

March 30, 2015

SUBMITTED ONLINE IN CONJUNCTION WITH EX PARTE APPLICATION

Marlene H. Dortch
Office of the Secretary
FEDERAL COMMUNICATIONS COMMISSION
445 12th St., SW
Suite TW-A325
Washington, DC 20554

Dear Ms. Dortch:

On March 26, 2015, Byron Allen, Janice Arouh and I met with the office of the Honorable Chairman Wheeler. The purpose of the meeting was to discuss the National Association of African American Owned Media (“NAAAOM”) and Entertainment Studios Networks (“ESN”) significant concerns relating to the Comcast/Time Warner and AT&T/DirecTV pending mergers, and the lawsuits between NAAAOM/ESN and the aforementioned multi-video programming distributors (“MVPDs”).

After 50 plus years, none of these MVPDs carry any 100% African American-owned networks. These MVPDs spend approximately \$50 billion per year licensing cable networks and advertising with less than \$3 million per year going to 100% African American-owned media.

We explained the context of the lawsuits as it relates to these MVPD’s unilateral refusal to contract with ESN for cable channel carriage, license fees, and advertising despite the growing popularity and proven success of ESN’s channels while these same MVPDs have launched multiple, white-owned networks. Specifically, pursuant to the Civil Rights Act of 1866 as codified in 42 U.S.C. §1981, “[a]ll persons...shall have the right...to make and enforce contracts...as is enjoyed by white citizens.” Section 1981 is derived from section 1 of the Civil Rights Act of 1866, which, in turn, was passed pursuant to Congress’ authority to enact legislation to enforce the Thirteenth Amendment. See *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409,442 n.78 (1968).

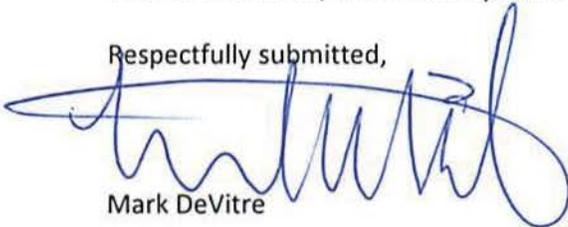
ESN has been trying to secure market-based carriage agreements and advertising with these MVPDs for over seven years, to no avail. Over the years, many other 100% African American-owned media

companies have suffered the same discrimination from these MVPDs. So, faced with no alternative, ESN resorted to the law and filed lawsuits for racial discrimination in contracting under Section 1981. The subject MVPDs continue to refuse to discuss an amicable, reasonable and peaceful solution that is on parity with similarly situated white-owned media companies despite ESN's pre and post lawsuit filing attempts to settle these claims. ESN is the only wholly-owned African American multi-channel operator (i.e., seven 24/7 Hi Def cable networks in active national distribution for more than six years) in the country and the MVPDs simply do not provide their subscribers, the viewing public of the United States, with any channels that are 100% African American-owned, including those channels of ESN, despite the fact that African Americans make up 13% of the national population, and represent as much as **forty percent (40%)** of the MVPDs revenue.

We, and all African Americans, need help and support from our elected representatives to ensure economic inclusion of 100% African American-owned media companies by the major white media corporations of the United States. We need the FCC to stand up for 100% African American-owned media and recognize the right and need for African Americans in this country to own their own media companies which provides for the kind of diversity in voices the FCC is supposed to protect. Unlike the 2010 case of Comcast and NBC Universal, we implore you to stop allowing giant, white-owned media corporations to get bigger while continuing to squeeze 100% African American-owned media to the point of extinction.

Moreover, NAAAOM and ESN recommended that the FCC pause any further review of these mergers unless our lawsuits, as well as those suits brought by our own Federal Trade Commission against these MVPDs, are adjudicated. For your reference please visit www.naaaom.com to review the Comcast/Time Warner and AT&T/DirectTV complaints.

Respectfully submitted,



Mark DeVitre

cc: Maria L. Kirby – Legal Advisor, Office of Chairman Tom Wheeler, FCC
Philip L. Verveer – Senior Counsel, FCC
Hillary B. Burchuk – Office of General Counsel, FCC
Jamilia Ferris – Office of the General Counsel, FCC