BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of	)	MB Docket No. 08-214
	)	
Herring Broadcasting, Inc. d/b/a WealthTV,	)	File No. CSR-7709-P
Complainant	)	
v.	)	
Time Warner Cable Inc.	)	
Defendant	)	
	)	
Herring Broadcasting, Inc. d/b/a WealthTV,	)	File No. CSR-7822-P
Complainant	)	
v.	)	
Bright House Networks, LLC,	)	
Defendant	)	
	)	
Herring Broadcasting, Inc. d/b/a WealthTV,	)	File No. CSR-7829-P
Complainant	)	
v.	)	
Cox Communications, Inc.,	)	
Defendant	)	
	)	
Herring Broadcasting, Inc. d/b/a WealthTV,	)	File No. CSR-7907-P
Complainant	)	
v.	)	
Comcast Corporation,	)	
Defendant	)	
	)	
NFL Enterprises, LLC,	)	File No. CSR-7876-P
Complainant	)	
v.	)	
Comcast Cable Communications, LLC,	)	
Defendant	)	
	)	
TCR Sports Broadcasting Holding, L.L.P.,	)	File No. CSR-8001-P
d/b/a Mid-Atlantic Sports Network,	)	
Complainant	)	
v.	)	
Comcast Corporation,	)	
Defendant	)	

To: Marlene H. Dortch, Secretary, Federal Communications Commission
Attn: The Hon. Richard L. Sippel – Chief Administrative Law Judge

January 7, 2009

DEFENDANTS' JOINT STATUS REPORT PURSUANT TO JANUARY 6, 2009 ORDER

In response to the Order dated January 6, 2009 issued by Chief Administrative Law Judge Richard L. Sippel, defendants Time Warner Cable Inc., Comcast Corporation, Comcast Cable Communications, LLC, Cox Communications, Inc. and Bright House Networks, LLC (collectively, the "Defendants") hereby submit this joint status report on the items identified by Chief Judge Sippel. Upon receipt of the Media Bureau's Order of December 24, 2008 (the "December 24 Order"), which attempted to seize jurisdiction of these cases, Complainants in these proceedings have ceased to move forward with their discovery and procedural obligations set out in the December 12, 2008 Scheduling Order issued by the Presiding Judge.[1] Defendants respectfully submit that these cases should be placed back on track with only a slight adjustment in the schedule to account for the delay over the past two weeks.

1. Protective Order

WealthTV - The Defendants on November 19 and 20, 2008 provided complainants with comments and edits to a draft protective order circulated jointly by the Complainants. The Defendants noted the need for separate protective orders for the WealthTV cases and each of the other cases. The Defendants in the WealthTV proceedings (Time Warner Cable, Inc., Comcast Corporation, Cox Communications, LLC and Bright House Networks, LLC) provided a draft protective order for review by the Complainant on December 17, 2008. Counsel for WealthTV responded with comments on the draft on December 23, 2008, and the parties discussed the draft the next day. On December 26, 2008, the WealthTV Defendants sent a revised protective order incorporating the parties' comments to counsel for WealthTV. Counsel for WealthTV has not

[1] For example, all parties have acknowledged the need for entry of appropriate protective orders prior to the production of documents. Thus, although Defendants submitted suggested revisions to a proposed protective order to WealthTV on December 26, 2008 (after release of the December 24 Order), counsel for WealthTV has not responded to those suggestions and determined on December 26 not to produce any documents to Defendants. Accordingly, Defendants did not produce documents to WealthTV on December 31, 2008 as originally anticipated.

engaged in further negotiations regarding the protective order upon issuance of the December 24 Order.

NFL - In the NFL Enterprises LLC ("NFL") proceeding, NFL forwarded to Comcast Cable Communications, LLC (where applicable to either or both of Comcast Cable Communications, LLC and Comcast Corporation, "Comcast") a draft protective order on December 9, 2008. Comcast Cable proposed revisions to the NFL's draft on December 16, 2008. The parties were in the process of negotiating the protective order prior to the December 24 Order. After the issuance of the Order, the NFL informed Comcast Cable of its "plan to hold in abeyance any search or production of documents contemplated in reliance on the ALJ's scheduling order." Email from Gregg Levy, Counsel to NFL, to David Toscano, Counsel to Comcast Cable, et al. (Dec. 29, 2008).

MASN - In the Mid-Atlantic Sports Network ("MASN") proceeding, MASN circulated a revised draft protective order for review by Comcast Corporation ("Comcast") on December 2, 2008. Comcast suggested utilizing a protective order similar to the one being proposed in the WealthTV and NFL proceedings and, consistent therewith, circulated a new draft protective order for review on December 15, 2008. The parties held various discussions regarding the protective order until release of the December 24 Order at which point the discussions terminated.

The Defendants believe that negotiations on protective orders in each case can be completed promptly and proposed orders can be submitted, noting any remaining areas of disagreement, by January 12, 2009.

2. Document Discovery

WealthTV - On December 5, 2008, the individual parties in the WealthTV cases each served document requests upon one another. In general, the document requests served by the

WealthTV Defendants upon WealthTV sought documents relating to: the strategies and communications regarding each Defendant; the allegations in WealthTV's Complaint, particularly with respect to the allegations that MOJO is substantially similar to WealthTV, that each of the Defendants engaged in a pattern and practice of discrimination against WealthTV, and that WealthTV has proven consumer appeal; comparisons between WealthTV and other networks; carriage of WealthTV by other multichannel video programming distributors ("MVPDs") or negotiations over carriage; WealthTV business plans, projections and financials; and copies of certain programming.

WealthTV responded on December 16, 2008, interposing only general objections to the requests for the production of documents. The parties thereafter conducted a meet and confer session on December 22, 2008 in which WealthTV generally agreed to provide the documents requested by Defendants, and agreed to provide a list of MVPDs with which it has secured or discussed carriage so that Defendants could inform WealthTV of the ones for which they would like to see pertinent documents.

WealthTV's requests for the production of documents generally sought documents relating to: each Defendant's consideration of, and actions concerning WealthTV; Defendants' carriage and development of INHD, MOJO and several other networks, including programming agreements, programming decisions and programming schedules, advertising analyses and subscriber data; governance, finances and marketing of iN DEMAND; the decision to cancel MOJO; all carriage agreements between any Defendant and any unaffiliated company; Nielsen information for all entertainment-related programming carried by each Defendant; and cost and price information regarding each tier of service provided by each Defendant.

The Defendants each responded with specific and general objections to WealthTV's requests on December 15, 2008 and the parties discussed these during meet-and-confer sessions on December 18 and December 22, 2008. The parties reached certain agreements as to the scope

of requests and the searches to be employed, and the Defendants agreed to produce the vast majority of the information requested. Defendants informed counsel for WealthTV that several requests concerning historical channel line-ups, system-wide communications, cost information and certain carriage agreements posed an undue burden on Defendants; accordingly, the parties discussed alternative ways of securing pertinent information.

Although the parties were to produce lists and documents on December 31, 2008, in view of the failure of WealthTV to move forward with the protective order and the December 24 Order purporting to seize jurisdiction of the cases, no such production occurred. Defendants believe that they will be in a position to produce documents no later than five (5) business days after a protective order is entered.[2]

NFL – On December 5, 2008, the Complainant served document requests upon Comcast Cable, and Comcast Cable served document requests on the Complainant and its affiliated entity, the National Football League, which plays a central role in the events at the heart of Complainant's "financial interest" claim. In general, the document requests served by Comcast Cable upon NFL sought documents sufficient to show the NFL Network's monthly licensing revenue and monthly penetration level by DMA and Distributor and documents relating to the pricing of the NFL Network to Distributors; the relationship between the pricing of the NFL Network and the distribution of the NFL Network; the reasons that any Distributor declined to distribute the NFL Network at the level of distribution requested or desired by the NFL Network; the effects of Comcast's distribution of the NFL Network solely on a sports tier on the NFL Network's ability to compete fairly; the NFL Network's advertising sales (including prospective sales) from May 2007 through the present; the NFL's acquisition of telecast rights from May 2007 through the present; the potential or actual grant of Live Game Rights either to Comcast or

[2] The protective order is expected to address the distinction between Confidential Information and Highly Confidential Information, as well as the text to be used on legends marking each such document. Given the potential voluminous nature of document production, Defendants submit that the proposal for document production to be completed no later than five (5) business days after entry of a protective order is reasonable.

to the NFL Network; and any relationship between Live Game Rights and the NFL's strategies for distributing the NFL Network.

In general, the document requests served by NFL upon Comcast Cable sought documents sufficient to identify Comcast's subscribers nationwide, tiers or packages on which the NFL Network and several other Networks were carried, and direct and indirect fees charged to subscribers for several Comcast tiers and packages; documents relating to Comcast's analysis and consideration of the NFL Network and several other networks, including comparisons of the NFL Network to the other networks and decisions regarding the tier or package placement of the NFL Network or such other networks; and agreements and draft agreements concerning carriage of several Comcast networks, Comcast's investment in program services carried on Comcast cable systems, and any receipt of anything of value in connection with Comcast's carriage of independent sports networks on any tier or package other than the Sports Entertainment Package tier.

On December 15, 2008, the parties exchanged specific and general objections to the other's requests. The parties had discussed conducting a meet and confer session the first week of January 2009 and commencing document productions around that time; however, as stated above in regard to the Protective Order, the NFL informed Comcast Cable that it was suspending its document collection and production in response to the December 24 Order.

MASN – On December 5, 2008, the parties in the MASN case entered into a Joint Case Management Discovery Statement which limited each party to 10 document requests and set forth a rolling production of documents that would commence on December 22, 2008 and be substantially complete by January 12, 2009. Also on December 5, 2008, Comcast and MASN exchanged document production requests. In general, Comcast sought documents regarding the demand for MASN programming, the negotiation of the program carriage agreement between MASN and Comcast, the scope of MASN carriage by other MVPDs, the rates charged by

MASN for its programming, and MASN's business plan generally. MASN generally sought documents regarding Comcast's carriage of Regional Sports Networks ("RSNs"); the decision to exclude certain Comcast systems within MASN's territory from the carriage agreement; Comcast's deliberations regarding the acquisition of sports programming rights; and channel lineup changes, rates, and ratings information.

On December 15, 2008, the parties in the MASN proceeding served Objections and Reponses to each other's document requests. The parties were in the process of resolving the various objections to the document requests and, in fact, an initial exchange of documents occurred. After release of the December 24 Order, however, MASN requested the return of all documents that had been produced to date and Comcast complied with that request. Discussions regarding document production thereafter ceased.

Defendants in all six cases propose that they produce documents by January 21, 2009, assuming a protective order in each case is in place by January 14, 2009. The Defendants in the cases also agree that any motions to compel, if necessary, should be filed within ten (10) days of receiving the production. The Defendants are not aware of any issues that are currently ripe for a motion.

3. Fact Witness Deposition Discovery

WealthTV - The parties in the WealthTV actions have agreed that there shall be no deposition discovery of fact witnesses.

NFL - In the NFL proceeding, Comcast Cable deposed NFL witness Frank Hawkins, former Senior Vice President Business Affairs, on December 17, 2008. Comcast Cable intends to depose NFL witnesses Paul Tagliabue, Steve Bornstein, Ronald Furman, and Adam Shaw concerning the matters raised in the pleadings of NFL in the NFL proceeding, including the matters raised in the declarations submitted by Mssrs. Tagliabue, Hawkins, and Furman, matters

raised in the pleadings of Comcast Cable in this proceeding, and any other matter relevant to any claim or defense of either party to the NFL proceeding.

MASN - In the MASN proceeding, prior to the December 24 Order, the parties had been working cooperatively to schedule the depositions of witnesses, but firm dates had not yet been established. Comcast had indicated that it planned to depose at least the following individuals: David Gluck; Mark C. Wyche; James Cuddihy; Dr. Hal J. Singer; and possibly Michael Haley. Prior to release of the December 24 Order, the parties were attempting to schedule these depositions during a two-week window commencing approximately two weeks after document production was substantially complete. Scheduling discussions terminated upon release of the December 24 Order.

If the new proposed schedule is adopted, Comcast and Comcast Cable expect that the parties in the NFL and MASN proceedings will conclude fact witness deposition discovery by March 6, 2009.

4. Expert Discovery

WealthTV - The parties in the WealthTV cases exchanged expert disclosures on December 12, 2008 and December 22, 2008, respectively. The Defendants have retained the following experts, whose qualifications are summarized below:

Larry Gerbrandt (retained by Comcast): Mr. Gerbrandt is the founder and principal of Media Valuation Partners, which provides a variety of analytical, research and consulting services in the media and entertainment sectors, and has worked as a media analyst and publishing executive for more than thirty years. Between 1984 and 2000, Mr. Gerbrandt served as Senior Analyst and later Senior Vice President of Kagan World Media. Subsequently, Mr. Gerbrandt acted as COO for Primedia and thereafter led AlixPartners' entertainment consulting group. In 2005, Mr. Gerbrandt was recruited by The Nielsen Company to become SVP/General Manager of Nielsen Analytics.

Michael Egan (retained by Time Warner Cable): Mr. Egan is the founder and principal of Renaissance Media Partners LLC, a management consulting firm, and has twenty-five years of experience in the cable television industry. Mr. Egan has provided a variety of consulting services to cable/satellite TV programmers, distributors, technology companies and others. Prior to founding Renaissance Media Partners and its predecessor entity, he was Director of Programming and later Senior Vice President, Programming and Product Development at Cablevision Industries, where he worked for sixteen years.

Howard B. Homonoff (retained by Time Warner Cable): Mr. Homonoff is a Director at PricewaterhouseCoopers LLP ("PWC") in their Entertainment, Media & Communications advisory practice. Mr. Homonoff has worked in the media, cable and broadcast television business for more than twenty years. Prior to running his own media consulting firm and joining PWC, Mr. Homonoff served as Vice President and General Manager of CNBC Strategic Ventures, and General Counsel of NBC Cable Networks. Mr. Homonoff regularly lectures on the media business and recently served as Associate Professor and Program Director for the Masters Degree Program in Television Management at Drexel University.

Janusz Ordover (retained by Bright House Networks and Cox Communications): Dr. Ordover is a Professor of Economics at New York University and the Director of Masters in Economics Program. Over the past thirty years, Dr. Ordover has conducted scholarly research and written on a wide variety of economics topics, including many pertaining to antitrust and market competition issues in a variety of industries. Dr. Ordover has previously served as Deputy Assistant Attorney General for Economics in the Antitrust Division of the United States Department of Justice, and has consulted on antitrust and competition matters for many years.

The Defendants intend to take the depositions of WealthTV's disclosed experts, Gary Turner, Jedd Palmer and Mark Kersey. If the new proposed schedule is adopted, Defendants

expect that the parties will schedule depositions of the WealthTV experts between February 16, 2009 and March 13, 2009.

Defendants have also proposed a stipulation to WealthTV counsel that would govern a variety of expert discovery and other discovery issues. WealthTV counsel provided comments on the proposed stipulation and the parties discussed those comments on December 24, 2008. On December 26, 2008, Defendants provided WealthTV counsel with a revised stipulation incorporating all comments, but counsel has not responded. Defendants believe that this stipulation can be finalized and filed by January 9, 2009.[3]

NFL – The parties in the NFL proceeding cases exchanged expert disclosures on December 5, 2008 and summaries of anticipated expert testimony on December 12, 2008. Comcast has retained the following experts: Larry Gerbrandt (whose qualifications have been summarized above) and Jonathan Orszag, who is currently the Senior Managing Director at Compass Lexecon, previously Competition Policy Associates, Inc. ("COMPASS") and FTI Consulting, Inc. Mr. Orszag manages the economic consulting firm and specializes in antitrust, economic policy, and litigation matters. He is a member of the firm's Executive Committee and conducts economic and financial analysis on a wide range of complex issues in policy and regulatory for corporations and public-sector entities. Mr. Orszag has served as an expert witness in proceedings before U.S. and international courts and administrative agencies and the European Court of First Instance on competition policy issues, including industry structure, vertical relationships, and intellectual property rights. He also has consulted on international projects in Argentina, Australia, The Bahamas, Canada, Ecuador, the European Union, Iceland, New Zealand, South Korea, Trinidad and Tobago, and the United Kingdom.

MASN – The parties in the MASN proceeding exchanged expert disclosures on December 5, 2008 and summaries of anticipated expert testimony on December 12, 2008. Comcast has

[3] To Defendants' knowledge, the only open issues addressed in the stipulation relate to privileged communications.

retained the following experts, whose qualifications have been summarized above: Larry Gerbrandt and Jonathan Orszag.

If the new proposed schedule is adopted, Defendants in all of the cases expect that the parties will schedule depositions of the experts in all of the cases by March 13, 2009.

5. Pending Motions – The following motions are currently pending with regard to these cases:

a) Emergency Application for Review filed jointly by the WealthTV Defendants on December 30, 2008. This Application for Review requests that the full Commission vacate the December 24 Order and direct the ALJ to proceed with these cases as designated by the HDO. In the Application for Review, the Defendants have requested a determination by the full Commission on an "emergency," expedited basis and are hopeful for a prompt decision.

b) Emergency Motion for Stay filed jointly by the WealthTV Defendants on December 30, 2008. This Motion for Stay asks the full Commission to order the Media Bureau to refrain from taking further action toward issuing a ruling in these cases pending resolution of the pending Application for Review. As with Applications for Review, the Defendants have asked that their stay request be granted on an "emergency," expedited basis.

c) Motion for Reaffirmation of Scheduling Order Or, In the Alternative, Request For Certification Of An Application For Review, filed jointly by all the Defendants on December 30, 2008. This Motion requests the ALJ to reaffirm his Scheduling Order released on December 15, 2008, as agreed to by the parties in all the cases involving WealthTV, but with all deadlines extended by the number of days between the release of the December 24 Order and the date of the presiding officer's grant of the motion. In the alternative, the motion renews the

Defendants' timely request that the ALJ certify an Application for Review to obtain a determination from the full Commission regarding the effect of the Media Bureau's attempt in the HDO to impose a 60-day timeframe for the resolution of these cases.

d) Time Warner Cable, Cox and Bright House Networks ("BHN") filed a "Joinder" in support of the Emergency Application for Review and Emergency Motion for Stay on December 31, 2008.

e) BHN filed a "separate statement" in support of the Motion for Reaffirmation of Scheduling Order Or, In the Alternative, Request For Certification Of An Application For Review on December 31, 2008.

f) Comcast filed a Supplement to the Emergency Application for Review on January 2, 2009 to address the Media Bureau's December 31 Order relating to the NFL Network case.

g) Comcast filed a Supplement to the Emergency Motion for Stay on January 2, 2009 to address the Media Bureau's December 31 Order relating to the NFL Network case.

h) WealthTV and MASN filed a joint opposition to the Application for Review on January 6, 2009. Defendants' replies are due on January 16, 2009.

i) WealthTV and MASN filed a joint opposition to the Motion for Stay on January 6, 2009. Replies are not permitted.

j) WealthTV and MASN filed a joint opposition to Defendants' Motion for Reaffirmation of Scheduling Order Or, In the Alternative, Request For Certification Of An Application For Review on January 6, 2009. Replies are not permitted. The timing of the decision on this motion lies within the sound discretion of the presiding officer. However, as the BHN separate statement

points out, the "certification" issue was fully briefed prior to issuance of Judge Steinberg's Order on November 20, 2008, and thus is ripe for decision.

k) Informal request to update the record. On December 31, 2008, WealthTV and MASN submitted an informal request, via email, to the Media Bureau, asking for the issuance of an Order specifying any additional materials needed to supplement the record. The Defendants submitted their opposition, also informally via email, on January 2, 2009. The timing of any further action by the Media Bureau is unknown and is subject to the pending Emergency Motion for Stay.

6. Proposed Procedural and Hearing Dates -- Assuming that the Presiding Judge grants the pending Motion for Reaffirmation of Scheduling Order on or before January 9, 2009, the Defendants propose the following revised procedural and hearing dates:

January 21, 2009[4]	Document Production
February 6, 2009	Complainant's final expert reports filed[5]
February 13, 2009	Defendants' final expert reports filed
March 13, 2009	Deadline for completing depositions
March 13, 2009	End of Discovery
March 19, 2009	Exchange of trial briefs by 12:00 pm
March 20, 2009	Exchange of hearing exhibits and written testimony by 12:00 pm
April 6, 2009	Document Admissions Session at 10:00 am
April 7, 2009	Commencement of hearing at 9:30 am

[4] This assumes that the Presiding Judge will have entered a protective order on or before January 14, 2009. If such a protective order is entered after January 14, 2009, Defendants would respectfully request that any document production occur five (5) business days after the entry of such an order, and that the remaining schedule be adjusted to work off that new document production date.

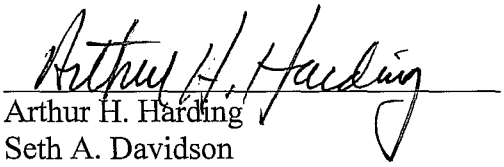
[5] The parties to the MASN proceeding previously agreed to exchange expert reports on the same day. Comcast, therefore, proposes that this deadline govern both parties in the MASN proceeding.

The post-hearing schedule for Proposed Findings and draft recommended decision set forth in the December 12 Order shall remain in place.

7. Completion of Hearing – At this stage, without the benefit of discovery and completed expert work, it is difficult to estimate the amount of time that will be necessary to complete the hearing of all cases in MB Docket No. 08-214. Reserving all rights to amend this estimate once better information is available, Defendants currently estimate that it will take 20-25 hearing days to complete the hearing for all six cases on this docket. Once the hearing is complete, Defendants expect to make the post-hearing filings in accordance with the schedule set out in the December 12, 2008 Scheduling Order.

Respectfully submitted,

TIME WARNER CABLE INC.



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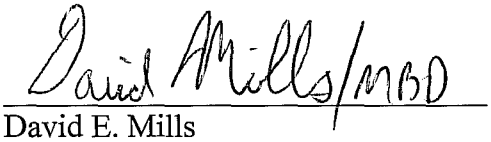

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Dated: January 7, 2009

CERTIFICATE OF SERVICE

I, Mark B. Denbo, a partner at the law firm of Fleischman and Harding LLP, hereby certify that copies of the foregoing "Defendants' Joint Status Report Pursuant to January 6, 2009 Order" were served this 7th day of January, 2009, via e-mail, upon the following:

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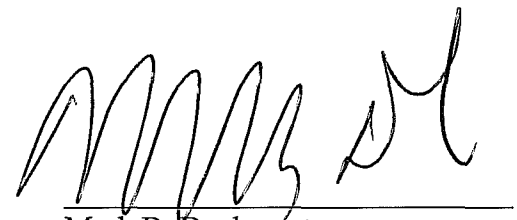

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