

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

<b>In the Matter of</b>	)	
	)	<b>MB Docket No. 08-214</b>
<b>Herring Broadcasting, Inc.</b>	)	
<b>Complainant</b>	)	<b>CSR-7829-P</b>
	)	
<b>v.</b>	)	
	)	
<b>Cox Communications, Inc.</b>	)	
<b>Defendant</b>	)	

**To:** Marlene H. Dortch, Secretary  
Federal Communications Commission

**Attn:** Arthur I. Steinberg  
Administrative Law Judge

**DEFENDANT COX, INC.’S RESPONSES AND OBJECTIONS  
TO PLAINTIFF’S FIRST SET OF REQUESTS  
FOR PRODUCTION OF DOCUMENTS**

Pursuant to Section 1.325 of the Rules of the Federal Communications Commission (the “Commission”), 47 C.F.R. § 1.325, defendant Cox Communications, Inc. (“Cox”) by and through counsel, hereby submits the following Responses and Objections to Complainant’s First Request for Production of Documents to Defendant Cox Communications, Inc. (the “Document Requests”).

**GENERAL OBJECTIONS**

A. Cox objects to the Document Requests, including but not limited to Definitions and Instructions Nos. 1, 12, 14, and 18 to the extent that they purport to require Cox to provide documents that are within the possession, custody or control of “affiliated” entities or “related entities” in which Cox holds a minority ownership interest or over which Cox does not exercise management authority or operational control.

B. Cox's responses set forth herein are based upon its current information, understandings and beliefs. Documents and information are being gathered on an ongoing basis. Cox reserves the right to supplement or amend these Responses and Objections as may become necessary or appropriate.

C. Cox responds to the Document Requests without admitting the competency, relevance, materiality, authenticity or admissibility of any document produced, and Cox expressly reserves all objections to the use of any document produced in response to the Document Requests, or any information contained therein.

D. By stating that Cox will produce responsive documents, Cox does not represent that such documents in fact exist, but only that, to the extent that such documents exist and are located through reasonable efforts, and subject to objections, such documents will be produced.

E. Cox objects to the Document Requests to the extent that they seek any information and/or documents beyond the permissible scope of, or otherwise seek to impose obligations beyond those required by or inconsistent with, the Federal Rules of Civil Procedure or the Commission's Rules.

F. Cox objects to the Document Requests to the extent that they are vague, ambiguous, overbroad, unduly burdensome, not relevant to any claim or defense, or not reasonably calculated to lead to the discovery of admissible evidence.

G. Cox objects to the Document Requests to the extent that they purport to seek any information or documents that were prepared in anticipation of litigation, are protected by the attorney-client, work product or any similar privilege or doctrine, or are otherwise protected from disclosure under applicable privileges, laws or rules. Cox's production of documents in response to the Document Requests is without waiver of any and all such privileges and

protections. In the event that privileged or protected material is produced inadvertently, such inadvertent production shall not be deemed to constitute a waiver of applicable privileges or protections.

H. Cox objects to the Document Requests to the extent that they seek information or documents that are not in its possession, custody, or control; primarily or exclusively within the possession, custody, or control of plaintiff or others; or publicly available.

I. Cox objects to the Document Requests to the extent they seek documents containing or constituting Cox's trade secrets or other confidential or proprietary information, including personnel information, without entry of an acceptable protective order. Cox's production of documents is subject to and governed by any protective or confidentiality order entered by the Commission in this proceeding.

J. Cox objects to the Document Requests to the extent that they seek information regarding persons or entities that are not parties to this litigation and have a right to privacy with respect to such information, or have entered agreements that prevent disclosure of information to third parties, such that disclosure by Cox would violate the rights of third parties or contractual obligations.

K. Cox objects to the definitions of "Document" and "Communication" contained in Definitions and Instructions Nos. 14 and 15 to the extent that it purports to include items that are not contemplated under 47 C.F.R. § 1.325.

L. Cox objects to the definitions of "Cox," "You" and "your," and "IN DEMAND" contained in Definitions and Instructions Nos. 1, 2, and 12 as vague, ambiguous, overbroad, and unduly burdensome.

M. Cox objects to the Document Requests, noting specifically but not exclusively Requests for Production Nos. 3, 5, and 7, to the extent that they purport to require Cox to search for or produce documents from any files not maintained or controlled by Cox, or from files, including electronic files, that are not reasonably likely to contain responsive and relevant documents. In responding to the Document Requests, Cox will search the files (including reasonably accessible email) of appropriate individuals employed by Cox reasonably likely to have responsive an relevant documents.

N. Cox objects to Definition and Instruction Nos. 14 and 19 to the extent that they purport to require the production of “original” documents or documents in a form other than the form in which they are maintained in the ordinary course of business or electronic documents in native format.

O. Cox objects to the scope of the Document Requests to the extent they seek documents created or obtained after the commencement of the carriage complaint proceeding against Cox, and Cox objects to the creation of a privilege log for documents created or obtained after the commencement of such carriage complaint proceeding.

P. The foregoing objections are incorporated into each response set forth below.

**COMPLAINANT’S REQUESTS FOR PRODUCTION AND COX’S  
SPECIFIC RESPONSES AND/OR OBJECTIONS THERETO**

**REQUEST NO. 1**

All documents referring or relating to Cox’s evaluation or consideration of carriage of WealthTV, including but not limited to documents relating to: the evaluation of WealthTV; demand for or interest in WealthTV; information regarding WealthTV provided to or known by Cox; the content of meetings or other communications within Cox or between Cox and Herring Broadcasting regarding WealthTV; and Cox’s willingness or refusal to engage in negotiations, meetings, or communications with Herring Broadcasting regarding WealthTV.

**RESPONSE AND/OR OBJECTION:**

Cox objects to this document request as vague, ambiguous, overbroad and unduly burdensome, and as consisting of multiple subparts, contrary to the rules governing discovery in this proceeding. Among other things, the Request would encompass irrelevant documents potentially in the sole possession of Cox cable system personnel with no decision-making authority over carriage of Wealth TV and as to whom Wealth TV has not identified any interest in carriage of Wealth TV. Subject to and without waiving any of its general or specific objections, Cox will produce responsive documents relating to Cox's evaluation or consideration of carriage of WealthTV possessed by Cox employees involved in decision-making over carriage of new cable networks like Wealth TV.

**REQUEST NO. 2**

All documents related to WealthTV potentially exhibiting its channel on a multicast channel of KLAS in Las Vegas, including the retransmission agreement of KLAS with Cox Communications.

**RESPONSE AND/OR OBJECTION:**

Cox objects to this Document Request as overbroad, unduly burdensome, seeking documents that are irrelevant to any claim or defense in this case, and not reasonably calculated to lead to the discovery of admissible evidence. Cox objects to the Request to the extent it seeks documents related to Wealth TV's negotiations with television station KLAS in Las Vegas because Cox does not own KLAS or control any of the documents possessed by KLAS. Cox objects to the production of the retransmission agreement between KLAS and Cox because it is highly confidential, involves a third party, and is irrelevant to the issues in this proceeding. The terms of a retransmission consent agreement in Las Vegas are irrelevant to the corporate decision by Cox not to carry WealthTV. Subject to and without waiving any of its general or specific

objections, Cox will produce documents within its possession, custody or control related to WealthTV's efforts to exhibit its channel on a multicast channel of KLAS, excluding the retransmission consent agreement between Cox and KLAS.

**REQUEST NO. 3**

All documents that relate to Cox's development, including as a participant in iN DEMAND, of and decision to launch or carry or continue to carry INHD, MOJO, Versus, The Outdoor Channel, E! or Style, including but not limited to documents relating to: Cox's internal deliberations and decision regarding the creation of, and selection of programming for, these programming services; analyses of these programming services with respect to target audience, target advertisers, viewer appeal, consumer branding appeal, actual viewership, financial stability, management ability and management track record; and Cox's internal deliberations as to transformation or rebranding of INHD into MOJO as a separate, stand-alone channel, and documents relating to monthly payment recorders, subscriber reports, and subscriber numbers, including total video subscribers, total digital subscribers, total high definition subscribers, and total number of subscribers receiving INHD and MOJO by city by month and the associated channel number along with a printout of each channel lineup from June 1, 2004 to the present by system.

**RESPONSE AND/OR OBJECTION:**

Cox objects to this document request as vague, ambiguous, overbroad, unduly burdensome, seeking documents that are irrelevant to any claim or defense in this case, and not reasonably calculated to lead to the discovery of admissible evidence. Cox objects to this Document Request because it consists of several distinct subparts despite the parties' agreement that each party is limited to ten document requests with no subparts. Cox objects to the extent that the Document Request seeks the production of documents not in Cox's possession, custody or control. Cox is a minority owner of iN DEMAND with no management authority or operational control. Cox also has no ownership interest in Versus, The Outdoor Channel, E! or Style. Cox objects to the Document Request as overbroad and unduly burdensome because it seeks irrelevant channel positioning information regarding cable services other than Wealth TV. No dispute exists over terms of carriage between Cox and Wealth TV because it is undisputed

that Cox elected not to carry Wealth TV. Therefore, the positions of channels that Cox carries are irrelevant to any issue in this proceeding. Subject to and without waiving any of its general or specific objections, Cox will produce responsive documents regarding Cox's decision to carry or to continue to carry INHD or MOJO.

**REQUEST NO. 4**

All documents relating to the terms of carriage for INHD, MOJO, Versus, The Outdoor Channel, E! and Style, by Cox or by other multichannel video programming distributions services.

**RESPONSE AND/OR OBJECTION:**

Cox objects to this Document Request as vague, ambiguous, overbroad, unduly burdensome, seeking documents that are irrelevant to any claim or defense in this case, and not reasonably calculated to lead to the discovery of admissible evidence. Among other things, the reference to "documents relating to the terms of carriage" is vague, ambiguous, and overbroad. To the extent the Request seeks carriage agreements between Cox and unaffiliated programming services, it is, at least in part, duplicative of Request No. 8 and is subject to the objections to that Request. Cox also objects to the extent that the Document Request seeks the production of documents not in Cox's possession, custody or control. Cox is a minority owner of iN DEMAND with no management authority or operational control. Cox also has no ownership interest in Versus, The Outdoor Channel, E! or Style. Subject to and without waiving any of its general or specific objections, Cox will produce documents reflecting the terms of its carriage of INHD and MOJO.

**REQUEST NO. 5**

All documents relating to the governance, finances and marketing of iN DEMAND, including, but not limited to board and board committee structure and membership, executives, key personnel, including but not limited to budgets, profit and loss

statements, balance sheets, marketing and advertising materials, and all briefing materials received by Cox as a participant in iN DEMAND or its governance structure.

**RESPONSE AND/OR OBJECTION:**

Cox objects to this Document Request as overbroad, unduly burdensome, seeking documents that are irrelevant to any claim or defense in this case, and not reasonably calculated to lead to the discovery of admissible evidence. Cox objects to the Request to the extent that it seeks the production of documents not in Cox's possession, custody or control. Cox is a minority owner of iN DEMAND and does not have management authority or control. Subject to and without waiving any of its general or specific objections, Cox will produce responsive documents within the possession, custody or control of Cox employees reasonably likely to have such documents, subject to the protections of an acceptable confidentiality order.

**REQUEST NO. 6**

All programming schedules for INHD, MOJO, Versus, The Outdoor Channel, E! and Style.

**RESPONSE AND/OR OBJECTION:**

Cox objects to this Document Request as overbroad, unduly burdensome, seeking documents that are irrelevant to any claim or defense in this case, and not reasonably calculated to lead to the discovery of admissible evidence. The requested programming schedules are available to Complainant from numerous publicly available electronic and print sources. Moreover, as stated above, Cox has no ownership interest in Versus, The Outdoor Channel, E! or Style, and Cox generally does not maintain historical programming lineups for cable networks it carries in the normal course of business.

**REQUEST NO. 7**

All documents relating to the decision to cancel MOJO and Cox's decision to cease carriage of MOJO and/or to iN DEMAND's decision to cease operating the channel.

**RESPONSE AND/OR OBJECTION:**

Cox objects to this Document Request as vague, ambiguous, overbroad, and unduly burdensome to the extent it seeks documents "relating to . . . iN DEMAND's decision to cease operating [MOJO]," because the Request seeks documents that are not within Cox's possession, custody, or control. Cox is a minority owner of iN DEMAND and does not have management authority or control. Subject to and without waiving any of its general or specific objections, Cox will produce non-privileged responsive documents in the possession, custody, or control of Cox employees reasonably likely to possess such documents.

**REQUEST NO. 8**

All carriage agreements and related documents entered into between Cox and any unaffiliated company for carriage of a cable programming network owned by such company on Cox's cable systems during the period June 1, 2007 to present.

**RESPONSE AND/OR OBJECTION:**

Cox objects to this Document Request as vague, ambiguous, overbroad, unduly burdensome, seeking documents that are irrelevant to any claim or defense, and not reasonably calculated to lead to the discovery of admissible evidence. Complainant's reference to "related documents" is vague and excessively broad. Subject to and without waiving any of its general or specific objections, and subject to the entry of an acceptable protective order, Cox will disclose the names of networks unaffiliated with Cox that executed carriage agreements with Cox between June 1, 2007 and the date the carriage complaint was filed against Cox, for networks launched during that period.

**REQUEST NO. 9**

Documents sufficient to show Nielsen or similar ratings by DMA for all entertainment-related programming networks carried on Cox's cable systems.

**RESPONSE AND/OR OBJECTION:**

Cox objects to this document request as vague, ambiguous, overbroad, unduly burdensome, seeking documents that are irrelevant to any claim or defense in this case, and not reasonably calculated to lead to the discovery of admissible evidence. Cox objects to the phrase "entertainment-related programming networks" as unduly vague and ambiguous. In addition, Wealth TV is not rated by Nielsen, so no meaningful comparison based on Nielsen ratings may be drawn between Wealth TV and other programming services Cox carries. Moreover, requesting Nielsen data by DMA for all of Cox's cable systems is excessively broad and unlikely to lead to the discovery of relevant evidence, particularly because Cox's cable systems are not coextensive with Nielsen DMAs. Cox also objects to this Document Request because ratings data Cox receives from Nielsen are subject to the terms of a license agreement that does not permit Cox to disclose such information to third parties. The Nielsen data Complainant seeks is available from Nielsen and may be purchased at Complainant's convenience.

**REQUEST NO. 10**

All documents relating to the difference between the cost of programming and the price charged to viewers for each tier of service, including the basic digital tier and the basic high definition tiers offered in each Cox market as of June 1, 2007.

**RESPONSE AND/OR OBJECTION:**

Cox objects to this document request as vague, ambiguous, overbroad, unduly burdensome, seeking documents that are irrelevant to any claim or defense in this proceeding, and not reasonably calculated to lead to the discovery of admissible evidence. Among other things, the phrase "cost of programming" as it relates to "each tier of service" is vague and

susceptible to numerous alternative interpretations. The Request also is incomprehensible because it appears to equate an aggregate expenditure (“cost of programming”) with per-subscriber income (“price charged to viewers”) and asks for the “difference” between the two. In addition, Cox does not have a “basic high definition tier.” Finally, Cox objects to the Request because it seeks confidential information that appears to be unrelated to any claim or defense in this proceeding.

Respectfully Submitted,

Dated: December 15, 2008

By:  David E. Mills / by jar

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**CERTIFICATE OF SERVICE**

I, Cynthia Forrester, hereby certify that a true and correct copy of the foregoing Opposition was sent by first class U.S. mail, postage prepaid, except where hand-delivery is indicated, on this 15th day of December 2008 to the following:

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The Honorable Richard L. Sippel  
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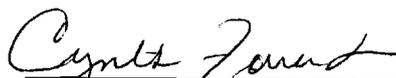
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\* By hand delivery