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Investors Target $55B Charter-TWC Deal, Related Offering

By **Jeff Zalesin**

Law360, Wilmington (August 24, 2015, 4:34 PM ET) -- A Charter Communications Inc. shareholder wants to stop Charter's proposed $55 billion merger with Time Warner Cable Inc. on the grounds that it unfairly favors stakeholder Liberty Broadband Corp., which faces a separate investor suit over a related stock issuance, according to Friday filings in Delaware Chancery Court.

Charter shareholder Matthew Sciabacucchi filed suit alleging that Charter's **agreements to take over** Time Warner and Bright House Networks LLC would benefit Liberty at the expense of Charter's public shareholders. The complaint came the same day as a separate Chancery suit by Belle Cohen, who seeks to block fellow Liberty shareholders from voting on a plan to issue over $4 billion in stock in connection with the Charter deals.

Sciabacucchi, who is seeking to represent a class of Charter stockholders, said in his complaint that Liberty, which owns about 26 percent of Charter, used its influence over the Charter board to gain benefits including access to discounted shares in the post-merger company.

"By structuring the transactions to provide these benefits to Liberty Broadband — and Liberty Broadband alone — the board has deprived plaintiff and Charter's public stockholders of additional value that should have been shared equally amongst all stockholders," Sciabacucchi said.

Charter's proposed acquisition of Bright House provides for Liberty Broadband to buy $700 million in new shares for $173 apiece, while the Time Warner deal allows Liberty to purchase $4.3 billion of new stock for the equivalent of $176.95 per Charter share, according to the complaint. Sciabacucchi said those prices represent a bargain for Liberty, allegedly resulting from preferential treatment.

Sciabacucchi also said that the transactions are set up to grant Liberty a voting proxy in the post-merger company, meaning Liberty will have a 25 percent voting stake in the company despite holding only about 19 percent of its equity.

"Liberty Broadband will thus be the only shareholder to avoid significant dilution of its voting interest upon the consummation of the transactions," Sciabacucchi said. "Liberty Broadband is paying nothing for this material benefit."

The plaintiff added that Liberty is the only stakeholder with the option to be paid all stock and no cash for its Time Warner shares, giving it a unique tax benefit.

Sciabacucchi lodged claims against Liberty Broadband, Charter and members of the Charter board including John Malone, who owns about 47 percent of Liberty Broadband's voting power and controls various affiliates, according to the complaint.

Liberty has four direct appointees on the Charter board including Malone, and at least two other board members are so closely connected to Liberty that they aren't truly independent, Sciabacucchi alleged. He accused Malone, in particular, of helping to engineer transaction terms favorable to Liberty.

Sciabacucchi asked for an order blocking the Time Warner and Bright House purchases, plus an accounting of damages and reimbursement for legal fees.

Cohen, for her part, is targeting a different aspect of the cable business' corporate shake-up. She filed suit on behalf of a proposed class of Liberty Broadband shareholders, seeking an injunction to stop a planned vote on a proposal to issue more than $4 billion in new stock to fund Liberty's planned investment in new Charter equity.

Under the stock issuance plan, Malone affiliate Liberty Interactive Corp. would buy about $2.4 billion of Liberty Broadband stock, with the rest of the issuance going to hedge funds, Cohen said. But if the shareholders vote against the plan, Liberty Broadband plans to try again with an altered set of terms, which it has not disclosed, Cohen alleged.

"Thus, Liberty Broadband stockholders are being asked to choose between two financing alternatives without even being informed about the material terms of the second alternative," she said.

Cohen also said that the issuance could be tainted by conflicts of interest stemming from Malone's role in both Liberty Broadband and Liberty Interactive. She added that Baker Botts LLP, which is advising Liberty Broadband on the issuance, has a conflict of interest because it has also acted as counsel for Liberty Interactive and Malone.

Representatives of Cohen, Sciabacucchi, Liberty and Charter did not immediately respond to requests for comment Monday.

Sciabacucchi is represented by Jason M. Leviton, Steven P. Harte and Joel A. Fleming of Block & Leviton LLP, and Kurt M. Heyman and Melissa N. Donimirski of Proctor Heyman Enerio LLP.

Cohen is represented by Jeremy Friedman and Spencer Oster of Friedman Oster PLLC, Gustavo Bruckner of Pomerantz LLP and Peter B. Andrews and Craig J. Springer of Andrews & Springer LLC.

Counsel information for the defendants was not immediately available.

The cases are Sciabacucchi v. Liberty Broadband Corp. et al., case number 11418, and Cohen v. Malone et al., case number 11416, both in the Court of Chancery of the State of Delaware.

--Editing by Mark Lebetkin.