

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

In the Matter of	)	
	)	
Herring Broadcasting, Inc. d/b/a Wealth TV,	)	MB Docket No. 08-214
Complainant	)	File No. CSR-7907-P
	)	
v.	)	
	)	
Comcast Corporation,	)	
Defendant	)	

To: Marlene H. Dortch, Secretary  
Federal Communications Commission

Attn: Arthur I. Steinberg  
Administrative Law Judge

**HERRING BROADCASTING, INC., D/B/A WEALTHTV'S FIRST DESIGNATION OF  
WITNESSES AND EXHIBITS**

Pursuant to the procedures adopted in the Presiding Judge's case management Order of October 23, 2008,<sup>1</sup> Herring Broadcasting, Inc. d/b/a WealthTV ("WealthTV") hereby submits this First Designation of Witnesses and Exhibits ("First Designation") for the hearing in the above-captioned matter. WealthTV is submitting this First Designation as promptly as possible in order to facilitate expedition of the proceeding.<sup>2</sup> WealthTV anticipates that it will supplement this First Designation prior to the procedural deadline for exchanging direct case exhibits and a list of witnesses once such a deadline is re-established. A first designation of witnesses will follow shortly.

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<sup>1</sup> Order, *Herring Broad., Inc. v. Time Warner Cable Inc., et al.*, FCC 08M-44, at 2 (rel. Oct. 23, 2008) ("Order").

<sup>2</sup> As evidenced by counsel's comments during the pre-hearing conference on October 27, 2008, the other complainants in these consolidated proceedings share WealthTV's commitment to facilitate expedition of these proceedings, as does the Enforcement Bureau. See Enforcement Bureau Comments on Issues Designated for Hearing, MB Docket No. 08-214, File Nos. CSR-7709-P *et al.* (Oct. 27, 2008) (noting that the Enforcement Bureau submitted its comments on defendants' interlocutory requests "early to expedite this hearing proceeding to the extent possible").

**I. FIRST DESIGNATION OF WITNESSES**

As a part of its affirmative case, WealthTV intends to offer the affidavits/declarations of Charles Herring, Jedd Palmer, Mark Kersey and John Ghiorzi which affidavits and declarations were submitted in support of WealthTV’s pleadings. WealthTV may supplement those Declarations through live testimony, additional written testimony, or a combination of both from some or all of the aforementioned witnesses.<sup>3</sup> If any of these witnesses is expected to offer live testimony of substance not summarized below, or in the event that WealthTV elects to offer testimony from additional witnesses, an appropriate summary will be submitted prior to the re-established procedural deadline as ordered by the Presiding Judge for submitting witness lists.

<b>Charles Herring</b>	<p>Charles Herring is Co-Founder and President of WealthTV. His responsibilities in this role have included participation in and supervision of WealthTV’s negotiations and attempted negotiations with actual and potential video distribution partners, including TWC, Comcast, Bright House Networks and Cox Communications.</p> <p>Mr. Herring’s testimony addresses the course of dealings between WealthTV and the defendant and how the defendant’s refusal to negotiate in good faith and refusal to carry WealthTV injured WealthTV. His testimony also documents that MOJO is substantially similar to WealthTV. His testimony addresses the importance of having a critical mass of subscribers in order for an advertiser-supported video programming service to have a viable and sustainable business. He will also address the appropriate remedy for defendant’s refusal to carry WealthTV and explain the reasonableness of the terms of carriage WealthTV seeks as its remedy.</p> <p>Mr. Herring may address other factual developments relating to the relationship between WealthTV and the defendant.</p>
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<sup>3</sup> In accordance with the Presiding Judge’s Order, this First Designation of Witnesses includes “a brief summary of the prospective testimony of each witness.” *Order* at 2, n.7.

<p><b>Jedd Palmer</b></p>	<p>Jedd Palmer is a cable industry veteran with more than twenty-five years of experience in and around the cable television industry including as Senior Vice-President of programming at Tele-Communications, Inc. (“TCI”), which, during his tenure was one of the largest cable companies in the United States. In that capacity, he negotiated dozens of agreements on behalf of TCI with programmers. A fuller description of his credentials is included in his affidavit in Exhibit A, at pp. 54 to 57.</p> <p>Mr. Palmer’s testimony explains the numerous and substantial similarities between MOJO and WealthTV. His testimony will rebut the testimony of defendant’s affiant on this subject, if necessary. His testimony will explain how defendant’s refusal to carry WealthTV has injured WealthTV and put it at a competitive disadvantage in the video marketplace. His testimony may also address the appropriate remedy for defendant’s misconduct and support the reasonableness of the terms of carriage sought as part of the remedy.</p>
<p><b>Mark Kersey</b></p>	<p>Mark Kersey is President of Kersey Research Strategies which focuses on cable and telecommunications analytical research services. His testimony documents the demographic profile of WealthTV’s viewers. His testimony will rebut the testimony of defendant’s affiant on this subject, if necessary.</p>
<p><b>John Ghiorzi</b></p>	<p>John Ghiorzi is Executive Vice President of WealthTV. His responsibilities include affiliate sales, that is, negotiations, agreements and relationships with actual and potential video distributions partners, including TWC, Comcast, Bright House Networks and Cox.</p> <p>Mr. Ghiorzi’s testimony addresses the course of dealings between WealthTV and defendant.</p>

WealthTV respectfully reserves the right to supplement this First Designation of Witnesses as to its affirmative case and to offer additional witnesses to rebut evidence and/or testimony presented by defendant.

## II. FIRST DESIGNATION OF EXHIBITS

As a part of its affirmative case, WealthTV expects to introduce the following exhibits, all of which were produced to Comcast Corporation (“Comcast”) and filed with the Commission during the pleading phase of this proceeding:<sup>4</sup>

Exhibit Letter:	Title of Exhibit:	Sponsoring Witness:	# of Pages:
WealthTV Exhibit A	Carriage Agreement Complaint of Herring Broadcasting, Inc. d/b/a WealthTV Cable v. Comcast Corporation (“Comcast”) (File No. CSR-7907-P)	Charles Herring	82
WealthTV Exhibit B	Complainant’s Reply to the Answer of Defendant Comcast Corporation in Support of its Complaint in the Matter of Herring Broadcasting, Inc. d/b/s WealthTV v. Comcast Corporation (File No. CSR-7907-P)	Charles Herring	61

WealthTV may supplement this First Designation of Exhibits; if it does so, it will provide Comcast and the Presiding Judge with copies of any additional exhibits prior to the re-established procedural deadline for submission of exhibits. WealthTV respectfully reserves the right to introduce additional exhibits to rebut evidence and/or testimony presented by the Defendant.

Respectfully submitted,

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Kathleen Wallman  
Kathleen Wallman, PLLC  
9332 Ramey Lane  
Great Falls, VA 22066  
(202) 641-5387

*Counsel for Herring Broadcasting, Inc. d/b/a  
WealthTV*

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<sup>4</sup> In accordance with the Presiding Judge’s Order, *Order* at 2, n.7, copies of each of these exhibits will promptly be provided to the Presiding Judge, the Enforcement Bureau, and Comcast.

October 31, 2008

**CERTIFICATE OF SERVICE**

I, Kathleen Wallman, certify that I caused the foregoing First Designation of Witnesses and Exhibits, dated October 31, 2008, to be served on the following parties as indicated.

Michael Hammer, (via email at [mhammer@willkie.com](mailto:mhammer@willkie.com))  
James L. Casserly, (via email at [jcasserly@willkie.com](mailto:jcasserly@willkie.com))

David Soloman, (via email at [dsoloman@wbklaw.com](mailto:dsoloman@wbklaw.com))  
Andy Tollin, (via email at [atollin@wbklaw.com](mailto:atollin@wbklaw.com))

Michael P. Carroll, (via email at [michael.carroll@dpw.com](mailto:michael.carroll@dpw.com))  
David B. Toscano, (via email at [david.toscano@dpw.com](mailto:david.toscano@dpw.com))

Kris Anne Monteith, (via email at [kris.monteith@fcc.gov](mailto:kris.monteith@fcc.gov))  
Gary Schonman, (via email at [gary.schonman@fcc.gov](mailto:gary.schonman@fcc.gov))  
Elizabeth Mumaw, (via email at [elizabeth.mumaw@fcc.gov](mailto:elizabeth.mumaw@fcc.gov))  
*FCC Enforcement Bureau*

//signed//

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Kathleen Wallman