

**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	)	
	)	
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 Dortch  
              Secretary, Federal Communications Commission

ATTN:        The Honorable Richard Sippel  
              Chief Administrative Law Judge

**MOTION FOR LEAVE TO SUBSTITUTE A NEWLY DESIGNATED EXPERT FOR  
ONE ALREADY DESIGNATED**

WealthTV seeks leave to substitute Sandy McGovern as an expert witness in the place of Jedd Palmer who was designated as an expert witness for complainant on December 12, 2008.

Ms. McGovern's curriculum vitae is attached.

WealthTV makes this request because of uncertainty about the health of Mr. Palmer and whether he will be well enough to be deposed or cross examined at the hearing. Mr. Palmer suffers from a chronic disease that limits his stamina and his ability to travel from his home in Colorado. While his condition was known to WealthTV at the time of his designation, as the time for deposition and cross examination at the hearing draws near, WealthTV's uncertainty about whether Mr. Palmer can deliver testimony has increased.

To address this situation, WealthTV seeks to substitute Ms. McGovern for Mr. Palmer as a designated expert. WealthTV anticipates that Ms. McGovern would cover the same areas as Mr. Palmer's intended testimony, as previewed by his declaration that is already part of the record in these cases. Ms. McGovern's background and experience are somewhat different from Mr. Palmer's and she is in a position to shed additional light within one area of Mr. Palmer's intended testimony (also addressed in his declaration) regarding defendants' argument that MOJO was merely a rebranding of INHD. WealthTV does not foresee that Ms. McGovern would delve into areas other than those as to which WealthTV has already provided notice to the defendants in its designation of Mr. Palmer. Thus, the description of intended testimony by Ms. McGovern reads as follows:

**Sandy McGovern** is a cable industry veteran with more than twenty-five years of experience in and around the cable television industry. Ms. McGovern's testimony will explain the numerous and substantial similarities between MOJO and WealthTV and expound upon the subjects covered in the declaration of Jedd Palmer which is already part of the record in these cases. Her testimony will rebut the testimony of defendants' witnesses on this subject, if necessary. Her testimony will explain how defendants' refusal to carry WealthTV has injured WealthTV and put it at a competitive disadvantage

in the video marketplace within the meaning of the statute and the regulations. Her testimony will also address the appropriate remedy for defendants' misconduct and support the reasonableness of the terms of carriage sought as part of the remedy. Her testimony will address the reasonableness and other aspects of the terms of conditions of carriage agreements produced in the course of discovery and the appropriate terms and conditions to be included in a remedy.

Ms. McGovern's testimony will also address the process by which cable companies decide to offer carriage to programming services based on his experience.

Ms. McGovern's testimony will also rebut assertions in affidavits and declarations furnished by defendants in their answers and other pleadings to WealthTV's complaints asserting that there are material or substantial differences between the programming of WealthTV and MOJO, differences in the audiences to which the programming is designed to appeal and does appeal, and other differences.

WealthTV wishes to have Ms. McGovern designated as an expert witness as soon as possible so that she may help counsel review such confidential and highly confidential documents as defendants may produce on or about February 13, 2009, the production date specified in the Presiding Judge's Order dated January 29, 2009. Expert reports are due one week thereafter on February 20, 2009, making time of the essence. WealthTV consulted with defendants before filing this motion. WealthTV suggests that since Ms. McGovern is essentially stepping into the same role with the same testimonial scope as Mr. Palmer, it should not be necessary for defendants to add or change witness designations. Thus, no changes in the established schedule should be necessary.

WealthTV acknowledges that this request comes long after the December 12, 2008 date specified by the Presiding Judge in the prior phase of proceedings in these cases for complainants' designating expert witnesses. WealthTV's evolving concerns about Mr. Palmer's availability for testimony prompt this request.

If WealthTV's request to substitute Ms. McGovern for Mr. Palmer is granted, Ms. McGovern would submit her report on February 20 under the established schedule, and Mr. Palmer would not submit a report.

Respectfully submitted,

WealthTV

By Its Attorney  
Kathleen Wallman, PLLC

\_\_\_\_//signed//\_\_\_\_

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February 9, 2009

## CERTIFICATE OF SERVICE

I, Kathleen Wallman, hereby certify that, on February 9, 2009, copies of the foregoing document were served via electronic mail on the following:

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*//signed//*

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## **EXPERIENCE**

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**McGovern Media Associates, LLC** **2000-Present**

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### **President and Owner**

- **Established global media consulting firm focusing on new business development and on programming analysis and contract negotiations.**
- **Major clients:**
  - 1) **VOOM (the high definition DBS provider)**  
**Acting Executive Vice President of Programming**
  - 2) **SES Americom IP Prime**  
**Programming consultant and contract negotiator**
  - 3) **Hiwire Mobile Video**  
**Programming consultant and contract negotiator**
  - 4) **RETRAK (audience research)**  
**Business plan development**
  - 5) **Channel 5 (U.K. broadcaster)**  
**Analyses of U.S. programming genres and demographics with recommendations for implementation of similar genres in the U.K.**
  - 6) **TViFusion (aggregator of programming services)**  
**Business development, joint venture due diligence and presentation to venture capitalists and potential partners.**
  - 7) **“Cane and Able: Hope in Hispaniola”**  
**Co-Executive Producer of documentary film on Dominican Republic sugar cane industry.**

**National Geographic Channels Worldwide** **1996-2000**

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### **Founding President**

- **Recruited by National Geographic Television to develop global strategy for launch of worldwide networks.**
- **Negotiated agreement with NBC to form 50/50 joint venture for National Geographic-branded channels around the world with total investment of \$700 million.**
- **Appointed by NBC and National Geographic Television to become the first president of the joint venture, National Geographic Channels Worldwide, overseeing all aspects of the network including programming, marketing, technical operations, legal and administration.**
- **Negotiated joint venture deal between BSkyB and NGCW to establish NGC Europe; served on board of directors.**

- Led international development and distribution to 60 countries, 50 million subscribers in 9 languages in only 28 months. Established and directed offices covering Europe/Middle East/South Africa, Asia/India, and Australia.
- Directed NGCW creative team (for on-air and print materials) to first year wins of 1 CTAM (Cable Television Advertising & Marketing) Gold Award, 1 Promax Gold Award, 1 Promax Silver Award, 24 Silver and Bronze BDA (Broadcast Design) Awards, and 2 Gold BDA Asia Awards.
- Cited by Variety Magazine as one of the “Breakthrough Achievers of Women in Show Business in 1998.”
- Honored by Multichannel News International as “The Global Programmer of the Year for 1999.”

**North American Television, Inc.**

**1995-1996**

**President and Chief Operating Officer**

- Recruited to start up U.S. business for Canadian-owned NATV (owned by Canadian Broadcasting Corporation and Power Corp) and its services, TRIO and NewsWorld International.
- Revamped programming of TRIO and NewsWorld International by shelving some existing product, acquiring new product, and rescheduling, thus customizing them for U.S. audiences.
- Directed extensive qualitative and quantitative research projects with Saatchi & Saatchi to determine the development of new programming genres that would appeal to U.S. audiences.
- Developed strategic business and financial plans for U.S. cable distribution of TRIO and NewsWorld International.
- Developed an international business exploration plan to expand the existing services to the global marketplace.

**Discovery Communications, Inc.**

**1987-1995**

**Senior Vice President**

**International Business Development**

**1992-1995**

- Pioneered Discovery’s international business development generating 87 million subscribers in 89 countries.
- Performed on-site due diligence in China, Japan, Asia (general), Latin America, South Africa, Germany, Spain, Portugal, Israel, Canada, Australia and New Zealand to determine distribution viability and programming direction.
- Designed business plans and strategies for entry into Asia (general), Latin America, Japan, Middle East, Iberia, Canada, Australia and New Zealand.
- Negotiated financial terms of distribution deals in Latin America, Japan, Middle East, Iberia, Australia and New Zealand.
- Participated as expert speaker on international television issues at U.S. Western Cable Show and at conferences in Asia, Latin America and Spain.

**Senior Vice President**

**Affiliate Sales and Relations**

**1987-1992**

- Recruited to start up Discovery's domestic Affiliate Sales Department.
- Increased annual subscriber revenue from \$5 million to \$50 million annually, with subscriber growth from 16 to 59 million, making it the fifth largest cable network by 1992.
- Established and developed all departmental management, tracking, and compensation/bonus systems.
- Established and developed efforts in both Local Ad Sales and Alternative Technologies.
- Served on founding Executive Committee, formulating policy and strategy for Discovery Communications, Inc.
- Served on Programming Committee which set strategic direction for programming and production projects for The Discovery Channel and The Learning Channel.

**The Weather Channel**

**1984-1987**

**Vice President**

**Affiliate Sales and Marketing**

- Recruited to direct national affiliate sales for the purpose of achieving a successful turn-around of the financially troubled company.
- In three years, increased annual subscriber revenues by 195%.
- Built strong sales and marketing team through reorganization of existing staff and by hiring and training new people.
- Established and developed Affiliate Marketing and Local Ad Sales efforts.
- Served on Executive Marketing Committee to develop and implement contiguous marketing effort to all U.S. affiliates, advertisers and viewers.
- Served on Programming Committee to improve and redesign on-air product.

**Rainbow Programming Services Company**

**1980-1984**

**Vice President**

**Affiliate Sales and Field Operations**

**1984**

- Directed national field operations through six regional offices, including affiliate sales, marketing and administration for all of Rainbow Programming's channels: Bravo, 6 regional sports networks, The Playboy Channel.
- Evaluated new business opportunities for Rainbow Programming, including development of the business plan for American Movie Classics, and the acquisition plan for three regional sports networks.

**Regional Director**

**Affiliate Sales**

**1980-1984**

- One of three regional directors hired to start up affiliate sales for Rainbow Programming Services' channels.

- Managed affiliate sales, marketing and administration for 22 states.

**Xerox Corporation** **1977-1980**  
**Sales Executive (Promoted three times)**

**Atlanta Back Clinic** **1977**  
**Consultant Psychologist**

**Georgia Division of Mental Health** **1976**  
**Director of Child and Adolescent Services**

**Public Schools Systems (Maryland and West Virginia)** **1969-1975**  
**Counselor and Teacher**

**EDUCATION**

**West Georgia College—30 hours post graduate work, Humanistic Psychology** **1975**  
**Marshall University—M.A., Counseling Psychology** **1972**  
**Marshall University—B.A., Education** **1969**

**AWARDS**

**Multichannel News’ “Global Programmer of the Year”** **1999**  
**Variety’s “Breakthrough Achievers of Women in Show Business”** **1998**  
**Distinguished Graduate Student Alumna Award, Marshall University** **1997**

**PROFESSIONAL ORGANIZATIONS**

**Women in Cable National Board of Directors** **1993-1994**  
**President of Washington/Baltimore Chapter of CTAM** **1990**  
**(Cable Television Advertising and Marketing Association)**  
**Vice President and Founder of Washington/Baltimore Chapter of CTAM** **1989**  
**Northeast Regional CTAM Board of Directors** **1989-1990**  
**Tower Club Southern Cable Honorary Association** **1989-1990**