March 18, 2016

The Honorable Tom Wheeler, Chairman
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: MB Docket No. 16-41. Notice of Inquiry ("NOI") – Promoting the Availability of Diverse and Independent Sources of Video Programming. Submitting Party: Herring Networks, Inc., dba One America News Network and AWE.

Dear Chairman Wheeler:

As a 100% family owned and independent national programmer, challenged with discriminatory carriage practices by many MVPDs, the recent NOI brought overwhelming joy and much welcomed hope. I applaud the efforts undertaken by the FCC. Your comments in taking the "…Congressional mandate to foster a diverse, robust, and competitive marketplace for video programming…" seriously is much appreciated.

Herring Networks, Inc. owns and operates two national cable channels, namely *One America News Network* ("OAN") and AWE, an acronym for *A Wealth of Entertainment,* formally known as *WealthTV*. *WealthTV* launched in June of 2004 and was one of the first all high definition national cable channels. *WealthTV* filed carriage access complaints against the iN Demand owners, namely Comcast, Time Warner Cable, Cox Communications and Bright House.

<u>MVPD Affiliated Networks Continue to Receive Favorable Treatment</u>

History, including a plethora of carriage access complaints through the years, has shown what we know to be intuitive – MVPDs have a natural tendency to favor their own programming. MVPDs treat affiliated networks "like siblings", extending preferred treatment from broad distribution to preferred channel placement to

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charging "themselves" wholesale rates well beyond similar programming from independent networks in the marketplace and passing the charges onto the consumer. With greater consolidation in the marketplace and no meaningful process to discourage such behavior, (discussed below) the practice of MVPDs providing preferential treatment to its affiliated content over readily available content in the marketplace will accelerate.

The Carriage Access Compliant Process is Broken and Needs to be Fixed

Through the years, several networks, including *WealthTV*, have filed carriage access complaints. The process is prohibitively expensive and excessively lengthy such that it doesn't offer any meaningful relief. As an example, mergers between some of the nation's large MVPDs, such as Charter/TWC/Advanced Newhouse have a shot clock of 180 days. There is no shot clock for a more simple carriage access complaint. Further, history has shown that no independent programmer has ever been successful in seeking the relief sought.

Pundits will argue that fewer complaints are being filed, which is a clear example that there is less discrimination taking place against independent programmers. The reality is that everyone in the cable industry, especially MVPDs and independent programmers, recognize that there isn't a viable path for relief via the carriage access regulations. Thus the deterrent to prevent discriminatory behavior is lost, along with the carriage access compliant process being broken. A time sensitive, cost bearable, and effective process is needed to address complaints and offer a deterrent to discriminatory practices.

Retaliation Continues to Take Place

Herring Networks, Inc. has experienced clear retaliation for speaking out about some of the practices experienced by some MVPDs. The retaliation has included cancelled appointments, denial of future meetings, and no meaningful consideration being extended. Several independent programmers, aware of such retaliation, simply avoid speaking with government agencies, especially the FCC where ex parte filings are required and available for all to read.

Bundling has Greatly Hindered Independent Networks and Consumers

The practice of bundling highly rated and sought after marquee channels with numerous less desirable channels has led to marketplace where bandwidth is at a premium, highly penetrated basic packages are filled, and programming dollars are consumed, leaving little room for independent networks. Some MVPDs with affiliated program holdings such as Comcast, contribute to the problem. Bundling also costs the consumer. Bundled programming that is less desirable receives more favorable penetration on MVPDs and higher rates, which are passed on to the consumer.

Independent Networks are forced to Accept Non-favorable Terms

Programmers affiliated with MVPDs and broadcasters have special negotiating powers. For example, an MVPD can exchange programming carriage on its video system for carriage of its own programming on another MVPD. Affiliated programming networks have the advantage of receiving immediate carriage on its affiliated MVPD and receiving above fair market pricing. This allows the programming service time to build its brand and build up the quality and volume of its programming. Independent networks, even with a strong single brand, are commonly forced to accept unfavorable and sub market terms and conditions, including:

Hunting License Agreements – A hunting license agreement is an affiliation agreement with no commitment to launch the network. Terms and conditions are defined to allow for launches at a later date at the discretion of the MVPD.

Limited System (DMA) Rollout – A cable MVPD may have numerous systems operating in various markets. Independent networks may be extended carriage in only a small number of the cable systems, not companywide rollout.

Low Penetration Tiers – Many independents are forced to accept limited penetration tiers that may represent only a fraction of an MVPDs video subscriber base regardless of the demand and ratings of the network.

Low Rates - With limited negotiating powers, an independent network may be forced to accept a lower than market rate for similar performance (rated) programming.

Most Favored Nation Provisions – Independent networks are often forced to accept broad MFN language. Such provisions can cause lead to a chipping away of revenue and distribution. For example, a drop provision in one agreement may cause

Drop Rights – Some MVPDs ask independent networks for drop rights without cause.

Alternative Distribution Method Limitation Clauses – Some MVPDs demand alternative distribution method provisions preventing an independent programmer from offering its linear service from being distributed via the internet.

I'm pleased to discuss these numerous issues with the FCC.

Respectfully submitted,

Charles Herring

Charles Herring
President
Herring Networks, Inc.

Copies To:

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