

warned that, going forward *after* completion of the transaction, she would “be watching closely with my large megaphone in hand should these [MOUs] be ignored”. The MOUs *were* ignored, as the Commissioner could easily have determined through even minimal inquiry, much less the “watching closely” she promised. And yet, she has been totally silent, apparently on the assumption that sounding tough in her concurring statement was all she had to do. If her large megaphone were still (or ever) in her hand, it has yet to be used for anything other than helping to create the misimpression that Commissioner Clyburn might be seriously interested in identifying and remedying Comcast’s discriminatory practices.

#### CONCLUSION

46. When the Commission imposes conditions on a party, the Commission can and should expect, and require, compliance with those conditions. Indeed, it *must* require compliance if it wishes to claim legitimate regulatory authority: an authority that willingly allows its orders to be flouted is no authority at all. In the case of Comcast, the Commission has clearly fallen down. It has allowed Comcast to chart a course contrary to the purpose of the condition, a course that constitutes exclusionary racial discrimination when the Commission plainly contemplated inclusionary opportunities for, *inter alia*, African Americans.

47. This horrendous state of affairs should not be allowed to continue. In view of all of the above, the Petitioners submit that the Commission should immediately undertake a comprehensive, detailed investigation of Comcast’s purported compliance with the condition concerning carriage of programming provided by independent, 100% African American-owned media. In so doing, the Commission should require the submission of detailed information and documentation concerning, *inter alia*: the ownership and management structures of Aspire and Revolt; the “close to 100” proposals submitted to Comcast, all but four of which were rejected;

the review process through which Comcast selected Aspire and Revolt and rejected 90+ other proponents; and the process(es) which Comcast has since undertaken to identify additional 100% African American-owned sources of programming in fulfillment of the Commission's condition.

48. To the extent that, as a result of such investigation, the Commission determines that Comcast has failed to comply, then the Commission should require Comcast to take *immediate* corrective steps, subject to rigorous, continuous and ongoing Commission oversight. And to the extent that the investigation leads to the conclusion that Comcast has violated the conditions – including engaging in misrepresentation or lack of candor – the Commission should impose meaningful penalties on Comcast, penalties which could include the full range of possible sanctions, from monetary forfeiture to revocation or non-renewal of some or all of Comcast's licenses.

49. If Comcast is to be a Commission regulatee, it must behave like a regulatee, respecting the Commission's authority and complying with its rules and orders. Comcast has not done so to date; instead, it has cloaked itself in faux-compliance with the Commission-imposed condition and, in so doing, furthered its racially discriminatory practices. The Commission should not allow itself to be a party to such racial discrimination and fraud any longer.

Respectfully submitted,

/s/ Harry F. Cole *Harry F. Cole*  
Harry F. Cole *ng abc*

Fletcher, Heald & Hildreth, P.L.C.  
1300 N. 17th Street – 11th Floor  
Arlington, Virginia 22209  
(703) 812-0483  
cole@fhhlaw.com

*Counsel for the National Association of African  
American Owned Media and Entertainment  
Studios, Inc.*

March 24, 2016

**Attachment A**

## DECLARATION

I, Mark DeVitre, hereby declare the following to be true and correct:

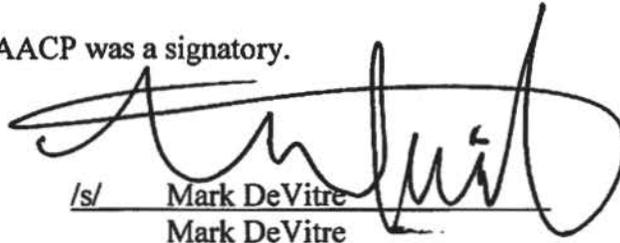
1. I am President of the National Association of African American Owned Media ("NAAAOM"). I am preparing this Declaration for submission to the Federal Communications Commission in connection with a Petition for Immediate Investigation and Imposition of Conditions, Monetary Forfeitures, Revocation and/or Non-Renewal of Licenses ("Petition") being filed on behalf of NAAAOM and Entertainment Studios, Inc. ("ESI") with respect to Comcast Corporation.

2. NAAAOM is an organization of voices across the communications and entertainment industries dedicated to fighting for economic inclusion, including equal access to distribution, investment capital, sponsorship, and other critical resources for 100% African American owned media. Its goal is the creation of sustained equal opportunities to communicate which can help rectify continued racial imbalances in the economy and society as a whole.

3. ESI is a fully integrated global media production and distribution company with eight networks of high definition programming, dozens of first-run syndicated shows (which have been nominated for (and won) Emmy Awards), over 5,000 hours of programming, a film distribution company, and a podcast network. It produces and distributes 38 syndicated television series. ESI is the largest independently owned and operated syndication producer/distributor for broadcast television programming. More importantly, ESI is 100% owned and controlled by Byron Allen, an African American, making ESI the only global media company of its size 100%-owned-and-managed by an African American individual. Mr. Allen began his career in entertainment as a stand-up comedian in the 1970s, became a television host and personality in the 1980s, and in 1993, formed ESI. ESI is a founding member of NAAAOM.

4. The representations set out in the Petition are based on research of publicly available sources undertaken by the Petitioners (or at their request).

5. Additionally, Petitioners have been advised that Las Vegas Entertainment and Sports Network, Inc. ("LVES"), another 100% African American-owned and operated video network, has for years been given essentially the same run-around by Comcast: vague quasi-promises to consider carriage of their networks, quasi-promises that invariably evaporate with no explanation. The Petitioners understand that the President of LVES – who happens to be a member of the Executive Committee of the Las Vegas chapter of NAACP – has concluded, based on Comcast's treatment of LVES, that 100% African American-owned media cannot get a fair shake from Comcast, notwithstanding Comcast's commitments in the Memorandum of Understanding to which the national NAACP was a signatory.

  
/s/ Mark DeVitre  
Mark DeVitre

Date: 3-24-2016

**Attachment B**



Brian P. Kemp  
 Secretary of State

OFFICE OF SECRETARY OF STATE  
 CORPORATIONS DIVISION  
 237 Coliseum Drive  
 Macon, Georgia 31217  
 (404) 656-2817

Registered agent, officer, entity status information via the Internet  
 sos.georgia.gov/corporations

APPLICATION FOR CERTIFICATE OF AUTHORITY  
 FOR FOREIGN LIMITED LIABILITY COMPANY

**IMPORTANT**

Remember to include your e-mail address when completing this transmittal form.

Providing your e-mail address allows us to notify you via e-mail when we receive your filing and when we take action on your filing. Please enter your e-mail address on the line below. Thank you.

E-Mail: wreeder@gmctv.tv

NOTICE TO APPLICANT: PRINT PLAINLY OR TYPE REMAINDER OF THIS FORM

1.	Aspire Channel, LLC Limited Liability Company Name April 20, 2012 Date Business Commenced (Or Proposed) in Georgia (NOTE: If the date provided here is more than 30 days prior to the date the application is received by the Secretary of State, a \$500 penalty must be paid; penalty is statutory and cannot be waived by Secretary of State.)	Name Reservation Number (Optional)	
2.	Wm. (Wj), Esq. Name of filing person (certificate will be mailed to this person, at address below) 1514 East Cleveland Avenue, Suite 240 Address Atlanta City	770 692 9955 Telephone Number GA 30344 State Zip Code	2/12/12 ACCOUNTING REGISTERED
3.	Delaware/USA Jurisdiction (Home state/country)	February 1, 2012 Date of Organization in home state	
4.	1514 East Cleveland Avenue, Suite 240 Address of Principal Place of Business Atlanta City	GA 30344 State Zip Code	
5.	Charles E. Humbard Name of Registered Agent in Georgia 1514 East Cleveland Avenue, Suite 240 Registered Office Street Address in Georgia (Post office box or mail drop not acceptable for registered office address) Atlanta City Fulton County GA State 30344 Zip Code		
6.	Eric Holoman, 9100 Wilshire Boulevard, 700 East Tower Manager's Name & Address (Person w/responsibility for maintaining records)	Beverly Hills City CA State 90212 Zip Code	
7.	1514 East Cleveland Avenue, Suite 240 Address Where Limited Liability Company Records Are Maintained Atlanta City	GA 30344 State Zip Code	
8.	<p>NOTICE: Mail or deliver an original and one copy of this form and the filing fee of \$225.00 to the Secretary of State at the above address. Filing fees are NON-refundable.</p> <p>This application is signed by a person duly authorized to sign such instruments by the laws of the jurisdiction under which the foreign limited liability company is organized. The foreign limited liability company undertakes to keep its records at the address shown in #7 above until its registration in Georgia is canceled or withdrawn. The foreign limited liability company, in accordance with Title 14 of the Official Code of Georgia Annotated, appoints the Secretary of State as agent for service of process if no agent has been appointed in Georgia or, if appointed, the agent's authority has been revoked or the agent cannot be found or served by the exercise of reasonable diligence.</p>		
	 Authorized Signature Req1	State of Georgia Creation - Foreign Entity 2 Page(s)	5/3/12 <a href="http://www.georgiacorporations.org">http://www.georgiacorporations.org</a> FORM 241





UPLIFTING ENTERTAINMENT

May 4, 2012

Via First Class U.S. Mail

Office of Secretary of State  
Corporations Division  
237 Coliseum Drive  
Macon, GA 31217

Re:- --Application for Certificate of Authority for Foreign Limited Liability Company

To Whom It May Concern:

Enclosed please find the filing fee and an original and one copy of the Application for Certificate of Authority for Foreign Limited Liability Company for Aspire Chanel, LLC.

If you have any questions or concerns please feel free to contact me.

Sincerely,

Wm. (Wil) Reeder, Esq.  
Consultant  
Business and Legal Affairs

RECEIVED  
SOS/PLB  
ACCOUNTING  
2012 MAY -7 PM 3:33

**CERTIFICATE OF SERVICE**

I, Harry F. Cole, hereby certify that, on this 24th day of March, 2016, I have caused copies of the foregoing "Petition for Immediate Investigation and Imposition of Conditions, Monetary Forfeitures, Revocation and/or Non-Renewal of Licenses" to be sent by electronic mail or placed in the U.S. mail, first class postage prepaid (as indicated below), addressed to the following:

The Honorable Tom Wheeler, Chairman  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554  
(By email – Tom.Wheeler@fcc.gov)

The Honorable Michael O’Rielly, Commissioner  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554  
(By email – mike.o’rielly@fcc.gov)

The Honorable Mignon Clyburn, Commissioner  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554  
(By email – Mignon.Clyburn@fcc.gov)

Jonathan B. Sallet, General Counsel  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554  
(By email – Jonathan.Sallet@fcc.gov)

The Honorable Jessica Rosenworcel,  
Commissioner  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554  
(By email – Jessica.Rosenworcel@fcc.gov)

David P. Murray, Esquire  
Jessica F. Greffenius, Esquire  
Willkie, Farr & Gallagher, LLP  
1875 K Street, N.W.  
Washington, D.C. 20006  
*Counsel for Comcast Corporation*  
(By first class mail)

The Honorable Ajit Pai, Commissioner  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554  
(By email – Ajit.Pai@fcc.gov)

Kathryn A. Zachem  
David Don  
*Regulatory Affairs*  
Lynn R. Charytan  
Julie P. Laine  
*Comcast NBCUniversal Transaction Compliance*  
Francis M. Buono  
Ryan G. Wallach  
*Legal Regulatory Affairs*  
Comcast Corporation  
300 New Jersey Avenue, N.W., Suite 700  
Washington, D.C. 20001  
(By first class mail)

/s/ Harry F. Cole  
Harry F. Cole

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In re )  
 )  
Comcast Corporation ) MB Docket No. 10-56  
 )

To: Marlene H. Dortch, Secretary

For transmission to: The Commission

**PETITION FOR IMMEDIATE INVESTIGATION AND IMPOSITION OF CONDITIONS,  
MONETARY FORFEITURES, REVOCATION AND/OR NON-RENEWAL OF LICENSES**

HARRY F. COLE  
Fletcher, Heald & Hildreth, P.L.C.  
1300 N. 17th Street – 11th Floor  
Arlington, Virginia 22209  
(703) 812-0483  
cole@fhhlaw.com

*Counsel for the National Association of African  
American Owned Media and  
Entertainment Studios, Inc.*

March 24, 2016

## SUMMARY

In an effort to convince the Commission of the counterintuitive notion that its merger with NBC-Universal might advance the public interest in diversity of media, Comcast Corporation “voluntarily” committed to, *inter alia*, carrying four independently-owned and-operated programming services in which African Americans have a majority or substantial ownership interest. Two of these were to be carried within two years of the consummation the merger; the other two were to be carried within eight years of consummation. The Commission’s grant of the merger was conditioned on compliance with that commitment.

In repeated reports to the Commission, Comcast has claimed that it has complied with the initial two-network commitment. But Comcast’s reports do *not* demonstrate compliance. In fact, they indicate precisely the opposite. And publicly available information underscores not only Comcast’s lack of compliance, but also a history of racist antagonism of which its bogus claims of compliance are only the most recent manifestations. Rather than negotiate in good faith with an established program provider owned 100% by an African American, Comcast has chosen to deal with organizations that are nothing more than front organizations, fronts to each of which one prominent African American has lent his name while non-African Americans call the shots and reap the benefits.

This is not the first time Comcast has engaged in such discriminatory behavior, but it should be the last.

If the Commission is serious about promoting authentic diversity of programming and bona fide, non-discriminatory access to economic opportunities, the Commission must immediately undertake a detailed, critical investigation into Comcast’s claims of compliance and, on the basis of its findings, impose on Comcast penalties commensurate with the seriousness of its misconduct. And Commissioner Clyburn, in particular, should be leading the

charge in this effort, because it was she who sternly warned, in her concurrence to the grant of the Comcast merger, that she would be “watching closely with my large megaphone in hand” to ensure Comcast’s compliance.

TABLE OF CONTENTS

SUMMARY ..... ii

BACKGROUND..... 3

*The Comcast Conditions*..... 3

*Comcast’s Claims of “Compliance”* ..... 5

*Aspire* ..... 6

*Comcast, GMC and Programming Supposedly Directed to African American Audiences*..... 11

*Revolt* ..... 15

DISCUSSION..... 17

*The inherent incredibility of Comcast’s claims* ..... 17

*The Commission’s Complicity*..... 20

CONCLUSION ..... 22

1. In a Memorandum Opinion and Order released on January 20, 2011, the Commission approved applications that resulted in the merger of Comcast Corporation (“Comcast”) and NBC Universal, Inc. (“NBCU”). In awarding the governmental imprimatur to those applications, the Commission, with the concurrence of the Obama Administration’s Department of Justice expressly required that Comcast comply with a number of conditions, some arising from Memoranda of Understanding (“MOUs”) entered into by Comcast. To date, as demonstrated below, Comcast has failed to comply with those conditions. And more importantly, in the intervening five years the Commission has utterly failed either to investigate Comcast’s non-compliance with, or to enforce, those materially significant conditions. Accordingly, the National Association of African American Owned Media (“NAAAOM”) and Entertainment Studios, Inc. (“ESI”) (collectively, the “Petitioners”) hereby demand that the Commission immediately take all appropriate measures – including, but not necessarily limited to, those described herein – to (a) investigate the extent to which Comcast has failed to comply with materially significant conditions imposed upon it by the Commission in *Comcast Corporation*, 26 FCC Rcd 4238 (2011) (“*Comcast Order*”), (b) require Comcast to take immediate corrective measures, subject to rigorous, continuous and ongoing Commission oversight, to ensure future compliance with those conditions and (c) impose such sanctions as may be warranted, including both monetary forfeitures and/or revocation and/or non-renewal of licenses, for Comcast’s flagrant violations of those conditions to date.

2. As we will demonstrate below, since the conditions were imposed, Comcast has consistently failed to honor its commitment to add independently-owned-and-operated programming services in which African Americans have a “majority or substantial interest” – terms the ordinary meaning of which connotes control and majority equity ownership by African

Americans. To the contrary, Comcast's actions – as opposed to its fanciful claims of compliance – reflect nothing but contempt for the Commission, the African American community, the television-viewing public and the integrity of the Commission's processes.

3. In flouting the commitments and conditions to which it “voluntarily” acceded, Comcast has continued on a relentless course of racial discrimination in its program carriage practices that long pre-dated its acquisition of NBCU and that persists even today. And the Commission's failure to date to make even the slightest effort to hold Comcast to its commitments makes the Commission and the Obama Administration complicit in this racially discriminatory conduct. The time has come for the Commission (and the Obama Administration) to acknowledge and act on its statutory duty to uphold the public interest, and to demonstrate that the imposition of conditions was not merely an empty charade, a meaningless gesture intended to create the illusion of diversity advancement and economic inclusion.

4. NAAAOM is an organization of voices across the communications and entertainment industries dedicated to fighting for economic inclusion, including equal access to distribution, investment capital, sponsorship, and other critical resources for 100% African American owned media. Its goal is the creation of sustained equal opportunities to communicate which can help rectify continued racial imbalances in the economy and society as a whole.<sup>1</sup>

5. ESI is a fully integrated global media production and distribution company with eight networks of high definition programming, dozens of first-run syndicated shows (which have been nominated for (and won) Emmy Awards), over 5,000 hours of programming, a film distribution company, and a podcast network. It produces and distributes 38 syndicated television series. ESI is the largest independently operated syndication producer/distributor for broadcast

---

<sup>1</sup> See Attachment A.

television programming. More importantly, ESI is 100% owned and controlled by Byron Allen, making ESI the only global media company of its size 100%-owned-and-managed by an African American individual. Mr. Allen began his career in entertainment as a stand-up comedian in the 1970s, became a television host and personality in the 1980s, and in 1993 entered the television production and media industry by founding ESI. ESI is a member of NAAAOM.

## BACKGROUND

### *The Comcast Conditions*

6. When the Commission approved the transfer of control of NBCU to Comcast, the Commission observed that diversity of programming is “one of the guiding principles of the Commission’s broadcast ownership policies”. *Comcast Order* at ¶187. Presumably recognizing the undeniable fact that its proposed acquisition of NBCU would fly in the face of that “guiding principle”, Comcast disingenuously entered into a number of supposedly “voluntary”<sup>2</sup>

---

<sup>2</sup> We purposely place “voluntary” in quotation marks. The ability of the Commission to legally insist unilaterally on the types of commitments included in the Memoranda of Understanding (“MOUs”) was, at the very most, dubious, as Commissioners McDowell and Attwell Baker observed in their joint concurring statement to the decision granting the Comcast applications. (Other Commissioners have since expressed similar concerns about the imposition of conditions as “forced tribute” that an applicant “must offer to mollify the Capitol”. *See, e.g.*, Statement of Commissioner Ajit Pai in MB Docket No. 14-90.)

Despite the questionable legality of “voluntary” conditions, the Commission plainly preferred to impose such conditions. But if the Commission were concerned about maintaining the appearance of non-involvement in the development of the conditions – after all, if the Commission were dictating their terms from the start, how could they be said to be “voluntary”? – how could it communicate to the private parties the types of conditions the Commission might deem to have a favorable impact on the eventual public interest determination the agency would have to make?

One possible mechanism: orchestration, behind the scenes and off the record, of supposedly private agreements that would be submitted as essentially extraneous exhibits to the application. How could the parties to such agreements know just what the Commission might want to see? Closed-door, unreported connections can easily make that happen. Could such connections

Memoranda of Understanding (“MOUs”) with various special interest groups, the purpose of which was transparent: to create the misimpression that the transaction might somehow be viewed as benefiting diversity. Specifically, in relevant part the MOUs called for Comcast to commit to

add[ing] at least ten (10) new independently-owned and-operated programming services over the next eight (8) years following closing of the transaction. ... Four (4) of the new networks will be linear video programming services in which African Americans have a majority or substantial ownership interest, with at least two (2) of those services to be added in the first two (2) years following closing of the transaction. The two (2) remaining linear video programming services in which African Americans have a majority or substantial ownership interest will be added within the eight (8) year period following closing of the transaction. In each system that adds one or more of the four (4) programming services, such service(s) will be added to the “D1” digital tier. Such services will be added on commercially comparable and competitive terms to the carriage of the services by other distributors.

---

possibly occur? Ask former Commissioner Attwell Baker, who left the Commission to become a Comcast executive mere months after voting in favor of the transaction.

And with particular respect to the MOUs in this case, it has been publicly reported that: Al Sharpton lobbied on behalf of Comcast, and more or less simultaneously lent his lobbying talents to a successful effort by Commissioner Clyburn’s father, Representative James Clyburn (D-SC), to retain his leadership position in the House of Representatives; Comcast contributed more than \$10,000 to that latter effort, and had also contributed \$140,000 to Sharpton’s National Action Network; and Sharpton met with Commissioner Clyburn prior to the Commission’s action on the Comcast application.

It should come as no surprise, then, that one of the so-called “African American Leadership Organizations” that entered into one of the MOUs was the National Action Network, on whose behalf Sharpton – who had no apparent experience or expertise in television program production or distribution – was the signatory. And notwithstanding that lack of experience, within eight months of the grant of the Comcast application, MSNBC – a Comcast operation thanks to that grant – gave Al Sharpton a prime-time talk show.

It should also be noted that, while Commissioner Clyburn loudly insisted on the importance of compliance with the MOUs (“I will be watching closely with my large megaphone in hand should these agreements be ignored”), nothing in the record suggests that that “large megaphone” has ever been deployed. All of this might just be pure coincidence, of course – but the confluence of odd circumstances strongly suggests otherwise, and undermines the fanciful notion that the MOUs could legitimately be termed “voluntary”.

See *Comcast Order*, 26 FCC Rcd at 4501. Comcast also promised to establish its own Diversity Advisory Councils to “provide advice to the senior executive teams at Comcast” on programming (among other things).

7. In granting the application, the Commission made fulfillment of those “voluntary commitments” a condition of the grant. But in so doing, the Commission made no provision for effective monitoring of Comcast’s performance. All that was required of Comcast were annual reports relating to the conditions.

### *Comcast’s Claims of “Compliance”*

8. On February 28, 2012, Comcast submitted to the Commission its first “Annual Report of Compliance with Transaction Conditions”. At pages 7-8 of that report, Comcast claimed:

Comcast is also well on its way toward meeting and beating the next milestones under this Condition — the launch of two more channels within two years and one more within three years of the Transaction Order — while simultaneously satisfying its separate voluntary commitment with various third parties that a subset of the independently owned-and-operated networks to be added would have Hispanic American or African American ownership or management. On April 4, 2011, Comcast announced that it was seeking proposals for a Hispanic American operated independent network programmed in English to launch by the end of July 2012 and two majority African American owned independent networks that will launch by the end of January 2013. The selection process for these networks began with a request for proposals which was prominently advertised online, in national magazines aimed at the African American and Hispanic American communities (e.g., *Black Enterprise* and *Hispanic Business*), and in trade publications like *Multichannel News* and *Broadcasting & Cable*. Interested parties were directed to visit a special section of the Comcast website to obtain more information about the proposal submission process. Applications were accepted through June 1, 2011.

Comcast received close to 100 proposals for new independently owned-and-operated African American and Hispanic American networks. As explained in more detail in Section Three: Overview of Progress on Diversity Commitments, on February 21, 2012, and following a thorough evaluation process, Comcast announced that it had reached agreements to launch four independent owned-and-operated channel additions well within the time frames required by the Conditions. The two African American owned and operated channels are: *Revolt*, created by superstar and entrepreneur Sean “Diddy”

Combs and MTV veteran Andy Schuon; and Aspire, created by sports legend and entrepreneur Earvin “Magic” Johnson and the Gospel Music Channel. ...

(Footnotes omitted.)

9. Later in its Report Comcast described the two “African American owned and operated channels” in greater detail as follows:

The two African American channels are:

**Aspire:** Spearheaded by Entrepreneur and NBA Hall of Famer Earvin “Magic” Johnson, in partnership with the Gospel Music Channel, Aspire is dedicated to delivering enlightening, entertaining, and positive programming to African Americans families, including movies, documentaries, short films, music, comedy, visual and performing arts, and faith and inspirational programs. Aspire will celebrate the successes, achievements and accomplishments of the African American community and create new opportunities for the next generation of African American visionaries. The network will launch by summer 2012.

**REVOLT:** Proposed by superstar and entrepreneur Sean “Diddy” Combs and MTV veteran Andy Schuon, this network is designed to feature programming inspired by music and pop culture, including music videos, live performances, music news, and interviews, and will incorporate social media interaction for music artists and fans. The network has entered into an agreement to launch by January 2013.

Comcast’s report – and the similarly upbeat annual reports filed in 2013, 2014 and 2015 – sound great, don’t they? But let’s examine Comcast’s first supposed successes in more critical detail, bearing in mind that Comcast was obligated to add four (4) new “independently-owned and-operated” networks in which African Americans have a majority or substantial ownership interest, at least two of which networks would have to be added within two years of closing and the other within eight years of closing.

*Aspire*

10. Comcast’s first supposed success is the “ASPiRE” network. (The trademark – more on that below – for what Comcast refers to as “Aspire” is technically depicted as “ASPiRE”, according to official records of the Patent and Trademark Office. We will refer to it as “Aspire” here, in keeping with Comcast’s apparent preference.)

11. The first question to ask: Is Aspire an “independently-owned-and-operated” programming service in which African Americans hold a “majority or substantial ownership interest”? Those are, after all, the express terms of the Comcast commitment, so compliance with those terms should be the first thing to check for.

12. But Comcast’s report does not provide sufficient information to determine compliance. All it says is that Aspire is “spearheaded” by a prominent African American professional athlete and “entrepreneur”, Earvin Johnson. The precise nature and extent of Johnson’s ownership interest is not disclosed. Since the condition imposed by the Commission expressly called for African Americans to hold a “majority or substantial ownership interest”, one would have thought that the Commission would have required, *at a minimum*, express disclosure of Aspire’s ownership structure to confirm compliance with the condition. That is especially so in view of the fact that the entity formed to operate Aspire – *i.e.*, Aspire Channel, LLC – is a Delaware limited liability company the ownership records of which do not appear to be publicly available. As a result, without disclosure by Comcast of Aspire’s ownership structure, the Commission would have no way of knowing who owns what in that entity. The Commission has not to date sought further information about the precise ownership arrangements underlying Aspire – a failure that suggests that the Commission has no serious interest in assuring compliance with the condition which it imposed.

13. But regardless of Johnson’s actual ownership interest, Comcast’s disclosure demonstrated on its face that carriage of the Aspire network did not meet the specifications of the condition. As described by Comcast, the network would be operated “in partnership with the Gospel Music Channel”. But the condition specified carriage of an “independently-owned-and-operated” service. Operating “in partnership with” another programmer – especially a white-

owned-and-operated programmer that has historically maintained close ties to Comcast – cannot be said to be an “independent” operation. Again, the Commission did not inquire into precisely how Comcast might think this “partnership” arrangement might comply with the condition.

14. And indeed, had the Commission undertaken even minimal investigation in publicly available media, it could (and should) have found published reports that:

Aspire “is managed by its partner, GMC TV, a family-oriented gospel music-themed cable network, and housed in the same office building as GMC”. [“GMC” refers to the Gospel Music Channel.]<sup>3</sup>

As of February, 2013, Johnson had visited the Atlanta-based offices of Aspire on no more than two occasions and the entire Aspire programming department consisted of one individual who had moved over from GMC.<sup>4</sup>

GMC was expected to provide “operational support for ASPIRE, including affiliate and advertising sales, marketing, programming, production and technical operations.”<sup>5</sup>

Johnson would not personally select programming on the network.<sup>6</sup>

InterMedia Partners, LP, a private equity investment fund founded by Leo Hindery, a white person, reportedly owns 33% of Aspire<sup>7</sup>, and the Yucaipa Companies, managed by Ron Burkle, another white person, has also been identified as an investor<sup>8</sup>, although the

---

<sup>3</sup> See “Inside Magic Johnson’s Perfunctory African-American TV Network”, *The Daily Caller*, February 14, 2013 (<http://dailycaller.com/2013/02/14/inside-magic-johnsons-perfunctory-african-american-tv-network/>).

<sup>4</sup> *Id.*

<sup>5</sup> See “Magic Johnson’s ASPIRE Network Launches”, PR Newswire, June 27, 2012, reported at <http://webcache.googleusercontent.com/search?q=cache:uPGGAzk-DygJ:stilettonation.com/business-magic-johnsons-aspire-network-launches/+&cd=1&hl=en&ct=clnk&gl=u>.

<sup>6</sup> See “Magic Mandate”, *The Washington Free Beacon*, February 22, 2012 (<http://freebeacon.com/issues/magic-mandate/>).

<sup>7</sup> See “Magic Johnson’s ASPIRE Launches ‘Exhale’ with Five Notable Hosts”, *Electronic Urban Report*, May 29, 2014 (<http://www.eurweb.com/2014/05/the-pulse-of-entertainment-magic-johnsons-aspire-launches-exhale-with-five-notable-hosts/>).

<sup>8</sup> See “Comcast Adds 4 Minority-Owned Nets”, *Variety*, February 21, 2012 (<http://variety.com/2012/tv/news/comcast-adds-4-minority-owned-nets-1118050524/>).

precise level of investment has not been disclosed. (Note the names of Messrs. Hindery and Burkle, as well as InterMedia: they will appear again shortly.)

15. From these and other similar descriptions all easily found on the Internet, the Commission could have determined that serious questions exist about Aspire's bona fides. Indeed, the readily available information already strongly indicates that Aspire in fact was nothing but a front, a sham designed to create the misimpression of compliance with the Comcast condition while, in fact, simply serving as a cover to permit a white-owned, controlled and operated entity, GMC, and its owner, white-owned InterMedia, to acquire yet another cable channel. After all, when a separate, white-owned company takes over "advertising sales, marketing, programming, production and technical operations" – and that company is owned by the same entity that happens to own 33% of Aspire – precisely what aspects of the business remain to be "independently-owned-and-operated" by the supposedly African American company supposedly in charge of the network?

16. The public record supports that conclusion. Rather than set up its own offices, Aspire moved in with GMC in Atlanta. According to the Application for Certificate of Authority for Foreign Limited Liability Company filed with the State of Georgia, Aspire's registered agent in Georgia is Charles Humbard, who happens to be the founder, President and CEO of GMC, and white. And, not surprisingly, that application was submitted to the Georgia state government with a transmittal letter on GMC letterhead.<sup>9</sup>

17. Digging a little deeper, the Commission could also have checked the records of the U.S. Patent and Trademark Office, where it would have found that the application for the trademark "ASPiRE" was submitted on February 17, 2012 – more than two weeks after Aspire

---

<sup>9</sup> See Attachment B.

was formed. Having been formed, Aspire could have filed that application itself; alternatively, Mr. Johnson himself could have filed it. But the trademark application was not filed by Aspire, or by Mr. Johnson. Rather, it was filed by, and granted to, Gospel Music Channel, LLC.<sup>10</sup>

18. Moreover, had the Commission simply bothered to check the daily programming schedule for the Aspire network, it would have found repeated re-runs of such 1970s vintage programming as *Room 222*, *The Mod Squad* (as frequently as eight hours per day), *Julia* and *The Flip Wilson Show* (as frequently as four hours per day). With all due respect, such programming hardly reflects an interest in attracting and serving a 21st Century African American audience. While the choice of such programming may not make much sense from a public service perspective, it apparently made considerable business sense to Mr. Hindery and InterMedia: according to at least one published report, such stale, out-dated programming was placed on Aspire because InterMedia happened already to own the rights to it.<sup>11</sup>

19. To summarize, in order to satisfy a condition requiring it to provide carriage to an independently owned and operated network a substantial or majority ownership in which was owned by African Americans, Comcast initially relied, and continues to rely, on Aspire. But the Commission has no idea whether Aspire meets the ownership criterion; published reports strongly indicate that it does not meet the independent ownership/operation criterion; and the

---

<sup>10</sup> See Trademark Application Serial Number 85546183 (available at <http://tsdr.uspto.gov/documentviewer?caseId=sn85546183&docId=FTK20120221075501#docIndex=21&page=1>)

<sup>11</sup> See "Magic Johnson, GMC launch new Atlanta-based cable network Aspire June 27, *Black Legal Issues*, June 27, 2012 ([http://www.blacklegalissues.com/Article\\_Details.ASPX?ARTCLID=e7adbbd03d](http://www.blacklegalissues.com/Article_Details.ASPX?ARTCLID=e7adbbd03d)) ("Charles Humbard, president and CEO of GMC, said 'Soul Train' repeats will be on the [Aspire programming schedule], partly because GMC is majority-owned by InterMedia Partners, which also has the rights to the classic music show.")

programming provided on the Aspire TV network is a gross parody of African American-oriented material much of which appears to be on the schedule simply because the white company with which Aspire is in partnership – and which appears to be in charge of the overall operation of the network – itself already held the rights to the stale, out-dated programming.

20. Comcast has thus provided the Commission no basis at all from which the Commission could legitimately conclude that Comcast has complied with the obligation imposed on it by the Commission.

*Comcast, GMC and Programming Supposedly Directed to African American Audiences*

21. Importantly, Comcast's failure in this regard *cannot* be attributed to any ignorance on Comcast's part. To the contrary, Comcast's willingness to embrace a white-owned, white-controlled network purportedly providing programming directed to African Americans – as opposed to a network owned and operated by African Americans – is well-established<sup>12</sup>, as the history of GMC (the white-owned entity in fact operating Aspire), and its relationship with Comcast, demonstrate.

22. GMC (originally known as the Gospel Music Channel, now known as Up TV) was formed by Charles Hubbard, as noted above. It is, and apparently has always been, owned and controlled by white people – specifically, InterMedia Partners, LP, the white-owned private equity investment fund which reportedly also happens to own 33% of Aspire (with white-owned Yucaipa apparently owning a significant piece of the remaining 67%). GMC's history with both Comcast and African American-owned video networks is instructive.

---

<sup>12</sup> Indeed, in its MOU with the “African American Leadership Organizations”, Comcast described the white-owned Gospel Music Channel as providing “programming primarily focused on the African American community”. *See Comcast Order*, 26 FCC Rcd at 4501.

23. In 1999, a group of prominent African Americans<sup>13</sup> formed the MBC Network, which was intended to serve as an African American-owned-and-operated video programming network to serve African American families. (The name of the entity was changed to The Black Family Channel in 2004. We refer to both MBC Network and Black Family Channel collectively as “BFC”.) From 1999-2002, Comcast carried BFC on numerous systems, eventually reaching a substantial percentage of the 8,000,000 households then served by Comcast. In 2002, however, Comcast stopped adding BFC on its local systems, and advised BFC officials that, to guarantee carriage on additional Comcast systems, they would have to offer Comcast a significant ownership interest in BFC.

24. BFC rejected that demand and, in February, 2003, Comcast announced the creation of TV One, a programming network partially owned by Comcast and directed to the African American family community. At that point, BFC’s expansion onto other Comcast systems effectively stopped in its tracks, while TV One’s carriage flourished throughout the Comcast system. NAAAOM understands that the terms of that carriage – on the basic analog service tier at no charge to the subscriber – were particularly advantageous to TV One, in direct contrast to Comcast’s treatment of the 100% African American-owned Black Family Channel. In multiple additional respects Comcast engaged in a pattern of further discriminatory and anticompetitive behavior favoring TV One and unfairly disadvantaging BFC.<sup>14</sup>

---

<sup>13</sup> The original members of MBC Network included former world heavyweight champion Evander Holyfield, major league baseball star Cecil Fielder, and Marlon Jackson, a member of the Jackson Five.

<sup>14</sup> Comcast’s anticompetitive misconduct in this regard should come as no surprise to the Commission, as the misconduct described above was set out in detail in an *ex parte* letter filed with the Commission in MB Docket No. 10-56 (*i.e.*, the docket involving the Comcast applications) on January 14, 2011. That letter may be found at