

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

In the Matters of	)	
	)	
Herring Broadcasting, Inc. d/b/a	)	MB Docket No. 08-214
WealthTV,	)	
Complainant	)	File No. CSR-7709-P
v.	)	
Time Warner Cable Inc.	)	
Defendant	)	
	)	
Herring Broadcasting, Inc. d/b/a	)	File No. CSR-7822-P
WealthTV,	)	
Complainant	)	
v.	)	
Bright House Networks, LLC,	)	
Defendant	)	
	)	
Herring Broadcasting, Inc. d/b/a	)	File No. CSR-7829-P
WealthTV,	)	
Complainant	)	
v.	)	
Cox Communications, Inc.,	)	
Defendant	)	
	)	
Herring Broadcasting, Inc. d/b/a	)	File No. CSR-7907-P
WealthTV,	)	
Complainant	)	
v.	)	
Comcast Corporation,	)	
Defendant	)	

TO: Marlene H. Dortch  
Secretary, Federal Communications Commission

ATTN: The Honorable Richard Sippel  
Chief Administrative Law Judge

**STATUS REPORT**

Herring Broadcasting, Inc. d/b/a WealthTV (“WealthTV”) hereby submits the report required by email transmitted from the Office of Administrative Law Judges dated March 18,

2009. Counsel for WealthTV (Wallman) consulted with Mr. Harding on Thursday, March 19, 2009 on the topics enumerated in the March 18, 2009 in preparation for submitting this report.

**Discovery Disputes and Motions to Compel:** By Stipulations agreed to by the parties on March 18, 2009 all current discovery disputes were resolved.

**In Camera Testimony:** WealthTV does not anticipate that any of its witnesses will need to testify in camera.

**Consolidating In Camera Testimony to One Day:** WealthTV recognizes the possibly attractive economies of this approach, but is concerned about how it would affect WealthTV's order of proof and its ability to present a coherent narrative of its case. For example, if this approach were to result in making an expert witness (or any witness) offered by Comcast both in the WealthTV cases and in the NFL Network case available for testimony and cross-examination on a date before WealthTV's trial commences on April 21, 2009, that witness' testimony would precede WealthTV's affirmative case. This is at odds with the order of proof specified in the Commission's regulations. To the extent that this could eventuate from the approach suggested in the March 18 email, WealthTV objects.

**Protective Order Issues:** WealthTV knows of no current issues relating to adequacy of the Protective Order entered in its cases. WealthTV continues to be concerned, however, about how the strictures of the Protective Order may adversely affect the openness of the trial. Substantially all of the documents produced by defendants have been marked Confidential or Highly Confidential, in contrast to WealthTV, which marked only core documents as such. While defendants have been reasonably responsive to the possibility of addressing WealthTV's protests concerning the proper marking of specific documents, this unmanageably shifts the burden of proper marking under the Protective Order to WealthTV, and the reality is that by the

time of trial, most of the defendants' documents that are likely to be exhibits will be marked Confidential or Highly Confidential. This will have a restrictive or exclusionary effect with respect to the attendance of FCC staff other than the designated Enforcement Bureau members, public interest groups and the press and seems at odds with the Presiding Judge's evident view, expressed in status conferences, concerning the desirability of a relatively open trial. It may also affect the ability of WealthTV's principals, Robert Herring, Sr. and Charles Herring, to attend the trial and participate meaningfully in preparation for trial.<sup>1</sup> In this light, WealthTV urges administration at trial of "rules of the road" that instruct counsel to minimize the need for clearing the courtroom for in camera cross-examination.

**Subpoenas ad Testificandum:** WealthTV is unable to specify at this time whether it might seek issuance of subpoenas because it has not yet learned from defendants who will be called as witnesses (in addition to the experts already identified). Depending upon whom defendants call, the availability of such witnesses for cross-examination could be satisfactory, and might obviate the need for some or all subpoenas. To begin to address this information problem, WealthTV has disclosed its witnesses to the defendants, and Ms. Wallman has discussed with Mr. Harding the possibility of a near-term reciprocal disclosure by defendants, but no agreement has yet been concluded.

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<sup>1</sup> To mitigate this problem, Robert Herring, Sr. and Charles Herring recently signed Declarations pursuant to the Protective Order seeking access to Confidential information only. The period provided for in the Protective Order for filing objections has not yet expired as of the date of the filing of this report. WealthTV acceded to the form of the governing Protective Order upon the Order of the Presiding Judge with full preservation of rights as to appeal.

Respectfully submitted,

Herring Broadcasting, Inc., d/b/a  
WealthTV

By Its Attorneys

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Harold J. Feld

March 23, 2009

**CERTIFICATE OF SERVICE**

I, Kathleen Wallman, hereby certify that, on March 23, 2009, copies of the foregoing document were served via electronic mail on the following:

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The Honorable Richard L. Sippel  
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