

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554**

In the Matter 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	)	
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	)	
	)	
To: Marlene H. Dortch, Secretary		
Federal Communications Commission		

Attn: The Hon. Richard L. Sippel  
Chief Administrative Law Judge

**CONTINGENT REQUEST FOR ISSUANCE OF SUBPOENA AD TESTIFICANDUM**

Complainant Herring Broadcasting, Inc. d/b/a WealthTV (“WealthTV”), by its counsel, hereby respectfully submits this Contingent Request for Issuance of Subpoena Ad Testificandum

pursuant to Section 1.333(b) of the rules and regulations of the Federal Communications Commission.<sup>1</sup> Specifically, for the reasons and under the conditions set forth below, WealthTV requests that the Presiding Judge issue a subpoena ad testificandum requiring the appearance and testimony of the Chief Executive Officer of iN DEMAND Networks, L.L.C. (“iN DEMAND”), Robert D. Jacobson, at the hearing in the above-captioned proceeding scheduled to begin on April 21, 2009. Defendants have arranged for the trial testimony of David Asch, an Executive Vice President of iN DEMAND, but not Mr. Jacobson who spoke often in the trade press about iN DEMAND and MOJO.

As the Presiding Judge is aware, Defendants have filed a Motion *In Limine* to Exclude Portions of the Testimony of Charles Herring (the “Motion In Limine”). The Motion In Limine seeks, among other things, to prevent Mr. Herring from testifying about iN DEMAND and its management of, strategies regarding, and target demographic for MOJO even though he has personal knowledge of these topics based on his work in the cable programming industry, and from testifying about and in reliance on statements made by iN DEMAND executive Robert Jacobson in trade press and other publications. WealthTV believes Mr. Herring’s testimony regarding such topics is both admissible and appropriate and is today filing its timely Opposition to the Motion In Limine.

However, in the event the Presiding Judge grants, in whole or in part, the Motion In Limine thereby preventing Mr. Herring from testifying regarding the topics outlined above, WealthTV requests that the Presiding Judge issue a subpoena ad testificandum requiring the appearance and testimony of Mr. Jacobson at the hearing in the above-captioned proceeding. If Mr. Herring’s testimony on such topics is excluded by order of the Presiding Judge, Mr. Jacobson will be able to provide testimony regarding iN DEMAND’s strategies regarding

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<sup>1</sup> 47 C.F.R. § 1.333(b).

MOJO, as well as the meaning of statements MOJO executives made in trade press and other publications. Specifically, Mr. Jacobson will be able to provide testimony regarding:

1. The business strategies, programming objectives, and perceived network demographics of iN DEMAND management in creating INHD and MOJO;
2. The statements made and the meaning of statements made in the trade press and other articles by executives of iN DEMAND;
3. The reasons and factual basis for the use of the MOJO tagline;
4. The categories of programming that iN DEMAND executives assigned to MOJO programming;
5. The advertising solicited by iN DEMAND for MOJO;
6. The consumer demand for MOJO;
7. Affiliation negotiations between iN DEMAND and the Defendants, as well as other multi-video programming distributors; and
8. The rationale for the discontinuance of MOJO.

Testimony on these topics will assist the Presiding Judge in evaluating the Defendants' discriminatory conduct toward WealthTV in comparison to MOJO.

For the foregoing reasons, in the event that the Presiding Judge grants Defendants' Motion *In Limine* to Exclude Portions of the Testimony of Charles Herring, Complainant's Request for Issuance of Subpena Ad Testificandum should be granted.

Respectfully submitted,

Harold Feld  
STS LLC  
1719 Noyes Lane  
Silver Spring, MD 20910

/s/ Kathleen Wallman  
Kathleen Wallman  
Kathleen Wallman, PLLC  
9332 Ramey Lane  
Great Falls, VA 22066

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

April 16, 2009

## CERTIFICATE OF SERVICES

I, Kathleen Wallman, hereby certify that, on this 16<sup>th</sup> day of April, 2009, copies of the foregoing "Request for Issuance of Subpoena Ad Testificandum" were sent via electronic mail, to the following:

The Honorable Richard L. Sippel  
Chief Administrative Law Judge  
Federal Communications Commission  
445 12<sup>th</sup> Street SW  
Washington, DC 20554

Ms. Mary Gosse  
Office of Administrative Law Judges  
Federal Communications Commission  
445 12<sup>th</sup> Street SW  
Washington, DC 20554

Kris Anne Monteith  
William Davenport  
Gary P. Schonman  
Elizabeth Mumaw  
Enforcement Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street SW  
Washington, DC 20554

R. Bruce Beckner  
Matthew S. Schwartz  
Robert M. Nelson  
Fleischman and Harding LLP  
1255 23<sup>rd</sup> Street NW, 8<sup>th</sup> Floor  
Washington, DC 20037  
*Counsel for Bright House Networks, LLC*

Arthur J. Steinhauer  
Cody Harrison  
Sabin Bermant & Gould LLP  
Four Times Square  
New York, NY 10036  
*Counsel for Bright House Networks, LLC*

David H. Solomon  
L. Andrew Tollin  
Robert G. Kirk  
J. Wade Lindsay  
Wilkinson Barker Knauer, LLP  
2300 N Street NW, Suite 700  
Washington, DC 20037  
*Counsel for Comcast Corporation*

James L. Casserly  
Michael H. Hammer  
Megan A. Stull  
Michael Hurwitz  
Willkie Farr & Gallagher LLP  
1875 K Street NW  
Washington, DC 20006  
*Counsel for Comcast Corporation*

David E. Mills  
J. Christopher Redding  
Jason E. Rademacher  
J. Parker Erkmann  
Lynn M. Deavers  
Dow Lohnes PLLC  
1200 New Hampshire Avenue NW  
Washington, DC 20036  
*Counsel for Cox Communications, Inc.*

Jay Cohen  
Gary Carney  
Samuel E. Bonderoff  
Paul Weiss Rifkind Wharton & Garrison LLP  
1285 Avenue of the Americas  
New York, NY 10011  
*Counsel for Time Warner Cable Inc.*

Michael P. Carroll  
David B. Toscano  
Antonio J. Perez-Marques  
Jennifer A. Ain  
Davis Polk & Wardwell  
450 Lexington Avenue  
*Counsel for Comcast Corporation*

/s/ Kathleen Wallman  
Kathleen Wallman