Committee meeting on June 8, 2020, Delaware counsel also "reviewed with the Committee the results of a follow-on question it had posed to Mr. Engles out of an abundance of caution with respect to that questionnaire. At that time, well over a month into Merger negotiations, Engles and Hamilton "each confirmed his or her belief that each Committee member does not have any material conflicts or relationships that would prevent him or her from

acting in a disinterested and independent manner” Despite Engles’ long-standing friendship and many personal and financial ties to Maffei, the Special Committee’s Delaware counsel apparently concurred.

VI. The Conflicted Special Committee Retains a Conflicted Financial Advisor

158. Compounding Engles’ conflicts of interest, the Special Committee hired Evercore to serve as its financial advisor. Evercore, however, was neither independent nor unconflicted.

A. Magro’s Friendship with Maffei

159. Anthony Magro is one of Evercore’s senior managing directors and was a principal advisor to the GCI Liberty Special Committee.

160. Like Engles and Maffei, Magro is also actively engaged with Dartmouth college (serving on, *inter alia*, the Dartmouth President’s Leadership Council).²⁷

161. Maffei and Magro are close enough friends that, on January 20, 2020, Maffei invited Magro to come ski with him in Vail the following weekend, offering that “I can fly you home Monday.” Magro had other plans and declined, but the two then began discussing the possibility of skiing together at Dartmouth’s 2020 “CarniVail” event.

²⁷ <https://www.evercore.com/bios/anthony-magro/>.

162. On January 27, 2020, Maffei forwarded Magro a link to the schedule of events for the 2020 Dartmouth “CarniVail” event. In response, Magro asked Maffei which events he would be attending, whether the two would have time to ski together, and whether Maffei would have room for Magro to stay at Maffei’s Vail vacation home. On January 29, 2020, Maffei responded that Magro was “welcome to stay with us,” that he had “sent you the events that i [sic] will be attending,” and that the two would spend some time skiing together.

163. After a February 3, 2020 meeting, Magro emailed Maffei thanking him “for the time and insights.” In response to the email, which was entitled “Going Commercial” and detailed Magro’s commercial flight plans, Maffei wrote that it was “great to see you” and that he was “[s]orry you’re not with us,” suggesting that in the past Magro and Maffei had flown together on private aircraft.

164. On February 10, 2020, Magro confirmed his late February plans for “CarniVail” with Maffei, telling him that he would “try to mirror your Dartmouth schedule,” including dinners and skiing. Maffei responded that he would “[l]ove to have you” and ultimately Magro spent the weekend of February 21, 2020 with Maffei and his wife at their Vail vacation home.

165. Maffei also allowed Magro use of his Vail vacation home again in early March 2020.

166. Magro was so comfortable with Maffei that, during the course of Merger negotiations, Magro inquired about whether his daughter (Isabelle) could stay with the Maffeis while on a cross-country drive. Maffei responded that “[t]hey are welcome to stay in our pool house.” Although Magro’s daughter ultimately made other arrangements, Maffei emailed her directly to say “[s]orry we will miss you.”

B. Evercore Provides Maffei Free Advice

167. On January 24, 2020, Magro and his Evercore colleague Michael Price discussed their respective personal and professional plans with Maffei. Magro told Price that he “had to decline [Maffei’s] invitation to stay with him this weekend as well but will be seeing him on 2/3.” In response, Price asked Magro whether Evercore was “doing anything with him?” Magro replied “No but we’re trying.”

168. The following day, Michael Price and Maffei began planning to meet for drinks in Vail on February 20, 2020.

169. On February 3, 2020, Maffei met with Magro and Daniel Mendelow, also from Evercore, to discuss a potential combination between GCI Liberty and Broadband which Magro described as intended to “eliminate duplicative G&A and ultimately facilitate merger of Broadband with Charter.”

170. Reflecting Evercore’s own recognition of the core drivers of any deal, its “Internal Prep Materials” for that February 3, 2020 meeting focused on three topics: “Greg Maffei Holdings;” “Unwinding SiriusXM;” and a “GCI Liberty Transaction.”

171. As planned, on February 20, 2020, Michael Price met with Maffei in Vail over drinks. In his report back to his Evercore colleagues, Michael Price told Magro and others, among other things, that Maffei was interested in a potential deal involving T-Mobile and that “[C]harter is a FOREVER hold.”

172. Thereafter Evercore’s work on a potential Broadband-GCI Liberty Merger began to heat up. Magro and Evercore initially prepared an extensive slide deck for a planned pitch to the Broadband Special Committee. Evercore later converted the Broadband pitch into a GCI Special Committee pitch.

173. By April 2, 2020, Evercore was actively working on a pitch to the as-yet unformed GCI Special Committee to act as their financial advisors in the Merger.

i. Maffei’s son was an intern at Evercore in June and July 2020

174. During the summer between his junior and senior years at Dartmouth, Maffei’s son, Andrew Maffei, worked as an “Investment Banking Summer Analyst”

with Evercore,²⁸ while Evercore was purportedly providing independent advice to the GCI Special Committee.

175. In early July 2020, Evercore's campus recruiting team asked to update Magro on Andrew Maffei, with whom Magro "has a relationship."

176. On November 24, 2020, the Company belatedly disclosed Andrew Maffei's summer employment at Evercore as well as the fact that Andrew Maffei received an offer to join Evercore as an employee after he graduates from college.

ii. Evercore fails to disclose material conflicts to the Special Committee

177. Although Evercore apparently intended to disclose to Broadband that it might be interviewed by the GCI Special Committee (which at that time had not yet been formed), Evercore did not disclose its prior work for Maffei to the GCI Special Committee. Apparently also undisclosed at that time was Evercore's work for Maffei and the fact that Maffei's son was a summer intern for Evercore while the Merger was being negotiated. Engles was vaguely aware only that Evercore may have been preparing to pitch the Broadband Special Committee.

178. On April 30, 2020, in a carefully worded "Summary of Relationships" that Magro characterized as "indicating no conflicts," Evercore informed the Special Committee, *inter alia*, that: (1) no members of the "Deal Team," including Magro,

²⁸ <https://www.linkedin.com/in/andrew-maffei/>; EVR_GCI_00015505.

“has any familial or economic relationship with any member of the board of directors or senior management of any Relevant Party [including Maffei]” or “is *currently* providing investment banking services to any of the Relevant Parties except pursuant to the Engagement;” (2) Evercore had “not received compensation from the Relevant Parties for the rendering of investment banking services” during the period January 1, 2018 to April 27, 2020; and (3) “no Senior Managing Director on our current deal team has any material non-public information concerning the Company that has not been provided by the Company.”

179. The letter thus left open the possibility, as was in fact the case, that Evercore had provided *uncompensated* investment banking services to Maffei. It also left open the probability that Maffei, as a representative of the “Company,” had provided Evercore with material non-public information concerning the Company.

180. Evercore reiterated those statements on May 7, 2020 with respect to a larger group of Relevant Parties and an expanded time period.

181. Engles was never informed – before, during, or after the Merger negotiations – that Maffei’s son worked at Evercore in June and July of 2020. In fact, Engles testified during his deposition that he thought Maffei’s son worked for Credit Suisse.

182. Engles himself had a long history with Magro, having known him for at least two decades. The two had professional ties, including service together on

the board of directors of WhiteWave Foods, where Engles was Chairman of the Board and CEO.²⁹ Their personal relationship is evidenced in the substance and tone of many personal email exchanges, including that: (a) Engles and his wife gave Magro a gift of fine wine; (b) the two would dine together; (c) Engles had supported Magro's daughter's application for admission to the Geisel School of Medicine at Dartmouth; and (d) the familiar tone that Magro used with Engles.

183. Engles was aware that Magro and Maffei were friends and had been friends for an extended period of time. Engles could not recall having told Hamilton about Magro and Maffei's longstanding friendship.

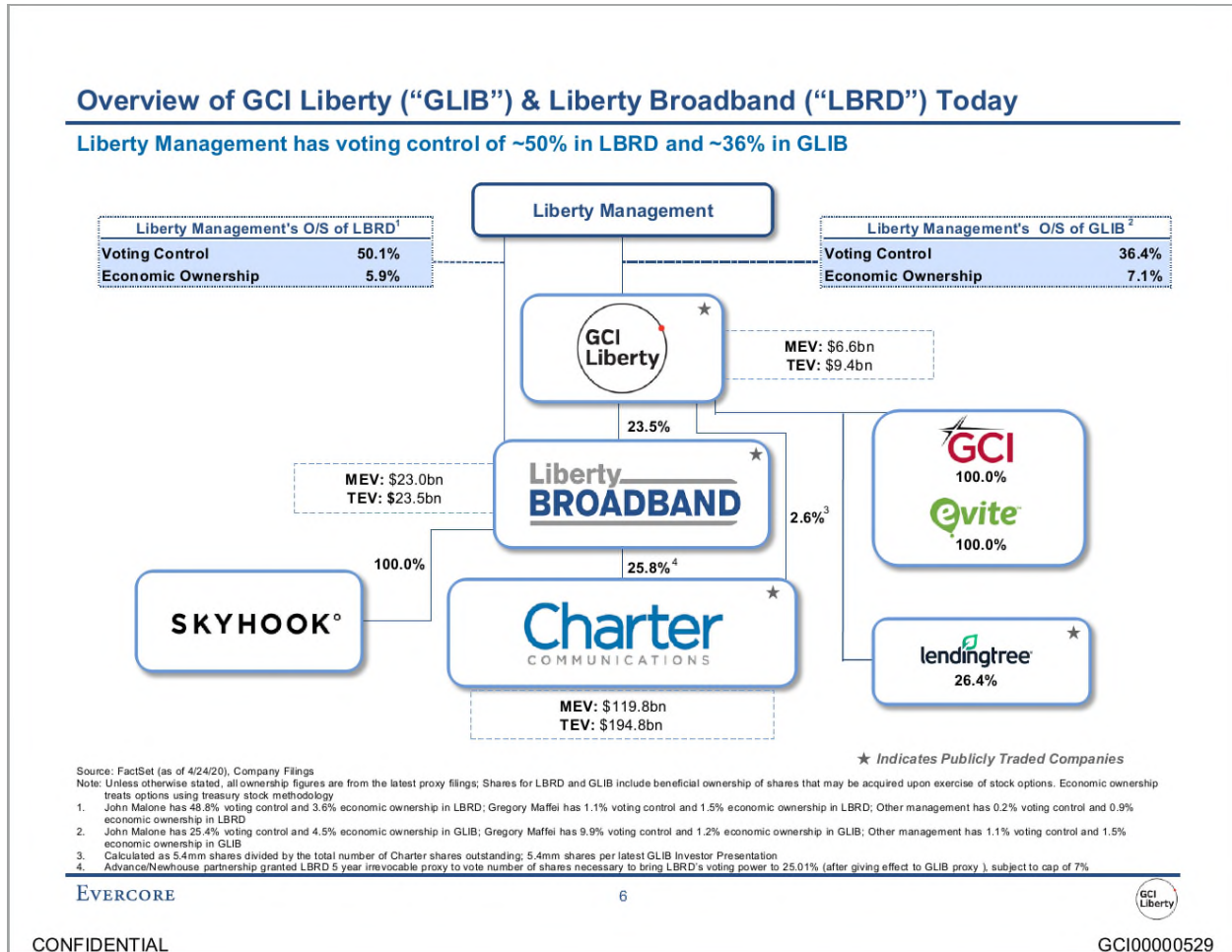
184. Hamilton remained unaware of Evercore's conflicts, including the close relationships between Maffei and Magro and between Engles and Magro. Hamilton was also unaware of the uncompensated work that Evercore had done for Maffei and/or Broadband earlier in 2020.

VII. The Special Committee Understood That This Was a Conflicted Controller Transaction

185. On April 27, 2020, the Special Committee met to review a pitch from Evercore – the PowerPoint deck that evolved from the work Evercore had done for Maffei and hoped to pitch to Broadband.

²⁹ WhiteWave Foods Form 8-K (Jan. 15, 2016); <https://www.evercore.com/bios/anthony-magro/>.

186. At this time “Liberty management,” which in Evercore’s pitch denotes the shared executive team at GCI Liberty and Broadband, controlled over 50% of Broadband altogether, and over 36% of GCI Liberty.



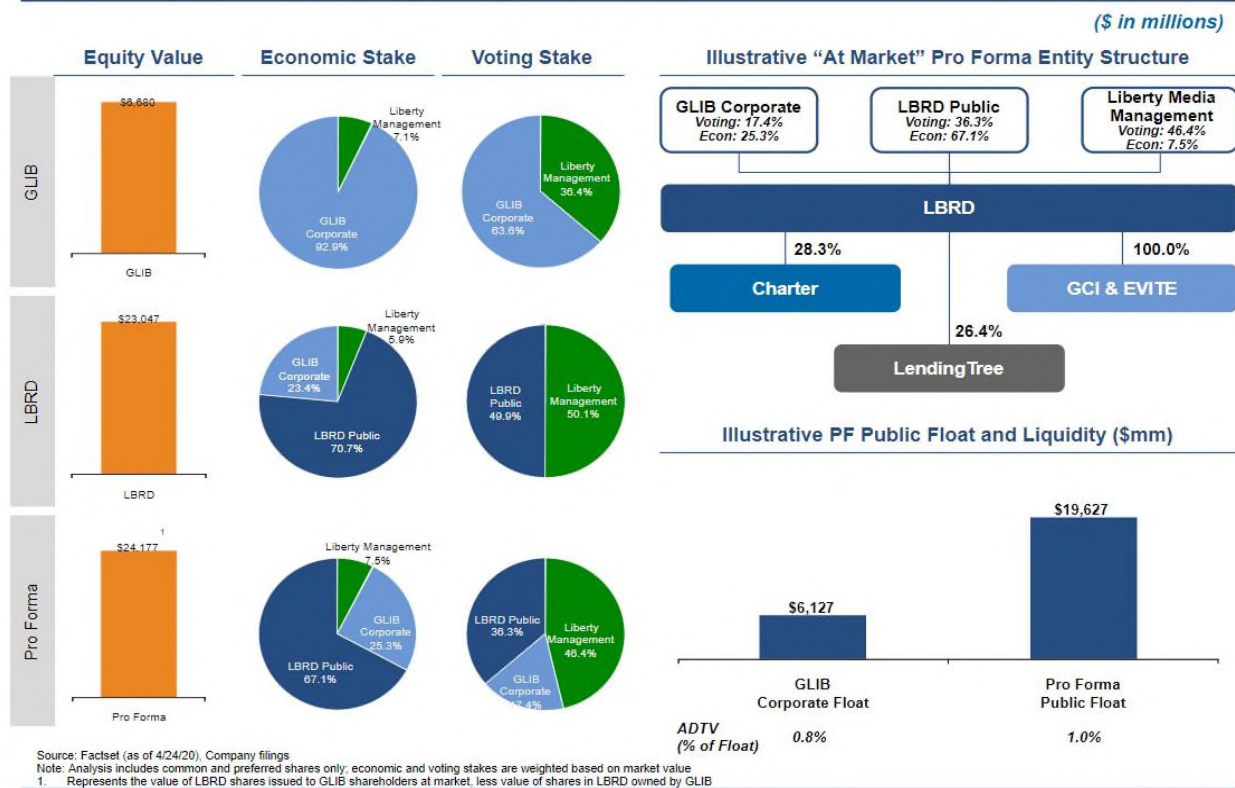
187. Evercore’s analysis, reproduced below, shows that Malone and Maffei effectively control both the Company and Broadband:

Table 5: Maffei and Malone Voting Interests

| | Liberty Broadband | | | GCI Liberty | | |
|-----------|-------------------|--------|--------------|-------------|--------|--------------|
| | Malone | Maffei | Total | Malone | Maffei | Total |
| Vote | 48.8% | 1.1% | 49.9% | 25.4% | 9.9% | 35.3% |
| Economics | 3.6% | 1.5% | 5.1% | 4.5% | 1.2% | 5.7% |

188. Evercore also assembled a pro forma analysis of “Voting and Economic Rights and Liquidity for Unaffiliated GLIB Shareholders Pro Forma for a Transaction vs Today”:

DE Voting and Economic Rights and Liquidity for Unaffiliated GLIB Shareholders Pro Forma for a Transaction vs. Today



189. As seen in the bottom right pie-chart, Evercore expected the GCI Series A stockholders (the majority vote in GCI Liberty) would retain some portion (e.g., 17.4%) of the vote in the combined company.

190. On May 1, 2020, the GCI Special Committee and its advisors met to discuss the IOI and a potential merger with Broadband.

191. From the beginning, the members of the Special Committee understood that both Malone and Maffei would have a personal interest in a GCI-Broadband Transaction that differed from the interests of unaffiliated stockholders.

192. On May 8, 2020, the GCI Special Committee discussed nondisclosure arrangements and the due diligence process. The GCI Special Committee acknowledged the severe conflicts of interest arising because “Broadband and the Company share management teams,” and they discussed crafting a process in which (a) the sharing of confidential information with the other company’s special committee must be directed by the sharing company’s special committee and (b) no information regarding confidential special committee deliberations may be shared with the other special committee without prior consent.

193. On May 18, 2020, GCI Liberty and Broadband entered into a mutual non-disclosure agreement, which “included provisions defining the process for sharing information that would take into account the overlap in the corporations’ management teams.”

194. Maffei confirmed that he and Malone were supposed to be excluded from the confidential process being run by the special committees – that they were to be “walled off” from the special committees’ discussions and determinations.

VIII. Malone and Maffei Monitor and Interfere with the Special Committee Process

195. In a June 2, 2020 email, Malone—copying Rosenthaler and Wilm—asked Maffei for an update on negotiations between the Broadband and GCI Special Committees.

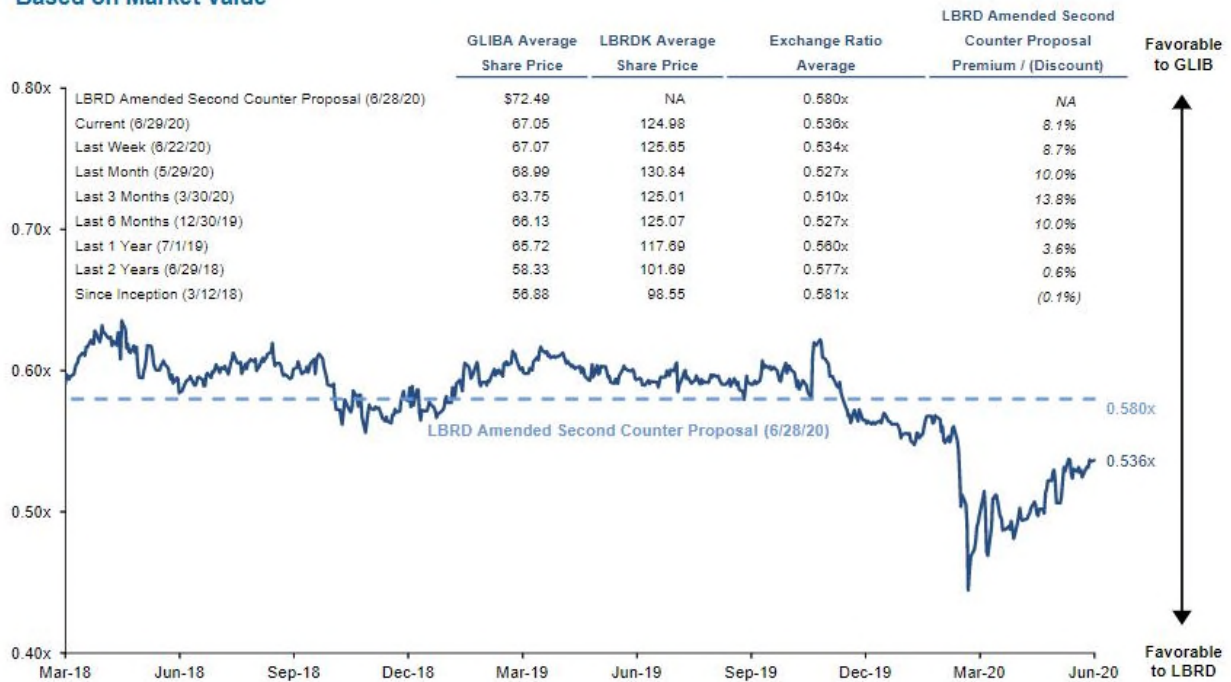
196. The next day, Wilm shared with Rosenthaler an analysis showing how Malone’s and Maffei’s control of Broadband could be impacted by a transaction in which GCI Liberty A shares were exchanged for Broadband A shares and GCI Liberty B shares were exchanged for Broadband B shares. Wilm’s analysis highlighted that such a transaction would decrease Malone’s voting power from 48.83% to 35.64%. Wilm was regularly in the practice of updating Maffei regarding his pro forma voting and economic power in the combined company, and likely disclosed this analysis to Maffei.

197. On June 9, 2020, Malone adopted 10b5-1 plans—scheduled to begin selling on July 1, 2020—to sell Broadband Series C shares. The 10b5-1 plans were purportedly adopted to provide liquidity to a charitable remainder trust that must make quarterly distributions and to replace liquidity Malone utilized in exercising certain rights for another company’s stock, but, as detailed below, Malone’s actions suggest that the 10b5-1 plans were actually adopted to pressure the respective special committees into promptly reaching an agreement.

198. Indeed, as illustrated by the chart below, the GCI Liberty-Broadband exchange ratio was rapidly rising to near pre-pandemic levels and, therefore, Malone and Maffei’s window of opportunity for causing their much-desired merger was closing:

GLIBA / LBRDK Exchange Ratio

Based on Market Value



As discussed below, as the GCI Liberty-Broadband ratio improved even more, Malone effectively used the 10b5-1 plans to force a prompt agreement.

199. On June 10, 2020, representatives of the Broadband Special Committee made an initial offer: 0.557 shares of non-voting Broadband Series C common stock for each share of one-vote GCI Series A common stock and for each share of ten-vote GCI Series B common stock (the “June 10 Proposal”). The offer—featuring an

exchange of 0.55745 non-voting Broadband Series C shares for each GCI Liberty A and GCI Liberty B share—implied a 3.9% premium based on the equities’ most recent closing prices.

200. Then, as throughout this process, Maffei was informed about the proposal.

201. On June 12, 2020, Rosenthaler forwarded to Maffei his team’s analysis of the economic terms of the June 10 Offer, which highlighted Broadband’s proposal to issue non-voting Broadband Series C shares as consideration in place of the one-vote Broadband A shares assumed in management’s prior analysis. Rosenthaler commented, “Not so bad under this analysis....,” prompting Maffei to ask that they discuss the analysis more thoroughly.

202. On June 17, 2020, the GCI Special Committee met. The Evercore presentation they viewed analyzed Broadband’s proposed A-to-C exchange, which would result in all GCI stockholders losing voting control in the combined company:

| | | | |
|--|-------|-------|---|
| Total Pro Forma LBRD Shares Outstanding | 199.9 | 199.8 | |
| Implied Economic Ownership for GLIB Shareholders | 29.9% | 29.8% | - |
| Implied Voting Control for GLIB Shareholders | 0.0% | 0.0% | - |

203. Evercore also presented an *alternative* pro forma scenario that would use Broadband Series A shares as consideration, and the effect that would have in preserving GCI stockholders’ voting interests.

LBRD Series C Shares vs. LBRD Series A Shares

(\$ in millions)

| | Standalone Statistics | |
|---|-----------------------|---------------|
| | LBRD Series C | LBRD Series A |
| Votes / Share | - | 1 |
| Share Price (6/9/20) | \$132.64 | \$130.11 |
| Fully Diluted Shares Outstanding | 154.0 | 26.5 |
| Trading Value | \$20,431 | \$3,447 |
| Size of Float (# Shares) | 105.5 | 24.7 |
| Size of Float (\$) | \$13,991 ¹ | \$3,215 |
| 3 -month Average Daily Trading Volume (# of Shares) | 0.7 | 0.1 |
| % Total Float | 0.7% | 0.6% |
| 3-month Average Daily Trading Volume (\$mm) | \$88 | \$17 |
| % Total Float | 0.6% | 0.5% |
| Illustrative Proportionate Ownership² | | |
| LBRD Trading Value (6/9/20) | \$24,203 | |
| Proposal Equity Value for GLIB | 7,900 | |
| Liberty Management's Current Voting Interest in LBRD | 50.1% | |
| Liberty Management's Current Voting Interest in GLIB | 36.4% | |
| Pro Forma LBRD Management Voting Interest | 46.7% | |
| Pro Forma LBRD Public Voting Interest | 37.6% | |
| Pro Forma GLIB Public Voting Interest | 15.7% | |

Source: Factset (6/9/20) and LBRD proposal

1. Reflects Factset float of 27.7% Series C shares held by GCI Liberty and not traded

2. Reflects voting ownership proportionally attributed weighted by market capitalization of LBRD and GLIB

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204. In this scenario, assuming the companies were combined with “voting ownership proportionally attributed weighted by market capitalization,” GCI Liberty public stockholders would retain a vote in the combined company (15.7%) rather than losing its vote altogether. Moreover, when combined with the public Broadband holders, non-insider stockholders would control over 50% of the vote of the combined company.

205. The Special Committee instructed Evercore to make a counter-offer proposing an exchange ratio of 0.588 as updated for market trading prices. The

market trading prices were important to the Special Committee as both Special Committee members agreed that the ultimate exchange ratio was driven, at least in part, by the exchange ratio implied by the companies' respective market prices, *i.e.*, the higher the ratio implied by the market prices, the higher the exchange ratio would need to be in order for the GCI Special Committee members to recommend the transaction.

206. The GCI Special Committee's offer did not specify the form of consideration. The fact that the GCI Special Committee did not automatically cede to the Broadband Special Committee's proposed form of consideration is an indication that the GCI Special Committee determined there was significant value in retaining voting rights for GCI stockholders.

207. On June 19, 2020, Evercore communicated to PWP the GCI Special Committee's counterproposal, which, after adjustments for trading prices, provided that each share of GCI Series A common stock and GCI Series B common stock would be converted into the right to receive 0.585 shares of Broadband common stock. Evercore also communicated that the GCI Special Committee had not decided whether it would accept Broadband Series C stock as consideration in a deal.

208. Early the next morning, Rosenthaler shared with Maffei his team's comparative analysis of the two offers.

209. On June 22, 2020, Broadband made a counterproposal featuring an exchange ratio of 0.575 and reiterating Broadband's intention to issue non-voting Broadband Series C shares as consideration.

IX. Malone Injects Himself Into Negotiations

A. The GCI Special Committee Initially Considers a Like-for-Like Exchange

210. The next day, on June 23, 2020, the GCI Special Committee met to discuss the June 22 Proposal, especially focusing on the amount and form of consideration offered. As seen below, Evercore reviewed the implied economic and voting ownership in different pro forma scenarios:

Project Lotus Proposal Ownership Summary

(\$ in millions)

| | Standalone Statistics | |
|--|---|--|
| | LBRD Series C | LBRD Series A |
| Votes / Share | - | 1 |
| Share Price (6/22/20) | \$129.36 | \$127.57 |
| Fully Diluted Shares Outstanding | 154.0 | 26.5 |
| Trading Value | \$19,923 | \$3,380 |
| Size of Float (# Shares) | 105.5 | 24.6 |
| Size of Float (\$) | \$13,645 ¹ | \$3,133 |
| 3-month Average Daily Trading Volume (# of Shares) | 0.8 | 0.2 |
| % Total Float | 0.7% | 0.6% |
| 3-month Average Daily Trading Volume (\$mm) | \$92 | \$18 |
| % Total Float | 0.7% | 0.6% |
| | Pro Forma Statistics | |
| | LBRD Series C Issued to GLIB Series A and GLIB Series B (LBRD Proposal) | LBRD Series A Issued to GLIB Series A; LBRD Series B Issued to GLIB Series B (Alternative) |
| (+) New LBRD Shares Issued Based on Proposal | 65.5 | 65.5 |
| New Series A Shares | - | 58.7 |
| New Series B Shares | - | 2.7 |
| New Series C Shares | 61.4 | - |
| New Preferred Shares | 4.1 | 4.1 |
| (+) Current Existing LBRD Series A Shares | 26.5 | 26.5 |
| (+) Current Existing LBRD Series B Shares | 2.5 | 2.5 |
| (+) Current Existing LBRD Series C Shares | 154.0 | 154.0 |
| (-) Canceled LBRD Series C Shares Held Within LBRD | (42.7) | (42.7) |
| Total Pro Forma LBRD Shares | 205.8 | 205.8 |
| GLIB Shareholder % Economic Ownership in Pro Forma LBRD | 30.5% | 30.2% |
| GLIB Shareholder % Voting Interest in Pro Forma LBRD | 2.6% ² | 63.1% |
| Liberty Management % Economic Ownership in Pro Forma LBRD | 7.7% | 7.7% |
| Liberty Management % Voting Interest in Pro Forma LBRD | 49.0% | 38.8% |
| Total Public % Economic Ownership in Pro Forma LBRD | 92.3% | 92.3% |
| Total Public % Voting Interest in Pro Forma LBRD | 51.0% | 61.2% |
| GLIB Public % Economic Ownership in Pro Forma LBRD | 28.2% | 27.9% |
| GLIB Public % Voting Interest in Pro Forma LBRD | 2.5% | 42.8% |
| LBRD Public % Economic Ownership in Pro Forma LBRD | 64.1% | 64.4% |
| LBRD Public % Voting Interest in Pro Forma LBRD | 48.6% | 18.4% |

Source: Factset (6/22/20)

1. Excludes Factset float of 27.7% Series C shares held by GCI Liberty and not traded

2. Voting interest relative to 12 votes per share attributable to holders of GLIB series A convertible preferred

211. The first scenario was the Broadband Special Committee’s Series C-only proposal. The “[a]lternative” scenario was a Like-for-Like Exchange that assumed that the holders of GCI Liberty Series A common stock would receive Broadband Series A stock and GCI Liberty Series B Holders would receive Broadband Series B stock.

| Pro Forma Statistics | | |
|--|---|--|
| | LBRD Series C Issued to GLIB Series A and GLIB Series B (LBRD Proposal) | LBRD Series A Issued to GLIB Series A; LBRD Series B Issued to GLIB Series B (Alternative) |
| (+) New LBRD Shares Issued Based on Proposal | 65.5 | 65.5 |
| New Series A Shares | - | 58.7 |
| New Series B Shares | - | 2.7 |
| New Series C Shares | 61.4 | - |
| New Preferred Shares | 4.1 | 4.1 |
| (+) Current Existing LBRD Series A Shares | 26.5 | 26.5 |
| (+) Current Existing LBRD Series B Shares | 2.5 | 2.5 |
| (+) Current Existing LBRD Series C Shares | 154.0 | 154.0 |
| (-) Canceled LBRD Series C Shares Held Within LBRD | (42.7) | (42.7) |
| Total Pro Forma LBRD Shares | 205.8 | 205.8 |
| GLIB Shareholder % Economic Ownership in Pro Forma LBRD | 30.5% | 30.2% |
| GLIB Shareholder % Voting Interest in Pro Forma LBRD | 2.6%² | 63.1% |
| Liberty Management % Economic Ownership in Pro Forma LBRD | 7.7% | 7.7% |
| Liberty Management % Voting Interest in Pro Forma LBRD | 49.0% | 38.8% |
| Total Public % Economic Ownership in Pro Forma LBRD | 92.3% | 92.3% |
| Total Public % Voting Interest in Pro Forma LBRD | 51.0% | 61.2% |
| GLIB Public % Economic Ownership in Pro Forma LBRD | 28.2% | 27.9% |
| GLIB Public % Voting Interest in Pro Forma LBRD | 2.5% | 42.8% |
| LBRD Public % Economic Ownership in Pro Forma LBRD | 64.1% | 64.4% |
| LBRD Public % Voting Interest in Pro Forma LBRD | 48.6% | 18.4% |

Source: Factset (6/22/20)

1. Excludes Factset float of 27.7% Series C shares held by GCI Liberty and not traded

2. Voting interest relates to 1/3 vote per share attributable to holders of GLIB series A redeemable preferred

212. Evercore’s analysis makes obvious the benefits of a Like-for-Like Exchange to GCI’s unaffiliated stockholders. The “Alternative” exchange would give GCI public stockholders around 42.8% of the vote and 27.9% of the economic share of the combined company. Meanwhile, Liberty management would be diluted from a 50.1% to a 38.8% vote in the combined company.

213. In Broadband’s Series C-only exchange offer, however, unaffiliated GCI Series A stockholders would receive *no* vote and preferred stockholders only 2.5% of the vote in the combined company. Meanwhile, Liberty management would receive 49% of the vote.

B. Malone Threatens to Disclose Deal Negotiations in an Effort to Leverage Economic Terms and Force a Prompt Agreement

214. As of early June, Malone and Maffei already understood the amount of dilution they would face if GCI Series A holders received Broadband Series A shares. Facing the possibility that the two special committees may agree on a Series A-to-Series A exchange, Malone stepped into the fray, imposing his will.

215. On or around June 22, 2020, members of GCI Liberty management informed the Special Committee's counsel that Malone had implemented a 10b5-1 program to sell Broadband Series C shares held by his charitable trust.

216. On June 23, 2020, citing disclosure requirements relating to the 10b5-1 program, counsel for Malone informed the Special Committee's Delaware counsel, Morris Nichols, that Malone's Schedule 13D filing with the SEC in the near future would need to disclose the potential range of exchange ratios at which a merger might occur.

217. Malone's threat to disclose the potential range of exchange ratios created artificial time pressure to push the special committees towards the terms Malone and Maffei preferred before the GCI Liberty-Broadband exchange ratio rose to a level that would make the Merger less attractive to Broadband.

218. The record developed in discovery so far does not reveal how Malone knew of the status of negotiations in order to be in a position to disclose any

“potential range of exchange ratios.” But Maffei was receiving regular updates about the deal process from Rosenthaler, Wilm, and other members of Liberty management, and Maffei was also in regular contact with Malone.

219. Although the GCI Special Committee did not authorize anyone to keep Malone or Maffei abreast of the status of negotiations, there is no indication that the GCI Special Committee investigated this apparent information leak or made efforts to mitigate future leaks.

220. Morris Nichols further informed the GCI Special Committee that it had learned that Malone’s 10b5-1 program “contemplates sales . . . *beginning on July 1, 2020.*” In light of “the potential for Schedule 13D filings and the Broadband Committee’s preference to have an agreement in principle before such Schedule 13D filings were made,” the GCI Special Committee decided to quickly “seek to conclude negotiations on an exchange ratio and the form of consideration prior to the filing of any Schedule 13D amendment.”

221. In other words, Malone’s disclosure threat interfered with the Special Committees’ negotiating timeline and forced a fire drill to get the deal done. Malone’s time pressure prevented the GCI Special Committee from allowing the GCI Liberty-Broadband ratio to continue to rise to pre-pandemic, pre-November 2019 levels.

C. Malone Refuses to Allow GCI Series A Holders to Receive Broadband Series A Stock

222. Capitalizing on his new-found leverage, Malone's next move was equally harmful to GCI Series A holders, ultimately stripping them of their voting power. On either June 24 or June 25, 2020, Morris Nichols and Debevoise learned that, because the proposed Merger threatened to dilute Malone's voting power, Malone might request that holders of ten-vote GCI Series B stock receive ten-vote Broadband Series B stock. Malone also used further disclosure threats to push through his preferences on the form of consideration.

223. In a conversation held on the evening of June 24, 2020, Malone's counsel informed the Broadband Special Committee's counsel in no uncertain terms that Malone would refuse to support the proposed Merger if Malone's voting power in Broadband would be diluted as a result.

224. Separately, Morris Nichols heard from Company management and Malone's counsel that Malone "desire[d] not to have his voting power at Broadband diluted as a result of a Potential Transaction." At least in part due to Malone's demand that he not be diluted, Company management and Sherman & Howard indicated that Malone might request that GCI Series B stock be exchanged for Broadband Series B stock.

225. Malone faced a very minor threat of dilution if all GCI common stockholders received Series C stock. Had both GCI Series A and GCI Series B stock received Broadband non-voting stock at an exchange ratio of 0.575, Malone’s voting power would have dropped from 48.8% to approximately 47%, and Liberty management would have retained approximately 49.0% of the combined voting power at Broadband.

226. If GCI Series B stock were exchanged for Broadband Series B stock, however, a significant threat of dilution would remain if Series A holders received Series A stock at the same or comparable exchange ratios. In fact, as seen below, the most significant threat of dilution came from a Like-for-Like Exchange—if GCI Series A holders and GCI Series B holders were to receive stock in the form of the parallel class of Broadband shares:

Table 6: Liberty Management’s Dilution at Broadband in Various Scenarios, As of June 2020

| | Pre-Merger Broadband | Series C-Only Exchange | Like-for-Like Evercore “Alternative” Scenario | Merger |
|--------------------------------|---------------------------------|-----------------------------------|--|---------------|
| Voting Control | ~49.9% | 49.0% | 38.8% | 66.6% |
| Dilution/ Accretion | – | ~(0.9%) | ~(11.1%) | ~16.7% |

227. To protect himself against dilution, by June 25, 2020, Malone had inserted himself into the negotiations that were supposed to be the exclusive purview

of the special committees, dictating not only timing for a deal but also the acceptable form of consideration for GCI Series A stockholders. Malone's insistence that he not be diluted effectively quashed a Like-for-Like Exchange. Such dilution would have endangered Malone and Maffei's control of the combined Broadband and impacted the economic value of their shares, including potentially the ability of Malone and/or Maffei to request a premium should the combined company be sold to Charter as anticipated.

228. At 1:00 P.M. on June 26, 2020, the GCI Special Committee met to discuss the June 26 Proposal. Even before the meeting, Morris Nichols had separately informed Engles and Hamilton that Company management had stated that Malone would not permit dilution of his vote in the combined company. Thus an exchange of GCI Series A for Broadband Series A was no longer an option.

229. Evercore updated its slides from June 23 concerning the Merger, taking out the Alternative scenario and leaving only a pro forma Series C-Only Exchange, in which Malone's dilution would be minimal:

Project Lotus Proposal Ownership Summary

Pro Forma Statistics

(\$ in millions)

| | Standalone Statistics | |
|--|--------------------------|---------------|
| | LBRD Series C | LBRD Series A |
| Votes / Share | - | 1 |
| Share Price (6/24/20) | \$123.99 | \$122.70 |
| Fully Diluted Shares Outstanding | 154.0 | 26.5 |
| Trading Value | \$19,090 | \$3,251 |
| Size of Float (# Shares) | 105.5 | 24.6 |
| Size of Float (\$) | \$13,078 ¹ | \$3,013 |
| 3 -month Average Daily Trading Volume (# of Shares) | 0.8 | 0.2 |
| % Total Float | 0.7% | 0.6% |
| 3-month Average Daily Trading Volume (\$mm) | \$94 | \$19 |
| % Total Float | 0.7% | 0.6% |
| Pro Forma Statistics: LBRD Series C Issued to GLIB Series A and GLIB Series B | | |
| (+) New LBRD Shares Issued Based on Proposal | 66.1 | |
| New Series A Shares | - | |
| New Series B Shares | - | |
| New Series C Shares | 61.9 | |
| New Preferred Shares | 4.2 | |
| (+) Current Existing LBRD Series A Shares | 26.5 | |
| (+) Current Existing LBRD Series B Shares | 2.5 | |
| (+) Current Existing LBRD Series C Shares | 154.0 | |
| (-) Canceled LBRD Series C Shares Held Within LBRD | (42.7) | |
| Total Pro Forma LBRD Shares | 206.3 | |
| GLIB Shareholder % Economic Ownership in Pro Forma LBRD | 30.7% | |
| GLIB Shareholder % Voting Interest in Pro Forma LBRD | 2.7% ² | |
| Liberty Management % Economic Ownership in Pro Forma LBRD | 7.7% | |
| Liberty Management % Voting Interest in Pro Forma LBRD | 49.0% | |
| Total Public % Economic Ownership in Pro Forma LBRD | 92.3% | |
| Total Public % Voting Interest in Pro Forma LBRD | 51.0% | |
| GLIB Public % Economic Ownership in Pro Forma LBRD | 28.3% | |
| GLIB Public % Voting Interest in Pro Forma LBRD | 2.5% | |
| LBRD Public % Economic Ownership in Pro Forma LBRD | 63.9% | |
| LBRD Public % Voting Interest in Pro Forma LBRD | 48.5% | |

Source: Factset (6/24/20)

1. Excludes Factset float of 27.7% Series C shares held by GCI Liberty and not traded
2. Voting interest relates to 1/3 vote per share attributable to holders of GLIB series A redeemable preferred

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230. Malone had by then escalated his threat to go public. At the Special Committee’s previous meeting, Morris Nichols had informed the GCI Special Committee that Sherman & Howard had represented that, other than a 10b5-1 plan formed on June 9, 2020, “Malone does not have any further intention to sell Broadband equity.” And yet, on the heels of Malone’s insistence that he not be diluted, the GCI Special Committee learned about a *second* 10b5-1 program that Malone had put in place *personally*, purportedly for “liquidity,” which contemplated a four-month sale period.

231. Morris Nichols relayed Malone’s position that, to receive safe harbor protection for any sales under Rule 10b5-1, Malone would likely need to publicly divulge the current status of negotiations and potential exchange ratios—another not-so-veiled threat to pressure the special committees.

232. Demonstrating that the 10b5-1 plan was a pretext to force a prompt sale, Malone’s counsel told Morris Nichols that:

Mr. Malone would *likely be willing to terminate both 10b5-1 plans* if an agreement in principle regarding exchange ratios and the form of consideration can be reached and publicly disclosed prior to July 1, 2020 (the time those plans would otherwise go into effect).

Malone did not explain—and the GCI Special Committee did not ask—how Malone intended to solve his supposed liquidity need if he terminated both 10b5-1 plans or why, if he was willing to terminate the 10b5-1 plans, they were necessary in the first place.

D. Malone Negotiates to Provide Maffei a Unique Benefit

233. Around this time, it became clear that Maffei would be the primary beneficiary, from a voting perspective, of a B-to-B share exchange. The GCI Special Committee discussed that Maffei had already separately indicated that he “may request that options he holds in the Company be converted into options for Broadband B shares.”

234. If Maffei's options had not rolled over, exercising such options would have required Maffei to outlay approximately \$110 million in cash. Alternatively, Maffei could have opted for a cashless exercise, but in doing so he would have had to pay for the exercise with stock he would have otherwise received, in essence cannibalizing his potential voting power. Accordingly, the ability to roll over his options would allow Maffei to preserve millions in cash and his potential voting power in the post-Merger entity.

235. On June 26, 2020, the GCI Special Committee considered the:

[P]otential voting power of GCI Liberty common stockholders in the resulting company if holders of GCI Liberty Series B common stock receive[d] Liberty Broadband Series B common stock as consideration.

236. The GCI Special Committee also considered the potential voting power of management in the combined company in a B-to-B exchange.

237. The majority of the increase in voting power would have arisen out of the conversion of Maffei's GCI Liberty stock options into Broadband stock options, and the exercise of the resulting options into Broadband Series B shares. Assuming Maffei exercised his converted stock options, his voting interest in Broadband would have grown from 1% to approximately 12%.³⁰

³⁰ The parties' resolution of Plaintiffs' application for a preliminary injunction stripped Maffei of the ability to convert his GCI Liberty stock options into Broadband Series B shares.

E. The GCI Special Committee Agrees to Unfair Consideration

238. Showing zero interest in challenging their controller, the GCI Special Committee abdicated its efforts to negotiate a fair deal for unaffiliated stockholders.

239. On June 26, 2020, the GCI Special Committee accepted the exchange ratio of 0.580 for each share of GCI Series A stock and GCI Series B common stock, “*subject to agreement on the form of consideration* and on definitive documentation.” As described above, this exchange ratio had already been tainted by Maffei’s successful effort to tank GCI Liberty stock relative to Broadband stock and is lower than the average exchange ratio between GCI Liberty stock and Broadband as of the April 2020 Evercore Presentation.

240. In agreeing to the tainted exchange ratio without specifying the form of consideration, the GCI Special Committee forfeited any leverage it may have had to extract voting shares for GCI Liberty Series A stockholders. Indeed, from that point forward, neither Evercore nor the GCI Special Committee ever even asked Broadband to allow GCI Liberty Series A stockholders to exchange their shares for Broadband voting shares.

241. On or around June 28, 2020, Morris Nichols learned that, contrary to the parties’ expectations, Malone had rejected a compromise structure that would have awarded Malone and Maffei a mix of Broadband Series C and Broadband Series B shares in exchange for their GCI Liberty B shares. Malone demanded a

like-for-like exchange of B shares only and indicated that he would refuse to support a transaction structured differently. Wilensky, the lead Morris Nichols lawyer on the assignment, reported this latest development to the Special Committee and advised that it was unlikely that a merger could be accomplished without Malone's support. The Special Committee agreed to accommodate Malone's demand.

242. At its June 28, 2020 meeting, the GCI Special Committee heard that (a) Malone's desired B-to-B exchange would "result in options to acquire GLIB B Shares being exchanged for options to acquire Broadband B shares;" (b) that Malone was also conditioning both his willingness to accept the Merger and his willingness to accept an exchange agreement on an all-B-for-B exchange; and (c) that Debevoise believed, with good reason, that Malone "would not agree to a Potential Transaction [*i.e.*, the Merger] unless his proposal on form of consideration is accepted, though he did not say so explicitly." In essence, Malone imposed his own terms.³¹

243. Well aware that Malone's preferred transaction terms would skyrocket Malone and Maffei's combined voting power in the combined company, the Special Committee nonetheless agreed and thereby allowed Malone and Maffei to forcibly strip voting rights in the combined company away from GCI Series A stockholders.

³¹ Under the terms of the now-defunct Warehouse Agreement, Malone agreed to cap his Broadband voting interest at 49%. Malone was happy to cap his ownership stake in Broadband at below 50% because it avoids incremental reporting obligations.

244. On June 29, 2020, both the GCI Special Committee and the Broadband Special Committee approved the terms of transaction proposed by Malone, *i.e.*:

Each one-vote share of GCI Series A would have the right to receive .580 non-voting shares of Broadband Series C;

Each ten-vote share of GCI Series B would have the right to receive .580 ten-vote shares of Broadband Series B, provided that Malone would receive shares of Broadband Series C in exchange for any shares of GCI Series B that would result in Malone's voting power of the post-merger company exceeding 49%;³² and

Each share of GCI Preferred Stock would receive one share of newly issued Broadband Preferred Stock, which would have substantially identical terms.

245. After the special committees preliminarily approved the terms of the deal, the special committees also agreed that "GCI Liberty's outstanding equity awards would be converted into equivalent equity awards at Liberty Broadband with respect to the applicable series of Liberty Broadband stock payable in the potential combination with respect to the series of GCI Liberty stock underlying the applicable award," which primarily, if not solely, benefited Maffei.

³² Malone's Broadband Series C shares that he received in exchange for GCI Series B shares were to be subject to conversion to super-voting Broadband Series B shares in certain circumstances.

246. Later on June 29, 2020, Debevoise and Morris Nichols jointly called Sherman & Howard to convey that the deal had been struck. Malone's counsel confirmed that he would support the Merger.

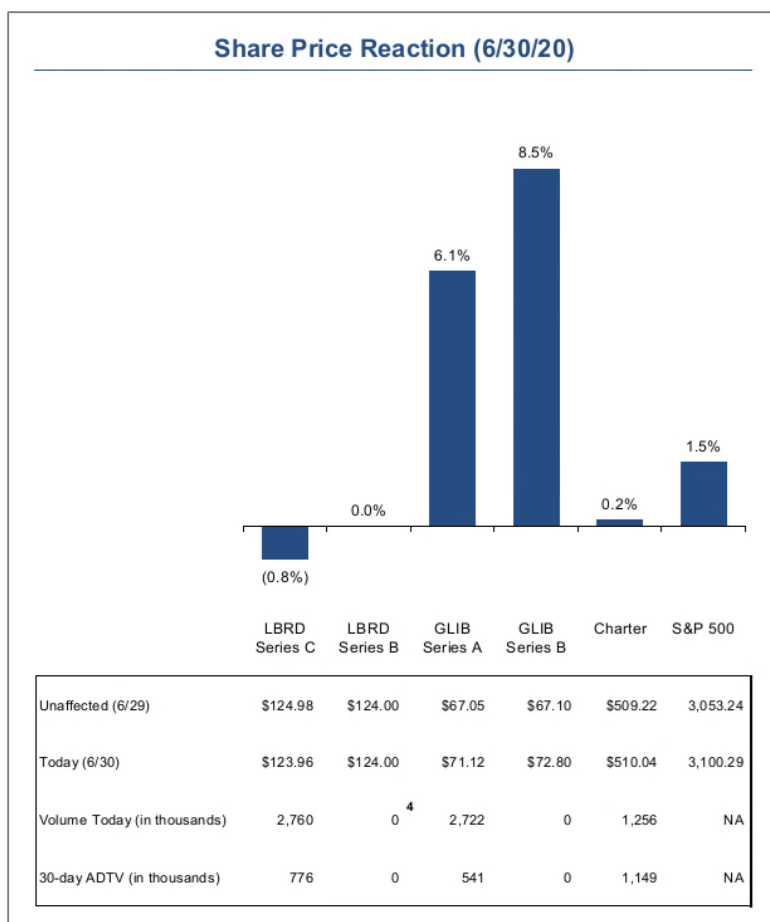
247. Following market close on June 29, 2020, each of Broadband and GCI Liberty filed a Form 8-K, Malone filed a Schedule 13D/A with respect to Broadband and GCI Liberty, and Maffei filed a Schedule 13D/A with respect to GCI Liberty disclosing, in each case, that the special committees of Broadband and GCI Liberty had reached a "preliminary understanding" regarding deal terms. Under that understanding, GCI Series A shareholders would receive 0.580 Class C shares in Broadband, Malone, Maffei, and other GCI Series B shareholders would receive 0.580 Class B shares in Broadband, and each share of GCI Preferred stock would convert into 1 share of Broadband Preferred stock. The Schedule 13D also disclosed the agreements in principle on the Exchange Agreement and the roll-over of Maffei's Series B options.

248. From the beginning, and throughout the process, management had its hand in guiding the Special Committee, as Engles himself admitted. On June 29, 2020, when the parties were on the verge of releasing a Form 8-K concerning the Merger, Engles thanked the GCI Board members (including Maffei and Malone) for "everyone's support *behind the scenes* from corporate."

X. The Special Committee Papers the Deal, But Faces Opposition in Stripping GCI Series A of its Voting Rights

249. On June 30, 2020, the GCI Special Committee convened to discuss the terms of the draft merger agreement that Debevoise had prepared. Baker Botts attended this meeting, and the GCI Special Committee instructed it, along with Morris Nichols, to negotiate with Broadband.

250. At this meeting, Evercore reviewed the reaction in the market prices for GCI Liberty stock on the news that Malone, Broadband, and GCI Liberty had come to preliminary understandings with each other. Again, the greater share price reaction in the price for GCI Series B stock indicated that the market well understood that Series B stock (and Malone and Maffei) had gotten a significantly better deal than the GCI Series A stockholders:



251. On July 8, 2020, Hudson Bay Capital (“Hudson Bay”), a stockholder of both GCI Liberty and Broadband, sent a letter to both special committees. Hudson Bay expressed two areas of concern: First, Hudson Bay stated that “as a significant GCI shareholder, we believe that proposed Possible Share Exchange Ratio of 0.5800 shares of Liberty Broadband Series C common stock [] for each outstanding share of GCI Liberty Series A common stock [] is *too low under a variety of metrics.*” Hudson Bay thereafter proceeded to explain why it believed the .580 exchange ratio was inadequate.

252. *Second*, Hudson Bay was “deeply troubled” that the proposed Merger involved holders of voting GCI Series A stock exchanging their shares for non-voting Broadband Series C stock—especially at an unfairly low exchange ratio—and that it would allow Malone and Maffei to further cement their control over the combined company.

253. Hudson Bay concluded its letter by writing “[f]irst and foremost, we believe [GCI Series A] shareholders should receive [Broadband Series A] voting stock in exchange for their [GCI Series A] voting stock.” If that were the case, then Hudson Bay would support a 0.605 exchange ratio, which, as shown by the table below, would provide holders of GCI Series A stock with \$181.7 million more in value *and* retention of their voting rights. On the other hand, “[i]n the event that [GCI Series A] shareholders were to receive [Broadband Series C] non-voting stock in exchange for their [GCI Series A] voting stock, *we believe a much higher share exchange ratio of at least 0.7000 is warranted*, to reflect full GCI NAV value upfront and *mitigate potential risk in any potential future transaction with [Charter] as a future Liberty [Broadband] shareholder with zero voting power.*”

As shown by the table below, a fair but conservative 0.700 exchange ratio would imply nearly \$1.53 billion in incremental value to holders of GCI Series A stock:

Table 7: Merger Consideration for Holders of GCI Series A Stock Under Various Scenarios

| (\$ in millions) | Merger Terms | Hudson Bay Proposal | |
|--|-------------------|---------------------|-------------------|
| | | LB Series A | LB Series C |
| Merger Currency | LB Series C | LB Series A | LB Series C |
| Pre-Announcement Closing Price (6/29/20) | \$124.98 | \$122.76 | \$124.98 |
| Exchange Ratio | 0.580 | 0.605 | 0.700 |
| Implied Offer Price | \$72.49 | \$74.27 | \$87.49 |
| GCI Series A Shares Outstanding ⁽¹⁾ | 102.0 | 102.0 | 102.0 |
| Implied Purchase Price | \$7,393.82 | \$7,575.52 | \$8,923.57 |
| Voting Rights | No | Yes | No |

⁽¹⁾ Evercore fairness opinion (GCI00000079.)

254. On July 17, 2020, the GCI Special Committee met and discussed a number of issues, including the Hudson Bay letter. On July 20, 2020, the GCI Special Committee met again and resolved not to “use the Hudson Bay letter at this time to seek additional concessions from Mr. Malone regarding governance of the *pro forma* entity.”

255. Throughout July 2020, the special committees continued to trade drafts of the Merger agreement, Exchange Agreement, and Voting Agreement.

256. As part of these discussions, on July 26, 2020, Morris Nichols sent Sherman & Howard a draft exchange agreement providing that while the Exchange Agreement would terminate following certain transfers of Broadband Series B stock by Malone or his affiliates, Malone had an exception to transfer all his shares of Broadband Series B common stock to Maffei (provided Maffei agreed to be subject to similar voting power limitations pursuant to a substantially similar agreement).

257. This draft made clear that Malone and Maffei had not only torpedoed the rights of GCI Series A stockholders, but Malone had extorted the right to nominate his successor. The GCI Special Committee did not secure *any* incremental benefit for GCI Series A holders and the Company in exchange for this substantial benefit to Malone and Maffei.

258. On August 5, 2020, the GCI Special Committee met again to see Evercore's updated analysis of the Merger and review the draft transaction documents, including the draft Exchange Agreement. Their lawyers had known as of July 26, 2020 that Malone had plans to transfer his voting power to Maffei in the future. Now the GCI Special Committee was officially informed that "Mr. Malone [had] agreed not to transfer Broadband B Shares to Greg Maffei [under the Exchange Agreement] unless Mr. Maffei signs a successor exchange agreement containing similar obligations to those contained in the Exchange Agreement."

XI. The Companies Approve the Merger

259. That same day, August 5, 2020, the Broadband Special Committee met, approved the Merger, and recommended that the Broadband Board approve the Merger. Later that day, the Broadband Board provided approval.

260. The next day, on August 6, 2020, the GCI Special Committee met to consider whether to approve the Merger. The GCI Special Committee kicked off

the meeting by reviewing a transaction timeline that indicates that Malone had agreed to support the Merger a full month earlier:

Purpose and Key Dates

- Purpose of Meeting: Consider recommendation from the special committee of GCI Liberty, Inc. (“GCI”) with respect to the potential combination of GCIL and Liberty Broadband Corporation (“LBC”)
- Transaction Timeline:
 - **April 20, 2020:** Letter of interest received from LBC regarding potential combination that would be subject to and conditioned upon (i) the negotiation by, and approval of, each special committee and (ii) approval by a non-waivable vote of the holders of a majority of the voting power of the outstanding shares of each company not held by John Malone or any other interested parties (the MFW Conditions).
 - **April 22, 2020:** GCIL special committee formed to consider potential combination
 - **April – May 2020:** GCIL special committee engages Morris, Nichols, Arsht & Tunnell LLP, independent Delaware counsel, Steptoe & Johnson LLP, independent tax counsel, and Evercore Group L.L.C., independent financial advisor
 - In addition, Baker Botts and Skadden (as special tax counsel) represent GCIL in connection with the potential combination
 - **May 4, 2020:** GCIL special committee delivers response letter agreeing to the MFW Conditions. Additionally, John Malone agrees with GCIL to the MFW Conditions.
 - **May 18, 2020:** GCIL and LBC enter into mutual confidentiality agreement
 - **June 26, 2020:** GCIL special committee and LBC special committee reach agreement on exchange ratio
 - **June 29, 2020:** GCIL special committee, LBC special committee and John Malone reach agreement on form of consideration and John Malone’s agreement to support the potential combination
 - **June 29, 2020:** 8-K Public Announcement of the potential combination
 - **August 6, 2020:** Evercore expected to deliver its fairness opinion to the GCIL special committee
 - **August 6, 2020:** GCIL special committee expected to recommend approval of the potential combination



261. Thereafter, the GCI Special Committee discussed the deal terms. It also reviewed the terms of Malone’s Exchange Agreement:

Transaction Documents

- Exchange Agreement between John Malone and LBC
 - John Malone will waive right to receive a number of LBRDB shares in respect of GLIBB shares in the Merger so that his voting power post transaction is approximately equal to 49%
 - In consideration of the waiver, John Malone will receive an equal number of LBRDK shares and the waived LBRDB shares will be subject to a warehousing arrangement whereby he may exchange LBRDK shares on a 1 for 1 basis for the warehoused LBRDB shares as follows:
 - Following any LBC issuance of voting securities that would cause John Malone's voting power to fall below 48.5%, but only as necessary to retain 49% voting power
 - In connection with any merger or combination of LBC, John Malone will be entitled to all remaining waived LBRDB shares or, alternatively, the merger consideration paid to holders of LBRDB in exchange for the applicable LBRDK shares
 - *Upon certain fundamental events, including certain mergers, split - or spin-offs, rights offerings and dividends, John Malone will be entitled to certain economic rights associated with the LBRDB shares he otherwise would have received in the potential combination (update)*
 - John Malone is required to put additional LBRDB shares into the warehouse arrangement if his voting power would exceed 49.5% following any repurchase, redemption or other event, but only as necessary to retain 49% voting power
 - *Transfers by John Malone of LBRDB shares to unrelated parties will result in appropriate adjustments to John Malone's target voting power percentages listed above (update)*
 - *Transfer to Greg Maffei will be subject to the execution of a similar exchange agreement between LBC and Greg Maffei (update)*
 - *LBC to reimburse John Malone reasonable costs and expenses incurred in connection with exchange agreement or any of the trans actions contemplated thereby (update)*

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262. The fundamental terms of this agreement match the deal that Malone agreed to on June 29, 2020. Namely, Malone agreed to receive Broadband Series C shares, in lieu of Broadband Series B shares, in exchange for certain of his GCI Series B shares such that his voting power in the post-Merger company would be approximately 49%. Following any dilutive events, Malone had the ability to exchange Broadband Series C shares for Broadband Series B shares in order to retain his 49% voting power. And, upon the occurrence of certain fundamental events,

Malone was entitled to trade Broadband Series C shares for the initially waived Broadband Series B shares.

263. Additionally, while the Exchange Agreement generally restricted Malone's ability to transfer his shares of Broadband Series B stock, Malone could freely transfer such all of his Broadband Series B stock shares to "a Family Member for estate-planning purposes" or to *Maffei*. Malone and Maffei had also agreed that any future transfers to Maffei would be subject to a "similar" exchange agreement between Maffei and the combined Broadband.

264. Thereafter, Evercore provided its fairness opinion to the GCI Special Committee. Evercore never attempted to value the voting rights ceded by holders of GCI Series A stock. Nonetheless, it opined that the Merger was fair to all unaffiliated stockholders.

265. The GCI Special Committee then approved the Merger and recommended "that the GCI Liberty Board approve (including for purposes of Section 203 of the DGCL) and declare advisable" the Merger and submit it to a stockholder vote.

266. Immediately thereafter, the conflicted GCI Liberty Board met and approved the Merger. Later, on the morning of August 6, 2020, the parties executed the Merger agreement and ancillary documents.

267. These documents included (a) the Exchange Agreement, executed by Malone and Broadband, and (b) two voting agreements, each executed by Malone, GCI Liberty, and Broadband, in which Malone agreed to vote all of his (and certain of his affiliates') Broadband shares (approximately 48.3% of Broadband voting power) and GCI Liberty shares (approximately 27.0% of GCI Liberty voting power) in favor of the Merger. Each voting agreement provides indemnification for Malone related to the voting agreements and the Exchange Agreement.

XII. The Parties Announce the Merger

268. On the afternoon of August 6, 2020, GCI Liberty and Broadband issued a joint press release announcing the transaction. The press release announced, among other things, that the closing of the Merger required approval by: (a) “[h]olders of a majority of the aggregate voting power of GCI Liberty outstanding stock to vote thereon not owned by John C. Malone and certain other persons;” and (b) “[h]olders of a majority of the aggregate voting power of Liberty Broadband outstanding stock entitled to vote thereon not owned by John C. Malone and certain other persons.”

269. On August 10, 2020, GCI Liberty held a call on which Maffei discussed the Merger. On that call, an analyst demanded point blank “to get some insight into why is the 0.58 ratio the same for Class A and B shares of GCI Liberty when the

GCI Liberty Class A shares will be losing their voting rights if the transaction goes through with Liberty Broadband.”

270. Maffei replied:

I believe, since this was done by 2 independent committees, both the independent committee at GCI Liberty and the independent committee at Liberty Broadband, they believe that was the fairest, the case which the shareholders see have higher liquidity. Given the strength and size of the B vote, *I think the A votes were viewed to be not -- I'm guessing, at our view, is meaningful*, but really, this was driven by 2 independent committees. They made the decisions, and I believe they thought it was fair to both sides.

271. Maffei then abruptly ended the call:

Thank you, operator. That is, I believe, is our last question, and I want to thank all of our listeners for their continued interest in Liberty businesses.

XIII. The GCI Liberty Special Committee Was Ineffective

272. The GCI Special Committee approved the Merger without informing itself as to the Company's value to other buyers, even though it was not precluded from doing so prior to GCI Liberty signing the Merger agreement. The GCI Special Committee's failure to engage with any other potential transaction partner is a sign that the GCI Special Committee was under the controllers' thumb.

273. At the outset of negotiations:

Following discussion, including as to the likelihood of any other parties being interested in pursuing a transaction with GCI Liberty, the risks of reaching out to other parties before signing a definitive agreement with

Liberty Broadband, and the ability of other parties to make a competing offering post-signing,

the GCI Special Committee “provisionally” determined to pursue a combination solely with Broadband. From the beginning, the GCI Special Committee was constrained by the specter of Malone’s power to block a deal with an alternative buyer.

274. Even after non-binding terms of the Merger were publicly announced, the GCI Special Committee had a six-week opportunity to conduct a form of a market check. To the extent that any purported “risks” initially justified exclusive discussions with Broadband, they no longer applied after the public announcement. Nonetheless, the GCI Special Committee did not revisit this issue until two months later (less than three weeks before signing), at which point the GCI Special Committee again chose not to shop the deal.

275. The Special Committee’s repeated decisions not to shop the deal, combined with its willingness to agree to an exchange ratio that attributed *no value* to GCI Class A stockholders’ voting rights, illustrate how the Special Committee improperly ceded its negotiating power to Malone and Maffei.

XIV. Malone and Maffei Altered the Deal After Plaintiffs Filed Suit

276. On September 17, 2020, GCI Liberty filed its preliminary proxy statement in connection with the Transaction.

277. On October 11, 2020, after reviewing that filing and documents produced by GCI pursuant to a books and records request, Plaintiffs filed a complaint seeking injunctive and declaratory relief. The initial complaint alleged, among other things, that the Board as well as Maffei and Malone (in their capacities as controlling stockholders) breached their respective fiduciary duties to stockholders in negotiating and approving the Merger, and that the Merger, as structured, violated DGCL Section 203.

278. On October 30, 2020, GCI Liberty filed its definitive proxy statement in connection with the Transaction. The filing belatedly disclosed, after the complaint was filed in this action, the composition of the GCI Special Committee and the existence of Malone's two (since cancelled) trading programs used to create leverage in the negotiations.

279. After the Court granted Plaintiffs' motion to expedite on October 27, 2020, Plaintiffs engaged in significant discovery, including conducting five depositions and reviewing over 10,000 documents produced by Defendants and third parties.

280. On November 21, 2020, only days before the close of expedited discovery, Malone and Maffei agreed to alter the terms of the Merger in exchange for the dismissal of Plaintiffs' Section 203 claim as moot and the withdrawal of Plaintiffs' motion for a preliminary injunction.

281. Under the parties' agreement, Malone and Maffei agreed to convert each outstanding share of the GCI Liberty Series B common stock they respectively beneficially own into one share of GCI Liberty Series A common stock. As a result, Malone and Maffei received the same consideration for their GCI Liberty Series B shares as GCI Liberty Series A stockholders received for their Series A shares (i.e., non-voting shares in the combined company). Consequently, the Exchange Agreement entered into among Malone, the JCM Trust, and Broadband also terminated pursuant to its terms at the time of the Merger because neither Malone nor the JCM Trust had the right to receive any Broadband B shares in the Merger.

282. In addition, Maffei agreed that immediately following the exercise of any options to acquire super-voting Broadband Series B common stock that he holds as a result of the Merger, he will exchange each share issued upon such exercise for one share of non-voting Broadband Series C common stock. Maffei also agreed that this exchange obligation will remain in effect even if he transfers his options to acquire super-voting Broadband Series B common stock.

283. As a result of the parties' agreement, Malone will own approximately 45.8% of the outstanding voting power of the combined company rather than 49% of the outstanding voting power of the combined company *plus* a warehouse agreement that would have enabled him to exchange Liberty Broadband Series C shares for Liberty Broadband Series B shares to preserve his 49% voting power in

the event of the occurrence of a voting dilution event as well as the right to exchange all shares for super-voting shares in the event of certain other events.

284. As a result of the parties' agreement, Maffei will own approximately 1.0% of the combined company and that percentage will not change if and when Maffei exercises his options. But for the parties' agreement, Maffei could have increased his voting power in the combined company to over 12%—and his and Malone's collective voting power to over 61% (and 66 2/3% in certain circumstances)—by exercising his options.

285. On November 24, 2020, the Company filed supplemental disclosures to its definitive proxy statement disclosing this agreement between the parties as well as additional (but still incomplete) information relating to the previously undisclosed personal relationships between Maffei and Engles, Maffei and Evercore, and Engles and Magro.

286. On December 15, 2020, GCI Liberty and Broadband stockholders approved the Merger.

XV. The Stockholder Vote Was Not Fully Informed

287. To obtain approval for the Merger, GCI Liberty disseminated materially misleading information.

288. First, the Proxy misleadingly disclosed that the 0.580 exchange ratio “represented an implied premium of 8.3% to the GCI Liberty Series A common

stockholders and 8.8% to the GCI Liberty Series B common stockholders.” The Proxy did not disclose that, as discussed in detail above, Maffei manipulated GCI Liberty’s stock price in November 2019 to make the combination more attractive for Broadband.

289. Specifically, Maffei provided false information to the market during Liberty’s 2019 Investor Day. At the time, the GCI Liberty-Broadband market value ratio was above 0.60. Maffei’s false guidance immediately caused the GCI Liberty-Broadband market value ratio to fall significantly. In other words, but for Maffei’s market manipulation, the 0.580 exchange ratio would likely have represented a *discount* to GCI Liberty’s stockholders. Indeed, the exchange ratio was less than the average GCI Liberty-Broadband exchange ratio between the Company’s inception and April 2020 (*i.e.*, after Maffei drove down the ratio and after the pandemic drove it down even further).

290. The Proxy also failed to disclose that management had been tracking the ratio between GCI Liberty and Broadband common stock for months to identify the opportune time for Broadband to acquire GCI stock. When that moment emerged (in the midst of the COVID-19 pandemic and a chaotic market), Malone and Maffei seized upon it and proposed the deal. As the unusual discount was narrowing, Malone pressed the special committees to approve the Merger by

threatening to disclose material non-public information in connection with Malone's newly created (but obviously pretextual) 10b5-1 trading plans.

291. Armed with that additional information, GCI Liberty stockholders would have had a much different view about the fairness of the Merger consideration, including whether it represented a premium at all.

292. Second, the Proxy fails to adequately disclose the relationship between Maffei and Evercore's lead banker, Magro. The definitive merger proxy is silent on that issue. On November 24, 2020, following Plaintiffs' discovery, GCI Liberty belatedly disclosed in an 8-K that

On occasion, Mr. Maffei has socialized with Anthony J. Magro, Senior Managing Director of Evercore, which served as financial advisor to the GCI Liberty special committee in connection with the Combination. On one such occasion, Messrs. Maffei and Magro attended a Dartmouth alumni reunion weekend in Vail, Colorado in February 2020, during which Mr. Magro stayed at Mr. Maffei's house in Vail.

293. This disclosure was still deficient as it paints the picture that Maffei and Magro are casual acquaintances when in fact they have been close friends for a long time. As discussed in detail above—but never disclosed to stockholders—Maffei allowed Magro use of his Vail home again in March 2020 and, while the Merger was being negotiated, Magro was so comfortable with Maffei that he inquired about whether his daughter could stay at Maffei's Cherry Hills Village home (to which Maffei responded that she could stay in his pool house).

294. The Proxy also omitted the leg work that Magro did for Maffei in February and March 2020. Nowhere did the Proxy disclose that Magro and Maffei began discussing a potential combination between GCI Liberty and Broadband in early February 2020 and that Evercore initially prepared in early March an extensive slide deck for a planned pitch to the Broadband Special Committee before converting it into a GCI Special Committee pitch. This information was particularly important because it was GCI Liberty management, *i.e.*, Maffei, that recommended Evercore as a potential financial advisor to the GCI Special Committee.

295. If disclosed, GCI Liberty stockholders would have had a very different perspective as to whether Evercore was actually serving the best interests of GCI Liberty's unaffiliated stockholders or the interests of Magro's close friend, Maffei.

296. Third, the Proxy omits that material information was withheld from the GCI Liberty Board and from Engles' fellow GCI Special Committee member Hamilton, including that:

- Engles and Maffei failed to disclose their close friendship to the GCI Liberty Board, which intended to appoint to the GCI Special Committee only directors who were independent of Malone and Maffei;
- Relatedly, despite the fact that Engles supposedly disclosed his potential conflicts to Morris Nichols and that Engles and Morris Nichols supposedly

summarized to Hamilton the results of its discussion with Engles, Hamilton was never informed that Engles and Maffei are close friends; and

- Hamilton was never informed that Magro and Maffei are close friends or that Engles and Maffei are close friends.

Disclosure of this omitted information would have given stockholders the ability to make a proper assessment as to whether the GCI Special Committee was properly functioning, including whether the members of the GCI Special Committee were able to comply with their fiduciary obligations to consider all material information reasonably available to them.

297. Maffei signed the materially deficient Proxy in his capacity as GCI Liberty Chief Executive Officer and President.

XVI. The Merger Remains Unfair to Unaffiliated GCI Liberty Stockholders

A. The Merger is the Result of an Unfair Process

298. As described above, the process by which the Merger was negotiated was deeply unfair.

299. The process was infected by conflicts.

300. One of the two GCI Special Committee members (Engles) is close friends with and, therefore, not independent of, Maffei. Engles' conflict was not disclosed to the GCI Liberty Board in connection with the formation of the GCI

Special Committee—which was intended to consist of directors independent of Maffei—and was not disclosed to Hamilton.

301. The lead Evercore banker is also close friends with and, therefore, not independent of, Maffei. Evercore’s lack of independence of Maffei, likewise, was not disclosed to the GCI Liberty Board and was not disclosed to Hamilton in connection with the selection of advisors.

302. Moreover, Malone played an outsized role in the negotiations, driving them according to his schedule and dictating the terms of the transaction.

303. Malone’s threat to disclose the existence of the negotiations and the range of exchange ratios, set in place when the GCI Liberty-Broadband ratio was increasing and after learning of the effect of an A-to-A exchange, effectively forced the special committees to a hurried agreement on an exchange ratio.

304. Indeed, when Malone indicated his displeasure with the exchange ratio and the prospect of being diluted, primarily by GCI Series A holders receiving Broadband Series A stock, the GCI Special Committee meekly agreed to accept different consideration for the GCI Series A and GCI Series B shares. By agreeing to the exchange ratio prior to deciding on the form of consideration, the GCI Special Committee entirely foreclosed the option of obtaining voting stock for Class A holders.

305. As a result, minority stockholders received non-voting shares in the combined company, and the GCI Series A stockholders went from holding a majority of the Company's votes to becoming a silent bloc in a combined company controlled by Malone and Maffei.

B. Malone and Maffei Retain a Nonratable Benefit in the Form of Control

306. The exchange of voting GCI Series A for nonvoting Broadband Series C (which have no vote) creates disparate benefits to Malone and Maffei as holders in Broadband stock at the expense of the unaffiliated GCI Liberty stockholders (almost all of whom were GCI Series A stockholders). As noted, holders of the GCI Series A shares ended up receiving nonvoting stock in the combined company.

307. The obvious way to merge the two companies would have been a Series A for Series A exchange and Series B to Series B exchange that preserved the voting powers of each class of stock in a Like-for-Like Exchange.

308. Even assuming the tainted exchange ratio of approximately 0.580, a deal that protected GCI Series A holders' one-vote-per-share voting power would have given the future Broadband Series A shares, as a class, majority voting power—over 60% of the company's vote. In a fair exchange of GCI Series A for Broadband Series A (consistent with the exchange ratio that the GCI Special Committee agreed to), Liberty management would have commanded 38.8% or less of the combined company's total voting power, with Malone himself controlling approximately 35%

of the total voting power. In other words, Malone may still have been *de facto* controller of the combined company, but his control would have been subject to veto by the Class A stockholders.

309. By causing GCI Liberty Series A stockholders to receive non-voting shares, Malone and Maffei—even after altering the terms of their agreement—will have substantially more voting power than they would have if the Merger had been a Like-for-Like exchange:

Comparisons of Voting Power at Pro Forma Company, Deal Versus Like-for-Like Exchanges

| | As-Modified Merger | Evercore’s Alternative Like-for-Like Scenario |
|----------------------|-------------------------------|--|
| Malone and Maffei | 46.8 % | 38.8% |

310. Despite the clear benefits to GCI Liberty stockholders of a Like-for-Like exchange, the GCI Special Committee never even attempted to negotiate for this, or at least dropped any pretense of considering it once Malone demanded that he could not be diluted in the transaction. It is inconceivable that a truly arm’s-length, independent, and diligent special committee could have reached such a lopsided deal for stockholders.

C. The Exchange Ratio is Unfair

311. As discussed in detail above, in November 2019, Maffei manipulated GCI Liberty's stock price relative to Broadband's stock price to set the stage for a potential transaction.

312. As a result of Maffei's statements and representations to the market, GCI Liberty stock price increasingly decoupled from Broadband's stock price, and the GCI Liberty-Broadband ratio plummeted.

313. After the GCI Liberty/Broadband ratio fell to all-time lows due to Maffei's misleading guidance and the pandemic, Maffei, with Malone's approval, caused Broadband to opportunistically pounce.

314. As a result of the timing of the Merger and Maffei's manipulation of GCI Liberty's stock price relative to Broadband, the Merger (i) robs GCI Series A stockholders of their voting interests and (ii) provides GCI Liberty stockholders with an unfair exchange ratio that is below even the average 0.59x market value exchange ratio between March 2018 and April 2020.

315. Moreover, GCI Liberty failed to extract any value for the synergies between GCI and Charter. Evercore calculated those synergies to be worth more than \$45 million annually or approximately \$450 million total. Because Broadband stockholders own the majority of the combined company, should the much-

anticipated Charter/Broadband transaction come to pass, it is Broadband stockholders who will receive the majority of the benefit from those synergies.

316. Unaffiliated GCI stockholders must be made whole.

CLASS ALLEGATIONS

317. Plaintiffs bring this Action pursuant to Rule 23 of the Rules of the Court of Chancery individually and as a class action on behalf of all holders of GCI Series A common stock (except Defendants named herein, and any person, firm, trust, corporation, or other entity related to or affiliated with any of the Defendants or their successors in interest) who are or will be threatened with injury arising from the Defendants' wrongful actions, as more fully described herein (the "Class").

318. The members of the Class as so numerous that joinder of all members is impracticable. The Company has thousands of stockholders who are scattered across the United States and internationally. As of August 3, 2020, there were approximately 102 million shares of GCI Series A common stock outstanding, of which stockholders unaffiliated with Defendants hold approximately 98%.

319. There are questions of law and fact which are common to the Class and which predominate over questions affecting any individual Class member. The common questions include, *inter alia*, the following:

- a. Whether the Director Defendants have breached their fiduciary duties;

- b. Whether Malone and Maffei breached their fiduciary duties, in their capacity as controlling stockholders;
- c. The existence and extent of any injury to Plaintiffs and other members of the Class created by such breaches;
- d. The proper relief for any such injury, including the proper measure of damages and/or equitable relief.

320. No difficulties are likely to be encountered in the management of this Action as a class action.

321. Defendants have acted on grounds generally applicable to the Class with respect to the matters complained of herein, thereby making appropriate the relief sought herein with respect to the Class as a whole.

322. Plaintiffs are committed to prosecuting this Action and have retained competent counsel experienced in litigation of this nature. Plaintiffs' claims are typical of the claims of the other Class members, and Plaintiffs have the same interests as the other Class members. Accordingly, Plaintiffs are adequate representatives of the Class and will fairly and adequately protect the interests of the Class.

323. The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for Defendants, or adjudications with respect to individual members of the

Class which would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

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

COUNT I

(Against Malone and Maffei for Breach of Fiduciary Duty in Their Capacity as Controlling Stockholders)

325. Plaintiffs repeat and reallege each and every allegation set forth herein.

326. Malone was the controlling stockholder of GCI Liberty or, in the alternative, Malone and Maffei collectively controlled GCI Liberty. As such, Malone, in his capacity as a controlling stockholder (or, in the alternative, Malone and Maffei in their capacities as controlling stockholders), owed Plaintiffs and the Class the utmost fiduciary duties of care and loyalty.

327. By reason of the foregoing, Malone breached his fiduciary duties (or, in the alternative, Malone and Maffei breached their fiduciary duties). In particular, Malone and Maffei violated their fiduciary duties by interfering with the timing and substance of the negotiation of the exchange ratio, causing the GCI Special Committee to agree to a Merger that deprives GCI Liberty stockholders of their

voting rights, and causing the GCI Special Committee to agree to a Merger at an unfair exchange ratio.

328. As a direct and proximate result of the foregoing breaches of fiduciary duty by Malone and Maffei, Plaintiffs and the Class have been harmed and will continue to be harmed, as both their voting and influence over the combined company and the value of their investment in the combined company have been diminished.

329. As a result of the foregoing, Plaintiffs and the Class have been harmed.

330. Plaintiffs and the Class have no adequate remedy at law.

COUNT II

(Against Engles and Maffei for Breach of Fiduciary Duty)

331. Plaintiffs repeat and reallege each and every allegation set forth herein.

332. By virtue of their positions as directors of GCI Liberty (and, in the case of Maffei, as an officer of GCI Liberty), Engles and Maffei owe fiduciary duties of care, loyalty, and good faith to the Company and its stockholders. Those fiduciary duties include a duty of candor to their fellow directors. The duty of candor required them to disclose to their fellow directors all material information reasonably available to them.

333. Maffei and Engles breached their duty of candor by failing to disclose their close friendship to the rest of the GCI Liberty Board in connection with the formation of the GCI Special Committee. The GCI Liberty Board intended to form a special committee of directors who were independent of Malone and Maffei. Engles and Maffei deprived the GCI Liberty Board of the ability to do so by withholding from the Board information necessary for the Board to conclude that Engles lacked independence from Maffei and, therefore, should not serve on the GCI Special Committee.

334. Maffei and Engles also breached their duty of candor to the GCI Liberty Board and, in particular, Hamilton by failing to disclose to the Board (or Hamilton) that Maffei and Magro are close friends. Indeed, Maffei (and other members of GCI Liberty management) selected Evercore as a potential financial advisor to the GCI Special Committee without disclosing this conflict. The GCI Special Committee intended to hire a financial advisor that was independent of Malone and Maffei. Maffei and Engles prevented the GCI Liberty Special Committee from doing so by failing to disclose that Evercore's lead banker lacked independence from Maffei.

335. The foregoing information would have assumed actual significance in the GCI Liberty Board's determination whether to approve the unfair Merger because knowing that the unfair Merger had been negotiated by a conflicted special committee led by a conflicted financial advisor would have helped board members reach a more accurate assessment of the probative value (or lack thereof) of the sale process, including the vigor with which the exchange ratio was negotiated. Instead, believing that the Merger had been negotiated by an independent special committee led by an independent financial advisor, the GCI Liberty Board rubberstamped the GCI Special Committee's recommendation to approve the unfair Merger.

336. Maffei also breached his duty of care to GCI Liberty stockholders by causing GCI Liberty to issue a materially misleading Proxy, which he signed in his capacity as GCI Liberty's Chief Executive Officer and President.

337. As a result of the foregoing, Plaintiffs and the Class have been harmed.

338. Plaintiffs and the Class have no adequate remedy at law.

COUNT III

(Against Director Defendants for Breach of Fiduciary Duty)

339. Plaintiffs repeat and reallege each and every allegation set forth herein.

340. By virtue of their positions as directors of GCI Liberty, the Director Defendants owed fiduciary duties of care, loyalty and good faith to the Company's stockholders. These fiduciary duties required them to place the interests of the Company and its stockholders above their own interests and/or the interests of the controlling stockholder(s).

341. As described above, the Director Defendants breached their fiduciary duties by causing the Company to enter into the Merger, which was derived from an unfair process and provides unfair consideration to unaffiliated stockholders.

342. As a result of the foregoing, Plaintiffs and the Class have been harmed.

343. Plaintiffs and the Class have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment as follows:

- a. Declaring the Action properly maintainable as a class action and certifying the proposed Class;

- b. Declaring that the Director Defendants breached their fiduciary duties;
- c. Declaring that Malone and Maffei breached their fiduciary duties as controlling stockholders;
- d. Awarding post-Merger equitable relief;
- e. Awarding damages, together with pre- and post-judgment interest, for harm arising from the Merger, in an amount to be proven at trial;
- f. Awarding pre- and post- judgment interest on any monetary award;
- g. Awarding the costs, expenses, and disbursements incurred in this action, including experts' and attorneys' fees; and
- h. Awarding such other relief as the Court deems just and proper.

Dated: December 23, 2020

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CERTIFICATE OF SERVICE

I, Gregory V. Varallo, hereby certify that, on December 23, 2020, the foregoing *Second Amended Verified Class Action Complaint* was filed and served via File & ServeXpress upon the following counsel of record:

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/s/ Gregory V. Varallo
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IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

HOLLYWOOD FIREFIGHTERS')
PENSION FUND, WEST PALM)
BEACH FIREFIGHTERS' PENSION)
FUND, and SHEET METAL) C.A. No. 2020-0880-SG
WORKERS' LOCAL UNION NO. 80)
PENSION TRUST FUND, on behalf)
of themselves and all others similarly)
situated,)
Plaintiffs,)
v.)
JOHN C. MALONE, GREGORY B.)
MAFFEI, GREGG L. ENGLES,)
RONALD A. DUNCAN, DONNE F.)
FISHER, and RICHARD R. GREEN,)
Defendants.)
)
)
)
)
_____)

**UNSWORN DECLARATION AND VERIFICATION OF
JASON ROSNER PURSUANT TO 10 Del. C. § 3927**

Pursuant to the Delaware Supreme Court's Administrative Order No. 14

(dated December 2, 2020),¹ I, do hereby state as follows:

¹ NOW, THEREFORE, IT IS ORDERED that:

* * * *

5. Administrative Order No. 3 regarding the suspension of any requirements for sworn declarations, verifications, certificates, statements, oaths, or affidavits in filings with the Supreme Court, the Court of Chancery, the Superior Court, the Family

1. I am Jason Rosner, Chairman of the Board of Trustees of The Hollywood Firefighters' Pension Fund, plaintiff in the above-captioned action and a continuous holder of GCI Liberty Inc. common stock during all relevant times alleged in the Second Amended Verified Class Action Complaint (the "Second Amended Complaint"). I am a resident of Florida and am of full legal age. I make this unsworn verification and declaration in support of the Second Amended Complaint filed in the above-captioned case.

2. I make this unsworn declaration under penalty of perjury.

3. I have read the Second Amended Complaint and consulted with counsel.

4. The facts alleged in the Second Amended Complaint are true and correct to the best of my knowledge, information, and belief.

5. In accordance with Delaware Court of Chancery Rules 23(aa), I have not received, been promised or offered and will not accept any form of compensation, directly or indirectly, for prosecuting or serving as a representative party in this Action except for:

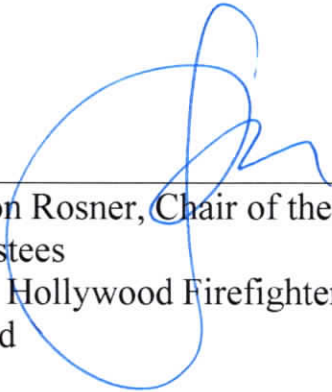
Court, the Court of Common Pleas, or the Justice of the Peace Court will remain in effect.

(a) such fees, costs or other payments as the Court expressly approves to be paid to or on behalf of the Fund; or

(b) reimbursement, paid by my attorneys, of actual and reasonable out-of-pocket expenditures incurred directly in connection with the prosecution of this Action.

I declare under penalty of perjury under the laws of Delaware that the foregoing is true and correct.

Executed on this 23 day of December, 2020.

By: 

Jason Rosner, Chair of the Board of
Trustees
The Hollywood Firefighters' Pension
Fund

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

HOLLYWOOD FIREFIGHTERS')
PENSION FUND, WEST PALM)
BEACH FIREFIGHTERS' PENSION)
FUND, and SHEET METAL) C.A. No. 2020-0880-SG
WORKERS' LOCAL UNION NO. 80)
PENSION TRUST FUND, on behalf)
of themselves and all others similarly)
situated,)
Plaintiffs,)
v.)
JOHN C. MALONE, GREGORY B.)
MAFFEI, GREGG L. ENGLES,)
RONALD A. DUNCAN, DONNE F.)
FISHER, and RICHARD R. GREEN,)
Defendants.)

**UNSWORN DECLARATION AND VERIFICATION OF
DAVID MERRELL PURSUANT TO 10 Del. C. § 3927**

Pursuant to the Delaware Supreme Court's Administrative Order No. 14
(dated December 2, 2020),¹ I, do hereby state as follows:

¹ NOW, THEREFORE, IT IS ORDERED that:

* * * *

5. Administrative Order No. 3 regarding the suspension of any requirements for sworn declarations, verifications, certificates, statements, oaths, or affidavits in filings with the Supreme Court, the Court of Chancery, the Superior Court, the Family Court, the Court of Common Pleas, or the Justice of the Peace Court will remain in effect.

1. I am David Merrell, Chairman of the Board of Trustees of West Palm Beach Firefighters' Pension Fund, plaintiff in the above-captioned action and a continuous holder of GCI Liberty Inc. common stock during all relevant times alleged in the Second Amended Verified Class Action Complaint (the "SAC"). I am a resident of Florida and am of full legal age. I make this unsworn verification and declaration in support of the SAC filed in the above-captioned case.

2. I make this unsworn declaration under penalty of perjury.

3. I have read the SAC and consulted with counsel.

4. The facts alleged in the SAC are true and correct to the best of my knowledge, information, and belief.


5. In accordance with Delaware Court of Chancery Rules 23(aa), I have not received, been promised or offered and will not accept any form of compensation, directly or indirectly, for prosecuting or serving as a representative party in this Action except for:

(a) such fees, costs or other payments as the Court expressly approves to be paid to or on behalf of the Fund; or

(b) reimbursement, paid by my attorneys, of actual and reasonable out-of-pocket expenditures incurred directly in connection with the prosecution of this Action.

I declare under penalty of perjury under the laws of Delaware that the foregoing is true and correct.

Executed on this 23 day of December, 2020.

By: 
David Merrell, Chair of the Board of
Trustees
West Palm Beach Firefighters' Pension
Fund