

(e) Order the following procedural relief in furtherance of prompt and just resolution of this complaint:

a. Comcast's prompt compliance with such documentary and interrogatory discovery as may be reasonably necessary to illuminate the decision making process by which Comcast elected to grant carriage to MOJO but not to WealthTV, and the extent to which, consistent with its apparent pattern and practice, Comcast rejected independent programming in favor of programming affiliated with itself and industry partners, including other cable companies and broadcasters, upon WealthTV's motion for such discovery;

b. The ALJ's implementation of and adherence to so-called "baseball style arbitration" rules in resolution of the proceedings, and

(f) Grant such other and further relief as may be just and proper.

Submitted:

April 21, 2008

Respectfully submitted:



Herring Broadcasting, Inc.

d/b/a WealthTV

By Its Attorney

Kathleen Wallman, PLLC

9532 Randy Lane

Great Falls, VA 22066

202-641-5387

Attorney for WealthTV

## CERTIFICATE OF SERVICE

I, Kathleen Wallman, hereby certify that on April 21, 2008 I caused to be served the foregoing Complaint upon the following parties by overnight carrier with respect to Mr. Block and by email with respect to the other parties:

Arthur S. Block, Esq.  
Senior Vice President, General Counsel and Secretary  
Comcast Corporation  
One Comcast Center  
Philadelphia, PA 19103-2838

Jennifer T. Gaiski  
Senior Vice President, Content Acquisition  
Comcast Corporation  
One Comcast Center  
Philadelphia, PA 19103-2838

Monica Desai  
Chief, Media Bureau  
Federal Communications Commission  
445 12<sup>th</sup> St., S.W.  
Washington, DC 20554

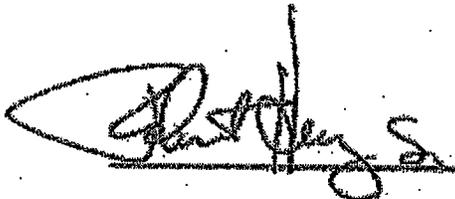
Steven Broeckaert  
Deputy Chief, Policy Division, Media Bureau  
Federal Communications Commission  
445 12<sup>th</sup> St., S.W.  
Washington, DC 20554

*//signed//*  
Kathleen Wallman

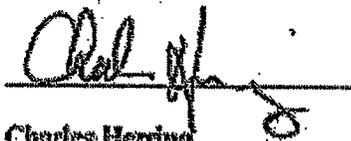
Complainant's Signature

Robert Herring, Sr., Chief Executive Officer of Herring Broadcasting, Inc., and Charles Herring, President of Herring Broadcasting, Inc., hereby sign this Carriage Agreement Complaint on behalf of Herring Broadcasting, Inc.

April 14, 2008



Robert Herring, Sr.  
Chief Executive Officer  
Herring Broadcasting, Inc.  
4757 Morena Blvd.  
San Diego, CA 92117  
(858) 270-6900



Charles Herring  
President  
Herring Broadcasting, Inc.  
4757 Morena Blvd.  
San Diego, CA 92117  
(858) 270-6900

see attached Notary Certification.

# Jurat

State of California

County of San Diego

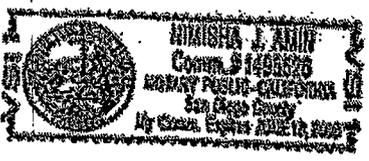
Subscribed and sworn to (or affirmed) before me on this 17<sup>th</sup> day of April

2008 by Robert Herring, Sr and Charles Herring

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Himishay Amin  
Signature

(Notary seal)



## OPTIONAL INFORMATION

### INSTRUCTIONS FOR COMPLETING THIS FORM

The wording of all Jurats completed in California after January 1, 2008 must be in the form set forth within this Jurat. There are no exceptions. If a Jurat is to be completed that does not follow this form, the notary must correct the wording by using a Jurat stamp containing the correct wording or attaching a separate Jurat form each or file and witness that certain proper wording. In addition, the notary must register the date of completion from the document signer regarding the authenticity of the contents of the document. The document may be signed at a later date or affirmation. If the document was previously signed, it must be re-signed in front of the notary public during the jurat process.

**DESCRIPTION OF THE ATTACHED DOCUMENT**

Complaint's Signature  
(Title or description of attached document)

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(Title or description of attached document continued)

Number of Pages 1 Document Date 4/17/08

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(Additional information)

- State and County information must be the State and County where the document sign(s) personally appeared before the notary public.
- Date of notarization must be the date that the sign(s) personally appeared which must also be the same date the jurat process is completed.
- Print the name(s) of document sign(s) who personally appear at the time of notarization.
- Signature of the notary public must match the signature on file with the office of the county clerk.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-ink and if a sufficient area remains, otherwise complete a different Jurat form.
  - Additional information is not required but could help to ensure this jurat is not misused or attached to a different document.
  - Indicate title or type of attached document, number of pages and date.
- Securely attach this document to the signed document.

List of Exhibits

- Exhibit 1: Prefiling Notice - Letter from Kathleen Wallman on behalf of WealthTV to Arthur R. Block, Esq., Senior Vice President, General Counsel and Secretary, Comcast Corporation, May 3, 2007
- Exhibit 2: Affidavit of Charles Herring
- Exhibit 3: Affidavit of Robert Herring, Sr.
- Exhibit 4: E-mail from Alan Dannanbaum, Alan Dannenbaum, Comcast – Corporate Senior Vice President of Programming
- Exhibit 5: Sampling of WealthTV Viewer Comments and Requests
- Exhibit 6: E-mail from John Ghiorzi, Executive Vice President of WealthTV, to Charles Herring, President of WealthTV
- Exhibit 7: iN DEMAND Press Release, “MOJO is Rising!! INHD Prepares for a May 1 Lightswitch when the HI-DEF Cable Channel Becomes MOJO,” March 19, 2007, ([www.MOJOhd.com/press/view/2](http://www.MOJOhd.com/press/view/2))
- Exhibit 8: Affidavit of Jedd Palmer,  
(Reply of WealthTV, File No. CSR-7709-P)
- Exhibit 9: “INHD’s New Moniker: MOJO,” Mike Reynolds, Multichannel News, March 19, 2007, (<http://www.multichannel.com/article/CA6425787.html>)
- Exhibit 10: “Q&A: Robert D. Jacobson, iN DEMAND Networks,” James Hibberd TVWeek, March 22, 2007)  
([www.tvweek.com/news/2007/03/qa\\_robert\\_d\\_jacobson\\_in\\_demand.php](http://www.tvweek.com/news/2007/03/qa_robert_d_jacobson_in_demand.php))
- Exhibit 11: WealthTV’s Standard MSO Presentation 2004, Target Audience Slide
- Exhibit 12: Declaration of Mark Kersey,  
(Reply of WealthTV, File No. CSR-7709-P)
- Exhibit 13: “Start-Up Cable Company to Focus on the Rich”, Rachel Laing, San Diego Union Tribune, January 21, 2004
- Exhibit 14: Supplemental Affidavit of Charles Herring,  
(Reply of WealthTV, File No. CSR-7709-P)

Exhibit 1:

*Prefiling Notice - Letter from Kathleen Wallman on behalf of WealthTV to Arthur R. Block, Esq.,  
Senior Vice President, General Counsel and Secretary, Comcast Corporation, May 3, 2007*

KATHLEEN WALLMAN  
WALLMAN CONSULTING, LLC  
9332 RAMEY LANE  
GREAT FALLS, VIRGINIA 22066

May 3, 2007

Arthur R. Block, Esq.  
Senior Vice President, General Counsel and Secretary  
Comcast Corporation  
1500 Market Street  
Philadelphia, PA 19102

Via Certified Mail and Fax

**Re: WealthTV -- Pre-Filing Notice of FCC Complaint**

Dear Mr. Block:

By this letter, Herring Broadcasting, Inc., doing business as WealthTV (hereinafter "WealthTV") is providing the pre-filing notice required by Section 76.1302(b) of the rules of the Federal Communications Commission in advance of the filing of a carriage agreement complaint for your company's violation of Sections 76.1301 of the FCC's rules.

WealthTV is an independent programming vendor. As Comcast is well aware, WealthTV has been seeking access from Comcast continuously for approximately three years, and Comcast has refused to grant access to WealthTV on the ground that there is no room in Comcast's channel line up for WealthTV. As Comcast also knows, WealthTV had several conversations with senior Comcast officials during the time that it has been seeking such access, and during that time, has discussed WealthTV's existing programming and plans for future programming offerings. Particularly in light of these discussions, WealthTV was especially troubled to learn that Comcast plans to launch an affiliated channel, MOJO, that offers programming that is substantially similar to that offered by WealthTV. Comcast's ability to find room in its channel line up for its imitation of WealthTV but for WealthTV itself is further evidence of Comcast's intentional discrimination against WealthTV in favor of its own affiliated programming in violation of the applicable laws and regulations.

Comcast's unlawful conduct has caused WealthTV significant and continuing damages by denying WealthTV access to Comcast's subscribers. Specifically, WealthTV believes that Comcast is in violation of Section 76.1301(a), which prohibits Comcast from requiring "a financial interest in any program service as a condition for carriage...", which is the effect of Comcast's decision to find room for its own version of WealthTV but not WealthTV itself. WealthTV also believes that Comcast is in violation of Section 76.1301(c), which prohibits Comcast from engaging in "conduct the effect of which is to unreasonably restrain the ability of an unaffiliated video programming vendor to compete fairly by discriminating in video programming distribution on the basis of affiliation or non-affiliation of vendors in the selection, terms, or conditions for carriage of video programming provided by such vendors."

Please indicate at your earliest convenience your availability to discuss WealthTV's forthcoming FCC complaint and the evidence to be included therein during the ten day window provided for in the regulations. You may contact me at the above address, by telephone at 202-641-5387 or by email at [wallmank@wallman.com](mailto:wallmank@wallman.com)

Very truly yours,

//file copy//

Kathleen M.H. Wallman  
Adviser to WealthTV

Exhibit 2:

*Affidavit of Charles Herring*

Before the  
Federal Communications Commission  
Washington, D.C. 20534

HERRING BROADCASTING, INC.,

Complainant,

v.

COMCAST CORPORATION

Defendant

File No. \_\_\_\_\_

**Affidavit of Charles Herring**

County of San Diego )

State of California )

Charles Herring, being duly sworn, hereby states the following:

1. My name is Charles Herring. I am President of Herring Broadcasting, Inc., the complainant, and Co-Founder and President WealthTV, the name under which Herring Broadcasting, Inc. operates its independent, high definition channel. This affidavit is made pursuant to Section 76.1302 (c) (2) of the Rules of the Federal Communications Commission.

2. I have read the Complaint in this matter. To the best of my knowledge, information and belief formed based on my participation in the events recounted in the complaint and after reasonable inquiry, the complaint is well grounded in fact and warranted under Commission regulations and policies. The complaint is not interposed for any improper purpose.

Charles Herring

Charles Herring

Subscribed and sworn before me this 17<sup>th</sup> day of April, 2008.



Nimisha Amin

Name of Notary: Nimisha Amin

My Commission expires: June 18, 2008

# Jurat

State of California

County of San Diego

Subscribed and sworn to (or affirmed) before me on this 17<sup>th</sup> day of April

2008 by Charles Herring

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Hemischarj Griffin  
Signature

(Notary Seal)



## OPTIONAL INFORMATION

### INSTRUCTIONS FOR COMPLETING THIS FORM

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**DESCRIPTION OF THE ATTACHED DOCUMENT**  
Affidavit of Charles Herring  
(Title or description of attached document)

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(Title or description of attached document)

Number of Pages 2 Document Date 4-17-08

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(Additional information)

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public.
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- Securely attach this document to the signed document.

Exhibit 3:

*Affidavit of Robert Herring, Sr.*

Before the  
Federal Communications Commission  
Washington, D.C. 20554

HERRING BROADCASTING, INC., )

Complainant, )

v. )

COMCAST CORPORATION )

Defendant. )

File No. \_\_\_\_\_

**Affidavit of Robert Herring, Sr.**

County of San Diego )

State of California )

Robert Herring, Sr., being duly sworn, hereby states the following:

1. My name is Robert Herring, Sr. I am Chief Executive Officer of Herring Broadcasting, Inc., the complainant, and Co-Founder and Chief Executive Officer of WealthTV, the name under which Herring Broadcasting, Inc. operates its independent, high definition channel. This affidavit is made pursuant to Section 76.1302 (c) (2) of the Rules of the Federal Communications Commission.

2. I have read the Complaint in this matter. To the best of my knowledge, information and belief formed based on my participation in the events recounted in the complaint and after reasonable inquiry, the complaint is well grounded in fact and warranted under Commission regulations and policies. The complaint is not interposed for any improper purpose.

Robert Herring, Sr.

Robert Herring, Sr.

Subscribed and sworn before me this 17<sup>th</sup> day of April, 2008.



Nimisha J. Amin

Name of Notary: Nimisha J Amin

My Commission expires: JUNE 18, 2008

# Jurat

State of California

County of San Diego

Subscribed and sworn to (or affirmed) before me on this 17<sup>th</sup> day of April

2008 by Robert Herzog, Sr

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Arminha J. Quinn  
Signature

(Notary Seal)



## OPTIONAL INFORMATION

### DESCRIPTION OF THE ATTACHED DOCUMENT

Affidavit of Robert Herzog, Sr  
(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages 2 Document Date 4-17-08

(Additional Information)

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- Securely attach this document to the signed document.

Exhibit 4:

*E-mail from Alan Dannanbaum, Alan Dannenbaum, Comcast – Corporate Senior Vice President  
of Programming*

Subj: Fwd: Sorry I was out in Houston..  
Date: Monday, October 11, 2004 4:28:10 PM

In a message dated 10/11/04 3:31:37 PM,  
Alan\_Dannenbaum@cable.comcast.com writes:

You keep begging and I keep saying the same thing – we're trying, but I can't make any promises on timing. Matt's concern all along has been using our scarce resources, so it is hard for me to say our lawyers have to do your paper when there are lots of other pressing matters at hand. Sorry. Just listen to the music.

Alan

Exhibit 5:

*Sampling of WealthTV Viewer Comments and Requests*

### Top Ten WealthTV Viewer Comments

***"One of my colleagues watched your channel in Dallas last week and like the content"*** Scott Pleyte, Programming Marketing Manager, Time Warner Cable San Antonio, 12/28/06. Time Warner employee watching on a competitor's system in Dallas (believed to be Verizon FiOS TV.)

***"Just discovered your channel and website and they are just fantastic! I'm hooked and can not escape. Keep up the great work!"*** Joseph watching on Charter Communications, Burbank 91501.

***"Thanks for making TV enjoyable and informative again!"***, Charles Keith, watching on Verizon FiOS TV, Midlothian, 23112

***"Just switched from comcast to u-verse and discovered WealthTV. Great programs. We watch it more than any other station!"***, Donald J. Casino watching on AT&T U-Verse TV, Danville, 94526

***"Great programming... love it"*** Gil Van Schoor watching on Verizon in Columbia, 92045

***"Excellent station, I just got Verizon for my cable provider and love all the programming on this station. Keep up the good work. The Boomer Show is fantastic"*** Louis Noborini, watching Email: ljnwine@comast.net City: Marlborough Zip: 01752 Provider: Verizon

***"Envy is the best hi-def program on cable. Good job!"*** Jason watching on WideOpenWest, Naperville, 60540

***"When can I see the episode of Wealth on the water, Tanya sailing the Greek Isles on The Moorings sail boat again. It was wonderful"*** Jon Ferrari watching on Qwest, Lebanon 08833

***Your programming is excellent. I especially like the Private Jet Programs. I would like to see more Private Jet Programs. Thanks for the excellent programming.*** Raiford C. Dudley, Jr, Qwest customer in Glendale 95308

***"enjoy wealth tv very much. I am having difficulty obtaining a particular recipe: corn sauce served w/ scallops. new york?"*** R Sullivan, AT&T U-Verse, Indianapolis, 46220

***"What a great feel good channel. I watch every day."*** Ron Jahn, watching on Charter Communications, Reno 89523

Exhibit 6:

*E-mail from John Ghiorzi, Executive Vice President of WealthTV, to Charles Herring, President of WealthTV*

**John Ghorzi**

**From:** "John Ghorzi" <John.ghorzi@wealthtv.net>  
**To:** <jghorzi@ix.m.com>  
**Sent:** Wednesday, April 16, 2008 10:22 AM  
**Subject:** FW: Final Comcast and Adelphia

On July 6, 2005 at 11am Charles (Hering) and I met with Alan Dannenberg in Philadelphia at Comcast Corporate HQ.

When Alan asked us "where we were with other MSOs" we mentioned, among others, Adelphia. We said that we had recently spoken to OlympusSAT and they had spoken to Adelphia Corporate and everything was a go to replace Chronicle on some Adelphia systems with WealthTV. Alan made some sarcastic remark like "is that right?".

On July 12th, 2005 I received an E-mail from Judy Meyer, asking me to call her. I was surprised to say the least (rather unusual for Judy to ask me to call her).

On Monday, July 18th, Judy called me in my hotel room in Los Angeles. Charles (Hering) was with me and I told Judy that Charles was with me and I was going to put her on speaker phone. Judy was very upset, to say the least. She said that we were not going to replace Chronicle on any of her systems. I explained to Judy that we had spoken to OlympusSAT and they assured us that they had spoken to everyone involved, including Barbara (who works in Programming and reports to Judy) of Adelphia Corporate and that the switch of WealthTV for Chronicle was "a go". Judy continued in her upset tone and said that is not the case. She denied that Barbara gave OlympusSAT permission. Our impression (and my notes confirm that, considering the timing (Judy sent me the E-mail on 7/12) right after our meeting with Alan, is that Alan had called Judy and decided her.

I consequently sent a letter to Judy apologizing. I have included a copy of the original first draft of the letter I wrote on July 18. The letter says the following:

Judy,

I apologize for any concerns or issues we may have caused you in reference to WealthTV switching out with Chronicle. We were at a Comcast meeting & asked how we were doing with major MSOs and when Adelphia came up, someone mentioned that due to an agreement w/ OlympusSAT WealthTV would be switching out w/ Chronicle on a couple of Adelphia systems. One thing I do know is that this person had recently spoken to OlympusSAT & was assured by them that (OlympusSAT) had spoken to everyone involved, including Adelphia corp. (Barbara) and that the switch out was a go. Your consequent call to me made me aware that this was not the case. Please accept my sincere apologies for any hassles we may have caused you. You know it is not my style or my way.

August 18, 2005 at 10am, Charles and I met with Alan Dannenberg at Comcast HQ in Philadelphia. Alan was very adversarial and condescending throughout the entire meeting. Alan said he had interest in HD laser, VOD and Broadband. Alan also said that he did not want to "make" another MTV unless Comcast had ownership or equity in the network.

John

John Ghorzi  
 WealthTV  
 IT'S YOUR LIFE...SPEND IT WELL.  
 4757 Meena Blvd.  
 San Diego, CA 92117  
 314.662.3086  
 Executive Vice President  
 John.ghorzi@wealthtv.net

No virus found in this incoming message.

Checked by AVG.

Version: 7.5.519 / Virus Databases: 269,23,0/1381 - Release Date: 4/16/2008 9:34 AM

4/16/2008

Exhibit 7:

*iN DEMAND Press Release, "MOJO is Rising!! INHD Prepares for a May 1  
Lightswitch when the HI-DEF Cable Channel Becomes MOJO," March 19,  
2007, ([www.MOJOhd.com/press/view/2](http://www.MOJOhd.com/press/view/2))*

**MOJO IS RISING!! INHD PREPARES FOR A MAY 1 LIGHTSWITCH WHEN  
THE HI-DEF CABLE CHANNEL BECOMES MOJO**

**Network Unveils Spring 2007 Slate of Original Hi Def Programming: King of  
Miami, I Bet You, London Live, Three Sheets and Uncorked with Billy Merritt**

**NEW YORK - March 19, 2007** - On May 1, 2007, high definition cable channel **INHD** officially changes its name to **MOJO**, announced Robert D. Jacobson, President & CEO, iN DEMAND Networks (MOJO's parent company). **MOJO** was born in June, 2006 as a prime-time programming block on the **INHD** network, with original high-def series geared to males who are "active affluents" - dynamic, intelligent, adventurous. Since then, the network has further developed the **MOJO** brand and expanded its slate of programming, with new series spanning adventure travel, comedy, finance, music, cuisine and spirits and high tech toys. **MOJO** is one of the most widely distributed HD networks, carried by every major US cable provider.

As part of the transition, **MOJO** is rolling out new original programming throughout prime time beginning immediately. The new spring slate is produced around the globe, filmed with HD cameras and presented full-time in exquisite 1080i format and Dolby 5.1 sound. The diverse shows include an eclectic mix of witty and urbane comedy, sports, adventurous travel, music and the finer pleasures of food and drink. Premiering over the next several months are *Uncorked with Billy Merritt*, *King of Miami*, *I Bet You* and *The Show*. Returning are two favorites, *London Live* and *Three Sheets* (starring the popular Zane Lamprey).

**MOJO's spring slate of originals include (production credits at end of release):**

**London Live** explodes out of the gate with season two of the high velocity series hosted by Joe Mace at the Koko Club. Twenty new episodes showcase the bands that are rocking the UK music scene. Just a few of the 60+ performers include The Killers, My Chemical Romance, Beck and The Charlatans. (Returning Series Premiered February 16)

**Three Sheets** - American comedian Zane Lamprey returns for season two of this colorful and unconventional travelogue/international pub-crawl to learn about new cultures; meet and befriend locals; and visit breweries, restaurants, pubs, and watering holes across Europe, Asia and the Americas. (Returning series - Premiered March 14. Every Wed. at 9PM ET/PT)

**Uncorked with Billy Merritt** introduces comedian Billy Merritt, a man with ordinary beer tastes who seeks to raise his sophistication level by learning all about wine. He visits vineyards, festivals and gourmet restaurants in North America and Europe. In this "guy's guy guide to wine," Merritt discovers that wine lovers are real people, too. Merritt is known to audiences as a regular on *Late Night with Conan O'Brien*. (New Original Series - Premiered: March 14 Every Wed. at 9:30PM ET/PT)