



November 9, 2015

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

**Re: MB Docket No. 15-149 and MB Docket No. 14-261, Submitting Party –
Herring Networks, Inc., dba One America News Network and AWE.**

**Ex Parte Filing post meeting regarding the Application of Charter
Communications, Inc. (“Charter”), Time Warner Cable Inc. and Advance
/ Newhouse Partnership for Consent to Transfer Control of Licenses
and Authorizations (The Charter - TWC Merger) and the Definition of a
MVPD**

Dear Chairman Dortch:

Pursuant to Section 1.1206 of the Commission’s rules, this ex parte is filed on behalf of Herring Networks, Inc. On November 9, 2015, Charles Herring, President of Herring Networks, Inc. met with Gigi B. Sohn, counselor to the Chairman, Jessica Almond, Legal Advisor, Media Public Safety, and Enforcement to the Chairman, and Owen Kendler, Office of the General Counsel.

Mr. Herring stated that Herring Networks, Inc. is a national independent and family owned cable programming company, which owns and operates two national cable services, namely AWE, a 24/7 lifestyle and entertainment channel, and One America News Network (OAN), a credible source of national and international news, 24/7.

Mr. Herring stated that its company’s affiliation agreement with Charter for its AWE (fka WealthTV) service has included a prohibited alternative distribution method provision, contractually preventing Herring Networks, Inc. from exhibiting its linear feed of AWE to over the top (“OTT”) devices and streaming services. Mr. Herring stated that this anti-competitive provision has caused the network to slow its

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deployment to OTT devices and avoid excessive advertisement of its services on OTT platforms. Herring Networks, Inc. made multiple attempts to negotiate the anti-competitive provision out of its agreement with Charter Communications but was unsuccessful. Mr. Herring characterizes such provisions as anticompetitive and discriminatory towards independent networks. The actual provision, attached, was provided.

Further, Mr. Herring believes that the anti-competitive tactics deployed by Charter Communications, along with the lack of action in defining OTT services, such as the now defunct Sky Angel as MVPDs, (see Herring's April 23, 2015 ex parte filing, MB Docket No. 14-261) has hurt competition in the marketplace at the direct expense of independent programmers, consumers, and new emerging businesses, small and large. Mr. Herring stated that small companies, such as the now defunct Sky Angel, suffered from prohibited alternative distribution method provisions, along with large multinational giants such as Intel, which eventually sold its On Cue OTT product after experiencing challenges with acquiring programming.

Mr. Herring stated that with its affiliation agreement with Charter Communications expiring, with an initial term of ten years ending in the early half of 2016, the network has been actively engaged with Charter. To the network's disappointment, the programming discussions with Charter for carriage of AWE and One America News Network show that Charter has foreclosed on meaningful consideration. Herring Networks, Inc. was forced to send Charter Communications formal notice of termination of its existing agreement to negate anti-competitive provisions and other discriminatory provisions. Only *after* sending formal notice of termination and pointing out the anti-competitive provision concerns, especially while seeking merger approval from the Department of Justice and the Federal Communications Commission, did Charter agree to modify the agreement.

Mr. Herring listed a host of concerns with Charter's actions towards its two independent networks, including:

1. Charter has not done the fundamentals when it comes to review of Herring Networks, Inc.'s two services. Charter refuses to review third party set-top-box numbers provided by the network and dismisses such measured performance data.
2. Charter has not taken the time to review One America News Network, dismissing the well rated and merging news channel by stating that there is "no demand for news" and it's "not a good business".

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3. These tactics amount to a constructive lack of good faith in the negotiations, despite Charter's attempt to explain it away.
4. Charter cites challenges with tying/bundling by large programmers as a pretext for denying independent programmers carriage in perpetuity. The FCC should take note of such "pretexts", especially when they can lead to lack of competition.
5. As Charter proposes to get bigger, there is nothing to suggest that this practice or business orientation will change; in fact, it will get worse as Charter gains increase market share and market power post-merger.
6. The main pillars of the FCC's public interest standard are localism, diversity (of viewpoint) and added services for consumers. OAN and AWE fit at least two of these criteria.

Mr. Herring stated that based on its recent dealings with Charter, it is reasonable and credible for Herring Networks to modify its assessment of the Charter - TWC merger, and to communicate this assessment to policymakers and regulators in the context of the merger review.

What is clear following recent discussions with Charter, is a fundamental lack of respect for independent programmers, even with proven performance value in the marketplace, such as One America News and AWE. If this is suggestive of how Charter treats an independent network pre-merger, we are highly concerned about the treatment in store for independent networks post-merger.

Mr. Herring encourages stringent review of the anti-competitive practices Charter has implemented against merging OTT services, and strongly suggests merger conditions to protect against discriminatory behavior by Charter Communications against independent networks and favoritism towards programming with common ownership such as Starz, Lionsgate, and Discovery Communications, Inc's plethora networks.

Respectfully submitted,

Charles Herring

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Copies To:

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(Handout Provided)

(a) Prohibited Exhibitions.

(i) Network agrees that in no event will it authorize the exhibition of the Service, any portion thereof or any programming derived therefrom on a broadcast station or other cable television network in the area served by any System.

(ii) In the event that, during the Term, Network grants to any third party the right to exhibit or distribute, in the Territory for delivery to residential customers, the Service or a substantial portion of the programming comprising the Service via the "Internet", any other web-based Internet protocol distribution means or any local or wide area computer network (unless such computer network is maintained by Network for its own employees), in any format, then Network shall promptly offer such rights to Affiliate on terms and conditions, each one of which is at least as favorable as that offered or granted to any such third party; provided, that any such terms and conditions must relate solely to the exercise of the pertinent right. In addition, Network shall not, during the Term, directly or indirectly sell or exhibit to consumers in the Territory for delivery to residential customers, the Service or programming in excess of six (6) hours of the programming on the Service airing in the same calendar month via the "Internet", any other web-based Internet protocol distribution means or any local or wide area computer network (unless such computer network is maintained by Network for its own employees), in any format. For purposes of clarification, the availability of such six (6) hours of programming is not intended to mean that each individual household may select up to six (6) hours of programming from a catalog of Service programming, but rather that the same programming (up to a maximum of six (6) hours) may be made available to all households simultaneously. Notwithstanding the foregoing, Network may exhibit or distribute via the Internet (A) programming of a similar nature and content to the Service, provided that such programming does not in any way or manner utilize programming from the Service, including but not limited to time-shifting; (B) programming in excess of six (6) hours of the programming on the Service(s) airing in the same calendar month and comprising a portion of the Service, provided any such programming (1) represents only a limited duration promotional or marketing "stunt" simulcasting a live special event limited to one per calendar quarter, or (2) is comprised only of video clips or short-form streaming video elements of three (3) minutes or less designed to increase or improve viewership of the Service.

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