December 18, 2015

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

Re: MB Docket No. 15-149, 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)

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 December 16, 2015, Robert Herring, Sr., Founder & CEO of Herring Networks, Inc. and Charles Herring, President of Herring Networks, Inc. met with Jessica Almond, Legal Advisor Media, Public Safety and Enforcement, Office of the Chairman, Jim Bird, Transaction Team Leader, Office of General Counsel, Ty Bream, Attorney Advisor, Media Bureau, Christopher Clark, Attorney Advisor, Media Bureau, Elizabeth Cuttner, Attorney Advisor, Office of General Counsel, Owen Kendler, Transaction Working Team Leader, Office of General Counsel, Elizabeth McIntyre, Wireline Competition Bureau, Susan Singer, Chief Economist, Media Bureau, Kiley Naas, Office of General Counsel, Joel Rabinovitz, Transaction Team, Office of General Counsel, Karen Schroeder, Honors Attorney Program, Alexis Zayas, Attorney Advisor, Media Bureau,

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.

Charles Herring provided copies of its September 9th ex parte filing and reviewed the key points highlighted in the filing. 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 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 was provided as part of the September 9th, ex parte filing, attached.

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.   Mr. Herring mentioned that third party set top box performance data from Rentrak shows that One America News Network, for the week of Nov 30, 2015, outperforms a number of major brands including Comedy Central, TruTV, CNBC, BBS America, Nat Geo, Nat Geo Wild, Travel

Channel, Animal Planet, Velocity, Fox Business, and numerous others. AWE outperforms similar genre network Esquire, AXS and a host of others.

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".

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.

Mr. Herring provided a one page screen shot (attached) of the FCC Electronic Comment Filing System and pointed out that a vast majority of the 17,100 emails flooding docket 15-149 are from passionate One America News Network and AWE viewers concerned about the merger. A one sheet labelled "Examples of the Comments Submitted" (attached) was provided.

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, there is reason for concern about the treatment in store for independent networks post-merger.

Mr. Herring called attention to media reports of John Malone eyeing content consolidation and how increased video customers with New Charter may benefit distribution, see attachment. Mr. Herring stated that New Charter, approaching 20 million subscribers, could launch new channels and ensure their success. This critical benchmark, according to Mr. Herring, has been stated in the book "Disney War". (The actual quote is, "But now Comcast had 21.5 million subscribers, with 20 million considered the critical mass necessary to launch a profitable cable channel. That meant that Comcast could launch programming on its own cable systems, page 477.)

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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

Charles Herring
President
Herring Networks, Inc.

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