services, subscriber guide producers and other affiliated vendors, including Request TV, TVSM, Kaleidescope, the Faith and Values Channel and others.

5. From January 1998 to November 1998, I served as Senior Vice-President of Programming for MediaOne Cable, Inc. ("M1"), the third or fourth largest cable company in the United States. My duties and responsibilities at M1 were similar to those at TCI, including serving on approximately six boards of directors of programming services, including New England Cable News, Viewer's Choice, E! Entertainment Television, Outdoor Life/Speedvision and Music Choice.

6. Commencing in November 1998 and through the current day (except as noted below), I work as an independent consultant in the television and related industries. My clients have included Charter Cable Communications, DirecTV, Dish Network, Cablevision Systems Corporation, the MTV Networks, the Odyssey and Hallmark channels, Discovery Communications, Telemundo, Stormcellar Productions, the Public Broadcasting Service, the Scripps-Howard Networks, U.S. Digital Television, Clearband Communications Corporation, 3DH Corporation, Liberty Media Corporation, the National Interfaith Cable Coalition, InterMall Media, Inc. and WealthTV. (I was also employed directly as Vice-President of Programming for Echostar Corporation for four or five months in 2000. I had to resign due to a serious but temporary illness.) My consulting assignments have included the negotiation of dozens of affiliation agreements, the review of approximately a thousand affiliation agreements, the preparation to provide expert witness testimony in several cases (all settled before trial), general business advice to film and video programmers and distributors and to many high technology ventures (including several totally unrelated to television), the review and preparation of approximately a dozen business plans and, in several instances, work on getting content for video

businesses in technologies that had never carried video signals before. (Fees from WealthTV have represented less than two per cent of my aggregate billings as a consultant.)

7. **MOJO and INHD were only similar in that both channels scheduled high definition programming.** As stated in WealthTV's complaint, MOJO was nested on the channel called INHD prior to MOJO's launch as a separate, stand-alone channel. Even with MOJO nesting therein, INHD held itself out to be a general entertainment service and appears to have programmed a wide variety of unrelated programming, as long as it was in high definition ("HD"). MOJO is not a general entertainment service, but rather a highly targeted niche programming service.

8. **Upon MOJO's launch as a stand-alone service, it became strikingly similar to WealthTV.** The launch of MOJO amounted to the launch of a new channel, not simply a rebranding of INHD. Once INHD was terminated and MOJO was launched, MOJO's press releases, marketing materials, website and programming schedule all stated (and continue to state) that MOJO is an HD channel that holds itself out as targeted to 25-to-49 year old affluent male viewers. A review of MOJO's website (www.mojohd.com), which includes its daily program schedule, lists 18 so-called "MOJO Series", all of which appear targeted to MOJO's self-targeted demographic. Marketing materials, press releases, a review of the channel's schedules and programming indicate that WealthTV targets the same audience, and a review of the MOJO Series and WealthTV's signature programming confirms that the shows programmed on both channels are strikingly similar, if not all but identical, in format and theme.

9. **The comparison of MOJO and WealthTV included as TWC's Exhibit 11 is not borne out by a review of MOJO's published schedules.** TWC's Exhibit 11 makes a comparison of MOJO and WealthTV for two calendar weeks, one in July 2007 and one

straddling year-end 2007 and beginning 2008. Notwithstanding the possibility that the comparison may be accurate for those two weeks, my review of more recent days of the two services' programming schedules does not show anything like the compared weeks of programming. MOJO's recent programming days indicate that the channel is living up to its promise as a highly targeted network and not as a general entertainment network. As examples, I've seen only scattered movies or sports scheduled, but the network does run a sufficient number of episodes of the MOJO series for me to conclude that MOJO is fulfilling its promises as a targeted network.

10. **Michael Egan's characterizations and comparisons of WealthTV and MOJO programming to programming on other networks is either incorrect, irrelevant or both.** It is certainly true that portions of the general content of many cable and broadcast networks overlap each other regularly; this does not, however, indicate that those overlapping networks are in any way similar as a whole. The fact that ESPN is the premier national sports television network does not mean that if some other channel carries sports programming, it should also be considered a national sports network; many channels do carry some sports, as many channels also carry movies. Mr. Egan compares WealthTV's "Charlie Jones: Live to Tape" with Retirement Living TV's "The Florence Henderson Show". Both are talk shows but one is a famous sports announcer interviewing hall-of-fame caliber former coaches and players (clearly directed at the male sports audience) and the other is a talk show hosted by an television situation comedy actress (whose most famous role was as a stay-at-home mother of a large family on "The Brady Bunch") talking and interviewing about famous hotels, recipes and the ilk, clearly not likely to appeal to a male demographic, regardless of income level. Other than the fact that both are talk shows, the shows are hardly similar at all. Furthermore, the fact that a

network may program some "filler" program, i.e., programming that may not be consistent with the channel's targeted audience or theme, but is either inexpensive to distribute (in the case of dated library films, for example) or because it generates revenue to help support the channel (e.g., in its early stages of obtaining distribution or to subsidize the cost of other programming), is a fairly common practice. (As examples, who can forget the hours and hours of World War II documentaries during the Arts & Entertainment Channel's early days, or the common practice of many networks running six to nine hours of home shopping or infomercials during the "overnight", i.e., from midnight to six or nine a.m., when households using television numbers ("HUT levels") are low.) All of this, however, is beside the point. MOJO and Wealth TV do not occasionally overlap in general ways; the overwhelming majority of the programming on both networks is the same, or very, very similar, in subject, type, feel, look and target audience.

11. **TWC's refusal to enter into an affiliation agreement and its refusal to allow launches of WealthTV have put WealthTV at a competitive disadvantage in the market for national advertisers.** TWC is an extremely well-clustered cable company. What this means is that TWC has engaged in a multi-year initiative to win franchises, buy franchises and trade for franchises in order to give it clusters in geographic market areas, many of which consist of or surround major American cities. It is the dominant cable operator in Los Angeles, the nation's second largest television market. Along with Cablevision Systems, it controls the New York City cable systems, including Manhattan, and most of Brooklyn and Queens. New York is the largest television market in the country and the home market for many of the biggest corporations in America, as well as the very heart of the advertising purchasing companies, such as Publicis and Interpublic. There is no way that WealthTV can possibly compete effectively in the national advertising sales market if it is, for all intents and purposes, blocked from the first

and second largest television markets in the country. The same situation prevails where TWC is the dominant cable operator in other major metropolitan markets controlled by TWC. (On top of this, I personally sat in on a meeting at Comcast, (which is the largest cable operator in the country and is a co-owner, with TWC, of MOJO, and (as stated by Comcast's then-general counsel, in a conversation with me) controls the majority of the cable systems in each of 17 of the next 20 largest television markets in the country) wherein Comcast's Executive Vice-President of Programming Acquisition said not just once but three times that he would like to keep in touch with WealthTV and asked WealthTV's President and Co-Founder to call him back in three years! Finally, according to Charles Herring, WealthTV's President and Co-Founder, Wealth TV has been advised by Cox Cable Communications, MOJO's final owner, that WealthTV would only get Cox carriage after every other channel was carried in HD.) Wealth TV certainly appears to be the network without a seat in television musical chairs.

12. **Finally, Wealth TV has engaged a wide variety of consultants and employees to ensure that its programming is every bit as television worthy as any other network on the dial.** Cable television is a product that only came into being within the living memory of many of the people still active in the industry. There is some debate about whether Pennsylvania or Oregon was the home of the first community antennae television system, but the birth of cable programming (as opposed to rebroadcasts of local or regional broadcast station signals) as a species of consumer product can be traced to the day in the early1970's when Ted Turner uplinked WTBS, channel 17 Atlanta, to a satellite for downlink by any cable operator who had a satellite dish anywhere in the United States. From that point forward, network after network was started by people who had brilliant ideas but little or no experience in television. For example, BET's founder Robert Johnson was a lawyer with the FCC. John Lack, virtually

WealthTV

IT'S YOUR LIFE...SPEND IT WELL

comcast.

Jen Gaiski
March 26, 2004

unknown in television, had the idea that young people would get a kick out of watching their music idols' videos on a channel that would cablecast one music video after another. Chuck Dolan had the idea to combine sports and concerts from Madison Square Garden with movies to create a sort of home box office. John Malone was an engineer by training but thought John Hendrick's idea of an all-documentary channel would provide welcome discoveries for many, many people. (Dr. Malone and the predecessor of Time-Warner also put up Bob Johnson's seed money.) Dr. Malone and his wife also liked watching classic American movies and thought others would as well. The Herring family's idea apparently has some real potential, since TWC, Comcast and Cox (long-term cable veterans all) have lit up MOJO, a direct competitor, and the Herrings have engaged all manner of expertise and experience to make sure that their channel looks as fully professional and highly produced as anything on television. Any accusation that the Herrings have less than optimal experience ignores both the past and the present.

Jedd Palmer

Subscribed and sworn before me this 21st day of February, 2008.

Name of Notary:

My Commission expires:

My Commission Expires
10-27-2011

Exhibit 7:

"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)

Q&A: Robert D. Jacobson, In Demand Networks

On the Demise of INHD2, and Rebranding of INHD Into Mojo

By James Hibberd

Earlier this week, In Demand Networks announced its 4-year-old general entertainment channel INHD was going to re-brand into a men's network called Mojo. The news came five months after In Demand folded its other channel, INHD2.
In Demand is owned by a consortium of cable operators, including Comcast, Cox and Time Warner. When INHD and INHD2 launched in 2003, some considered the networks to be "placeholders"—a way for cable operators to stock an HD tier until audience favorites such as USA, TNT and A&E launch their own HD channels.

By late last year, most major cable networks either had an HD channel or were making plans to launch one as part of DirecTV's push to carry 100 HD channels by the end of 2007. In this increasingly crowded field, In Demand's two channels were under increasing pressure to do more than simply fill space.

So INHD2 was quietly folded, while INHD will rebrand May 1 as Mojo, adopting the identity of the network's prime-time original programming block. Since debuting the block last summer, In Demand said it has seen a 37 percent increase in advertising revenue.

Mojo will feature original unscripted original programming such as "Uncorked With Billy Merritt," a "guy's guide to wine" where comedian Mr. Merritt travels to vineyards and restaurants; "I Bet You," with poker pros and longtime friends Phil Laak and Antonio Esfandiari traveling the country making bets on anything and everything; "The Show," about a group of baseball players attempting to transition to the big leagues; and "London Live," a concert series.

TVWeek spoke to Rob Jacobson, president and CEO of In Demand Networks, about the brand change, INHD2 and whether Mark Cuban is correct when he says Mojo is still just reserving a space.

TVWeek: How was the rebranding decision made?

Mr. Jacobson: We launched the channel back in September 2003, and we knew the time was going to come when it was no longer enough to be about technology, it was going to be about programming and having a brand that stood on its own.

TVWeek: So you're saying from the very beginning, INHD was planned to become something else?

Mr. Jacobson: No. From the beginning, INHD was developed to serve the needs of cable operators to satisfy people's desire for more HD programming. In order for the channel to stand for something other than high definition, we always had planned the channel would evolve and have an independent identity.

We didn't know what [identity], we only knew the channel lineup was going to get very cluttered with well-established brands.

At the same time, we were evaluating the programming landscape to make sure we had a programming landscape that was sustainable.

TVWeek: But you didn't just have INHD, you also launched INHD2.

Mr. Jacobson: We launched both at same time. In 2003, when the channels were conceived, there was very little in the way of HD programming. The channels were in part to meet that demand and appetite.

The second channel was to some degree a bandwidth-efficient response to what the cable operators were going to do locally. INHD2 was often preempted by regional sports networks. A lot of those regional sports networks are now stand-alone channels in HD. We could take the best programming from INHD and INHD2 and meld them together into Mojo.

TVWeek: You're referring to being what some call a placeholder. I asked Mark Cuban about the Mojo rebranding. He said INHD and Mojo "were, and are, a placeholder for third-party programming, like the NBA, NHL and others." So is Mojo still a placeholder or are you here to stay?

Mr. Jacobson: Had we not done what we did, Mark might have been right.

He's going to confront some of the same challenges that we did—a channel nomenclature that is just about the technology. We need to be about something other than the technology, and that's what Mojo is.

As many men watch television, there are not many [channels] that speak to the active affluents—men making more than $100,000 a year and who are active. It's a sustainable channel option.

To some degree, Mark's comment might be wishful thinking: If we're a placeholder, then it could clear up some bandwidth for his channel.

TVWeek: Are upscale men really underserved? There's HBO, SpikeTV, G4, Comedy Central, ESPN and others.

Mr. Jacobson: Spike, to me, skews younger. Comedy Central isn't as male-centric as Mojo. We knew we wouldn't compete with ESPN on sports, or USA and TNT as general entertainment programming.

TVWeek: Why do original programming instead of acquired?

Mr. Jacobson: Ultimately, if you are going to be a branded destination, you are going to be about originals. Strategic acquisitions are always helpful. On HBO, people watch the movies, but [the network is] known for 'The Sopranos.'

TVWeek: HD programming tends to be movies, sports, nature, music and high drama. You're doing a lot of reality programming, which is usually the last type of programming to get upgraded to hi-def. Are these shows really the best fit for a pure-HD network? Or, at this point, since everybody is going HD, is the HD aspect sort of beside the point?

Mr. Jacobson: It's a really good point.
You have to look at the day when it's not about the technology anymore. It's about the programming.
One of the things cable operators really like it that it's 24/7 programming in HD and 5.1 surround sound.
But you have to look at the road ahead, three to five years from now, when all programming is in HD. You don't want to be the Color Television Channel.

Exhibit 8:

"INHD's New Moniker: MOJO," Mike Reynolds, Multichannel News, March 19, 2007, (www.multichannel.com/article/CA6425787.html)

INHD's New Moniker: Mojo

"Mr. Mojo Risin', Gotta keep on risin' Risin', Risin'"— "LA Woman," The Doors

By Mike Reynolds -- Multichannel News, 3/19/2007

Executives at In Demand certainly believe that their Mojo will keep risin' as well.

After rolling out a primetime programming block under the Mojo banner last June, the cable industry's purveyor of movies, out-of-market sports packages and pay-per-view events on May 1 will affix that name to its high-definition channel, currently called INHD.

When Mojo debuts on May Day, the service will expand its original high-definition series in primetime, aimed principally at "active affluent" males, according to CEO Robert Jacobson.

The change will be supported by a multimillion-dollar marketing and advertising campaign, with TV commercials featuring music and the "Mr. Mojo Risin' " lyric from The Doors' song "L.A. Woman."

In Demand has been making headlines in recent weeks as the cable industry is engaged in a high-profile battle with DirecTV Inc. to retain "MLB Extra Innings," Major League Baseball's out-of-market game package. (See story on page 8.)

Jacobson said the Mojo move has the backing of the cable industry and the company's owners: Comcast, Time Warner Cable and Cox Communications. "The original programming block has been performing well," he said.

The rise of Mojo essentially dates back to when INHD launched on Sept. 15, 2003, as a service presenting enhanced movies and music programming. As In Demand executives expected, the market for high-definition programming has grown, but there remains a relative dearth of dedicated channels. None, they said, are specifically aimed at affluent males ages 25 to 49 with a batch of original programs.

"Fortunately, we were right in our projections. We were confident that there would be strong appeal for exclusive content aimed at high-end males," said Jacobson. "We get a lot of sampling and advertisers have responded to reach out to this sweet spot of consumers."

Jacobson said that since the premiere of the Mojo programming block last June, INHD has achieved a 37% increase in ad revenue. INHD is available in about 6 million of the approximately 7 million cable households that now get high-definition service.

To tout Mojo's rise, In Demand senior vice president of marketing Stacie Gray said the network is bringing hosts from a number of its original series to Los Angeles this week. These include Bob Arnott from Dr. Danger, Zane Lamprey from Three Sheets and Dave Hill from the upcoming series, The King of Miami.

The March 23 shoot is expected to yield taggable 30-second spots that operators will run on cross-channel availabilities. Sixty-second spots and interstitials will also be created for In Demand and Mojo's own air, as well as stills for the print portion of the campaign.

Gray said the hosts' "Mojo personality" will shine through, with the Jim Morrison version of "L.A. Woman" in play.

"There was instant recognition for the song," she said. The song will be slightly remixed and embedded in the commercials.

Featuring the tagline "Welcome to the Club," the multimedia campaign, slated to begin in mid April and continue into June, will also feature online and outdoor elements, and some consumer events in select locations.

Mojo's primetime lineup features commissioned original programs and acquired first-run and U.S. exclusive series on Sundays, Mondays, Wednesdays and Saturday from 9 p.m. to midnight Eastern time. The block then repeats for the Pacific time zone. Sports (Tuesdays), movies (Thursdays) and music (Fridays) dominate the schedule the other nights.

Last Wednesday, Mojo premiered Uncorked with Billy Merritt, in which the comedian, who prefers beer, tries to get sophisticated about wines, and Three Sheets, featuring comedian Lamprey's travelogue/pub crawl. The month before, the second season of music showcase London Live hit the air.

On May 7, faux reality series King of Miami will find comedian Hill trying to become "the guy" in that city, while I Bet You showcases a pair of professional poker buddies trying to one up one another — whether getting more tips from tending bar or finding Danny DeVito's home via Hollywood maps. This summer, Mojo will follow six Arizona Diamondbacks Triple A prospects trying to find their way to The Show.

David Asch, senior VP of programming at In Demand, said Mojo has also given green-lit sophomore seasons of Dr. Danger and Wall Street Warriors.

Exhibit 9:

WealthTV's Standard MSO Presentation 2004, Target Audience Slide

TARGET AUDIENCE

BROAD APPEAL SKEWED TOWARD EDUCATED, HIGH INCOME, MALE

- Best HD target audience is males from 25 to 49.
  Source: The Yankee Group's 2003 Digital Home Entertainment Survey.

- Interest is highest among homes with incomes above $100,000. *Source: The Yankee Group's 2003 Digital Home Entertainment Survey.*

- Households earning about $100,000 annually are the most likely buyers of HDTV monitors.
  Source: Louisville Courier Journal, 2003.

Exhibit 10:

Declaration of Mark Kersey, (Reply of WealthTV, File No. CSR-7709-P)

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

HERRING BROADCASTING, INC., Complainant, v. TIME WARNER CABLE, INC. Defendant	)	File No. CSR-7709-P

Declaration of Mark Kersey

I, Mark Kersey, under penalty of perjury, hereby swear and affirm the following:

1. My name is Mark Kersey, and I am President of Kersey Research Strategies. I make this declaration in rebuttal to portions of the declaration of Stacie Gray, and in support of WealthTV's reply to the answer of Time Warner Cable Inc. to WealthTV's complaint.

2. During the fourth quarter of 2007, WealthTV retained me, in my capacity as President of Kersey Research Strategies, to monitor, for a period of 60 days, and tabulate viewer feedback responses from WealthTV's subscribers.

3. These response were collected through a comment form located on the website of WealthTV and were delivered directly to me. WealthTV did not act, in any way, as an intermediary in the delivery of the responses. This includes, but it not limited to, aggregating data, reviewing and distilling data, or reformatting or manipulating data in any way.

4. Based on this data, I found that WealthTV's viewership demographics breakdown as follows:

Age

35 and Older	83%
21-34	16%
Under 21	1%

Gender

Male	71%
Female	29%

Income

$125,000 and Up	22%
$75,000-$124,999	33%
$50,000-$74,999	22%
$35,000-$49,999	14%
$25,000-$34,999	4%
$15,000-$24,999	1%
Under $15,000	4%

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Mark Kersey

Dated: February 22, 2008

Exhibit 11:

"Start-Up Cable Company to Focus on the Rich", Rachel Laing, San Diego Union Tribune, January 21, 2004

Startup cable network to focus on the rich

Wealth TV

What it is: A high-definition cable channel with original programming on topics that relate to wealth
Founded: September 2003
Projected channel launch date: June 2004
Founders: Robert Herring, president and CEO; Charles Herring, vice president; Robert Herring Jr., vice president; Dean Harris, general manager
Employees: 11 full-time; 8 contractors
Location: 36,000-square-foot facility on Morena Boulevard

Clairemont-based effort plans programming launch in June

By Rachel Laing
STAFF WRITER

Robert Herring is a rich guy. He has a 100-foot yacht docked in the Mediterranean, a beautiful wife half his age and a fabulous home in Rancho Santa Fe.

Now, the one-time technology entrepreneur is betting millions that television viewers want to know more about people like him. Herring and his sons, Charles and Bobby, are gearing up for the June launch of Wealth TV, a cable network devoted to what is arguably America's favorite topic: getting and spending.

"When you start talking about the finer things in life, regardless of who you are or how much you make, everybody is interested in it," said Charles Herring, vice president of Herring Broadcasting. "That's the American dream. We all want to succeed, to climb up the ladder or climb up the hill."

If television programming is any indication, there's no shortage of intrigue about the opulent lifestyles of the rich. E! Entertainment network's "It's Good to Be ..." and VH1's "The Fabulous Life" are devoted entirely to listing the luxurious items and vacations of Hollywood celebrities.

On MTV, "Cribs" gives viewers tours of pop stars' pricey homes, and "Rich Girls" gives viewers a peek into the shopping spree-filled lives of two wealthy New York teens.

SEE Wealth TV, C5

Wealth TV founder Robert Herring at the channel's Clairemont headquarters. The network will offer programming that Herring said will look at wealth from all angles. *Peggy Peattie / Union-Tribune*

▶ WEALTH TV

CONTINUED FROM PAGE C1

Network faces a huge hurdle: getting air time

The Herrings insist their programming will take the subject to a higher level. In addition to shows whose main purpose is to gawk at decadence, the Herrings say, Wealth TV will have programming that looks at the "intellectual" side of wealth — not just the what, but also the how and why.

They're planning a program on philanthropy that explores philanthropic giving, from the various motives for giving money away to how the rich choose their pet causes. And if they do a show on celebrities, Herring said, it will focus on their smart business decisions rather than their chaotic love lives.

"What we're not trying to do is be a gossip tabloid," Charles Herring said. "You won't see anything with dollar signs flashing with some star's name on it. We want to have an in-depth conversation about money."

To create its original programming, the company hired away a producer from E! and has contracts with several other producers to create pilots for the network.

Not all the content will be original. Company executives are in Las Vegas this week prospecting for independently produced content at the National Association of Television Program Executives' content expo. They're also scouring country for wealth-oriented shows that will have national appeal.

Herring calls Wealth TV a merger of his two passions: good television and the good life. The self-professed History Channel junkie first toyed with the idea about 10 years ago, before the advent of digital cable and its scores of niche channels.

Back then, renting satellite time was prohibitively expensive, and much of his cash was tied up in his company, Herco Technologies. When Herring sold the Poway circuit board printer in 2000 to the Boston company Teradyne for more than $100 million, he was suddenly retired with a huge amount of capital.

Herring decided the time was right to take a stab at his idea. He formed Herring Broadcasting in September, lined up space on a satellite that beams to all of North America and got to work making his daydream a reality.

The company recently moved into a 36,000-square-foot building in Clairemont and has started constructing a studio and editing suites. The company has 11 full-time employees, and Herring said he expects to have at least 60 by the time the company is done hiring.

But amid all the activity and optimism, Wealth TV faces a huge hurdle: getting air time. The channel will join dozens of upstart networks vying for a slot on cable operators' lineups.

Not all of them will make it, said Brian Dietz, spokesman for the Washington, D.C.-based National Cable & Telecommunications Association.

"The biggest challenge is said. "With the launch of digital cable, there's been an explosion in the number of channels that have been created. But there's limited capacity for cable operators to add new channels."

> For Robert Herring, the main goal of Wealth TV is to "have fun and do something I'm proud of."

The networks that win distribution will be those that can show they have capital to survive through lean times, advertisers and compelling subject matter consumers can't get elsewhere, according to Dietz.

So far, Wealth TV has a slot with a major cable operator in two "very small" markets, Charles Herring said, and the company is in negotiations for distribution elsewhere.

It's too early in the game to have advertisers lined up, Herring said, but he's optimistic that the channel will attract advertisers looking to reach an audience that can afford high-end luxury goods.

And while there are other channels with an emphasis on luxury lifestyles, including Fine Living or HGTV, Herring said Wealth TV's unique approach to the subject will set it apart.

But if Wealth TV has an ace in the hole, it will be its format, said Charles Herring. The company will film and broadcast exclusively in high-definition, giving more programming options Americans who have high-definition television sets but little to watch because most networks haven't made the switch to producing in high-definition.

"I talked to a friend who has HDTV and said he was watching birds fly on TV because that's all he could get in HDTV right now," Charles Herring said. "He would rather have been watching something else, but he was watching what he could get in HD."

Dietz said high definition gives Wealth TV an advantage because it sets it apart from other channels in a cable company's lineup. Fewer than a dozen cable channels have all-HD programming, he said.

Wealth TV won't be Herring's first venture into the media world. He bought an Escondido weekly newspaper, *The Reporter*, in the mid-1980s in the hopes of using it as a bully pulpit to spur cleanup of the city's blighted areas.

Within a year, Herring was poised to shut the money-bleeding enterprise down, but decided instead to merge with a San Marcos paper. He sold his interest in the paper less than a year later.

"I learned never to own a newspaper," Herring said.

Unlike his other ventures, Wealth TV has neither a civic nor profit motive behind it. For Herring, the main goal of Wealth TV is to "have fun and do something I'm proud of."

"I don't want to lose money. I don't want my wife to have to go to work, Herring said. "But even if we don't make money, it'll still be fun."

Rachel Laing: (619) 293-2022;

Exhibit 12:

Supplemental Affidavit of Charles Herring, (Reply of WealthTV, File No. CSR-7709-P)

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

HERRING BROADCASTING, INC., Complainant, v. TIME WARNER CABLE, INC. Defendant	))))))))	File No. CSR-7709-P

Supplemental 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 in direct rebuttal to facts and arguments contained in Time Warner Cable, Inc.'s ("TWC") Answer to the Carriage Agreement Complaint in the above captioned proceeding. I particularly address herein the ways in which TWC's discriminatory conduct on the basis of affiliation has restrained WealthTV's ability to compete fairly in the marketplace, rebutting TWC's assertions in its answer that its conduct has not had such an effect.

2. **Emerging National Networks Need to Reach the 20 million Subscriber Level to Become Viable in the Long-Term:** To establish an emerging network and become a sustainable long-term entity, my research shows that a national cable channel, such as WealthTV, needs to be distributed across at least 20 million subscribers throughout the nation. I have had the opportunity on numerous occasions to have candid, one-on-one discussions with numerous industry leaders and experts to review successful business models, coincident with our ongoing efforts at WealthTV. In addition, I have viewed business models of other emerging networks and established networks to determine how best to achieve long-term viability. All of this experience indicates that the 20 million viewer threshold is an appropriate guidepost and a necessary precondition to long-term fiscal viability.

3. **Cable Channels need 20 million Subscribers to attract National Advertisers:** Emerging national cable channels receive revenues from primarily two sources: affiliate fees and advertising revenue. Over the last four years, I have visited with key decision makers at some of the largest national advertising agencies in America; from Los Angeles to Austin to New York. Repeatedly, I have been told that a channel's audience size needs to be in the 20 million viewer range before there is consideration of niche networks for national ad campaigns. Just as importantly, many advertisers are seeking to hit the top markets including Southern California, New York, Florida, Texas and Chicago. This is in direct contradiction to TWC's assertion that their "barely 8 million digital viewers" are not essential to the success of an emerging national network

and to its argument that its denial of carriage has not unreasonably restrained WealthTV's ability to compete fairly.[1]

4. **<u>TWC is Looked Upon as the Industry Gatekeeper for Emerging Networks:</u>** For cable networks, achieving distribution via TWC is key to long-term success. As the world's largest media company and the nation's second largest cable operator, other smaller cable systems and satellite competitors look to TWC, as well as Comcast, the cable industry's two leaders, as "first movers" when it comes to seeking direction regarding carrying emerging networks. In addition, TWC directly controls which emerging channels are available for consideration by Bright House Networks, LLC. WealthTV's affiliate sales staff has received direct confirmation from Steve Miron, President of Bright House Networks, that Bright House will not give emerging networks consideration unless there is a carriage deal in place with TWC.

5. **<u>TWC holds Quasi Monopolies in Leading Designated Market Areas ("DMAs"):</u>** Through the Adelphia merger and by trading various cable systems with Comcast, Time Warner has been able to gain regional monopolistic strong-holds in leading DMAs, including the number 2 ranked DMA, Los Angeles. TWC's assembled cable cluster in Los Angeles currently controls over 75% of the cable market with over 2 million subscribers. For an emerging network to offer a national advertiser reasonably acceptable reach into key markets, it must offer coverage by such TWC systems. As WealthTV outlined in its complaint, access to subscribers in cities like Los Angeles and New York, which are "well known for setting trends in fashion, cuisine, lifestyle and business across the nation,"[2] is essential to WealthTV's long-term viability. Thus, the

[1] See Answer to Carriage Agreement Complaint, CSR-7709-P, at 33 to 35, (sub. Feb. 5, 2008)
[2] See Carriage Agreement Complaint, CSR-7709-P, at para. 10, (sub. Dec. 20, 2007)

success of an emerging network, and WealthTV specifically, to gain carriage on TWC is critical to long-term success and viability.

6. Further, I aver that I have read the complaint and reply in this matter. To the best of my knowledge, information and belief formed after reasonable inquiry, the complaint and reply are well grounded in fact and are warranted under Commission regulations and policies. The complaint in not interposed for any improper purpose.

Charles Herring

Subscribed and sworn before me this 21st day of February, 2008.

Name of Notary: James Patrick O'Connell

My Commission expires: Jan. 13, 2011

OFFICIAL SEAL
JAMES PATRICK O'CONNELL
NOTARY PUBLIC-CALIFORNIA
COMM. NO. 1716372
SAN DIEGO COUNTY
MY COMM. EXP. JAN. 13, 2011