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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

FILED/ACCEPTED

APR 12 2012

Federal Communications Commission
Office of the Secretary

In the Matter of	)	
	)	MB Docket No. ___
Retransmission Consent Complaint	)	CSR No. 8623-C
And Petition of Fox Television Holdings, Inc.	)	
	)	

To: Office of the Secretary
Attn: Media Bureau

12-113

RETRANSMISSION CONSENT COMPLAINT AND
PETITION FOR ORDER REQUIRING TV MAX, INC. TO SHOW CAUSE
WHY IT SHOULD NOT CEASE AND DESIST
FROM VIOLATING SECTION 325(B) OF THE COMMUNICATIONS ACT

Fox Television Holdings, Inc. ("FOX"), by and through its undersigned counsel, hereby files this Complaint, pursuant to Section 76.7 of the Commission's rules,[1] against TV Max, Inc. (d/b/a Wavevision) ("TV Max") for TV Max's continuing and willful violation of Section 325(b) of the Communications Act of 1934 (the "Act") and Section 76.64 of the Commission's rules.[2] FOX hereby also petitions the Commission to issue an order compelling TV Max to show cause why it should not be required to immediately cease and desist from retransmitting the signals of television broadcast stations KTXH(TV) and KRIV(TV), Houston, Texas (the "Stations") in violation of the Act and the rules. TV Max does not have FOX's consent or authorization to retransmit the Stations, and it is not (as it claims to be) operating a master antenna television facility (nor is it otherwise exempt from the retransmission consent

[1] *See* 47 C.F.R. § 76.7

[2] *See* 47 U.S.C. § 325(b); 47 C.F.R. § 76.64.

regime). For all of these transgressions, and because TV Max has refused to negotiate in good faith with FOX as required by Section 76.65 of the Commission's rules,[3] FOX requests that the FCC initiate a forfeiture proceeding against TV Max pursuant to Section 503 of the Act and Section 1.80 of the rules.[4]

Statement of Facts

FOX is the parent of the licensee of the Stations, and TV Max operates one or more cable television systems in the Houston, Texas Designated Market Area (the "DMA"). FOX and TV Max entered into that certain "Fox Television Holdings Retransmission Consent Agreement," for a term running January 1, 2009 through December 31, 2011 (the "Agreement"), which, among other things, provided FOX's consent to TV Max's retransmission of the Stations on TV Max cable systems in the DMA.[5] The Agreement remained in force through December 31, 2011, at which time it expired in accordance with its terms.

FOX diligently and in good faith attempted to negotiate with TV Max prior to expiration of the Agreement.[6] Specifically, in August 2011, FOX made its initial phone calls to TV Max to begin conversations about extending the contract.[7] On September 7, 2011, FOX sent TV Max a written proposal with terms for TV Max's continued carriage of the Stations beyond

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[3] *See* 47 C.F.R § 76.65.

[4] *See* 47 U.S.C. § 503; 47 C.F.R. § 1.80.

[5] *See* Declaration of Joseph M. Di Scipio, Vice President, Fox Television Stations, Inc. (the "Di Scipio Declaration"), attached hereto as Attachment 1. FOX has elected retransmission consent for the Stations for the 2012-2014 election cycle. A copy of FOX's valid retransmission consent election for this cycle is attached as Exhibit A to the Di Scipio Declaration.

[6] *See* Declaration of Steven W. Hunt, Regional Vice President, Affiliate Sales and Marketing, Fox Cable Networks Group (the "Hunt Declaration"), attached hereto as Attachment 2.

[7] *See* Hunt Declaration.

the end of 2011.[8] Unfortunately, despite FOX's repeated attempts to contact TV Max by telephone, mail and email, TV Max failed to provide any substantive response.[9]

In fact, in clear violation of the Commission's good faith bargaining rules,[10] TV Max utterly refused to engage in negotiations, consistently neglecting to return phone calls and, on several occasions, breaking its promises that a response to FOX's proposal would be forthcoming. Steven Hunt, the Regional Vice President for Affiliate Sales and Marketing in charge of negotiating FOX's retransmission consent in the DMA, kept detailed records of his attempts to communicate with TV Max.[11] Given how hard FOX tried in good faith to resolve this matter prior to December 31, 2011, those details bear noting here:

- Aug. 22, 2011 – Mr. Hunt left a voicemail for Richard Gomez, TV Max's Vice President, Operations.
- Aug. 25 and 29, and Sept. 6, 2011 – Mr. Hunt left additional voicemails for Mr. Gomez.
- Sept. 7, 2011 – Mr. Hunt sent a letter, accompanied by a written retransmission consent proposal, asking Mr. Gomez to contact him,
- Sept. 9, 2011 – Mr. Gomez left a voicemail for Mr. Hunt, acknowledging receipt of prior messages and receipt of FOX's written proposal. Mr. Gomez promised that he would review and contact FOX the following week.
- Sept. 14, 2011 – Mr. Hunt left another voicemail for Mr. Gomez.
- Sept. 19, 2011 – Mr. Hunt reached Mr. Gomez by phone; Mr. Gomez said that he was not prepared to discuss FOX's proposal; Mr. Gomez asked to have a further call to discuss at 10 a.m. on Sept. 23, 2011.

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8 *See id.*

9 *See id.*

10 *See* 47 C.F.R § 76.65.

11 *See* Hunt Declaration.

- Sept. 23, 2011 – Mr. Gomez did not call at the agreed-upon specified time; Mr. Hunt left another voicemail for Mr. Gomez.

- Sept. 27 and 29, and Oct. 3, 2011 – Mr. Hunt left additional voicemails for Mr. Gomez.

- Oct. 11, 2011 – Mr. Hunt reached Mr. Gomez by phone; at Mr. Gomez's request, Mr. Hunt re-sent FOX's proposal by email, at which point Mr. Gomez promised to review and call back by the end of the week.

- Oct. 14 and 19, 2011 – Mr. Hunt left additional voicemails for Mr. Gomez.

- Oct. 24, 2011 – Mr. Hunt again sent FOX's proposal to Mr. Gomez by email, accompanied by a request for a meeting.

- Oct. 31 and Nov. 2, 4, and 8, 2011 –Mr. Hunt left additional voicemails for Mr. Gomez.

- Nov. 9, 2011 – Mr. Hunt sent a letter to Mr. Gomez, accompanied by another copy of FOX's proposal; the letter requested a reply by Nov. 16, 2011.

- Nov. 17, 2011 – Mr. Hunt left another voicemail for Mr. Gomez, specifically warning that in the absence of an agreement, TV Max's retransmission consent authority would expire on Dec. 31, 2011.

- Nov. 17, 2011 – Mr. Gomez left a voicemail for Mr. Hunt, claiming that Mr. Gomez had passed along FOX's written proposal to the President and CEO of TV Max, who would contact Mr. Hunt shortly.

- Nov. 17, 2011 – Mr. Hunt attempted to return Mr. Gomez's call, but had to leave another voicemail; in his message, Mr. Hunt asked for contact information for TV Max's President and CEO.

- Nov. 28, 2011 – Mr. Hunt left Mr. Gomez another voicemail and sent him another email, in each case requesting contact information for TV Max's President and CEO.

- Dec. 1, 2011 – Mr. Hunt sent Mr. Gomez another letter, again accompanied by a copy of FOX's proposal, and requested a meeting to discuss.

- Dec. 6, 9 and 13, 2011 – Mr. Hunt left additional voicemails for Mr. Gomez, specifically reminding him of the Dec. 31, 2011 expiration of the Agreement.

- Dec. 14, 2011 – Mr. Hunt reached Mr. Gomez's assistant by phone; she acknowledged receipt of Mr. Hunt's voicemail of Dec. 13, 2011 and told Mr.

Hunt that she personally gave the message to Mr. Gomez. When Mr. Hunt asked her how to reach Mr. Gomez, she responded: "good luck."[12]

Finally, on December 20, 2011, FOX sent TV Max a letter reminding it that the Agreement was set to expire on December 31, 2011, and alerting it that carriage of the Stations after the expiration of the Agreement would constitute a violation of the Communications Act and the FCC's rules (as well as copyright infringement).[13] Notwithstanding this letter, TV Max failed to cease carrying the Stations on its cable systems upon expiration of the Agreement, and TV Max has continuously carried the Stations on its cable systems without FOX's authorization since January 1, 2012.[14] FOX reiterated to TV Max in a subsequent letter, dated March 13, 2012, that the cable operator's continuing carriage of the Stations without consent violates Federal law.[15] FOX demanded that TV Max cease and desist from its unauthorized retransmissions.[16] Still TV Max continues to engage in retransmitting the Stations' signals without FOX's authorization or consent.

TV Max's carriage of the Stations on its cable systems, in direct contravention of FOX's instructions, constitutes a brazen, willful and ongoing violation of Section 325(b) of the Act and Section 76.64 of the Commission's rules.

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[12] *See id.*

[13] *See* Letter from Joseph M. Di Scipio, Vice President, Fox Television Stations, Inc., to Richard Gomez, Vice President Operations, TV Max, Inc. (dated Dec. 20, 2011), a copy of which is attached hereto as Attachment 3. Mr. Hunt followed up with additional voicemails to Mr. Gomez on Dec. 27 and 28, 2011. *See* Hunt Declaration.

[14] *See* Di Scipio Declaration.

[15] *See* Letter from Catherine Robb, counsel to FOX, to Richard Gomez, Vice President Operations, TV Max, Inc. (dated Mar. 13, 2012), a copy of which is attached hereto as Attachment 4.

[16] *See id.*

Argument

Section 325(b) of the Act provides that, with respect to stations that have elected retransmission consent, no cable system or other multichannel video programming distributor ("MVPD") "shall retransmit the signal of a broadcasting station" without the express authority of the station.[17] Section 76.64 of the Commission's rules codifies this statutory mandate, and states that any retransmission consent agreement must be in writing and "specify the extent of the consent being granted."[18] Section 76.65 of the rules makes clear that "broadcast stations and [MVPDs] shall negotiate in good faith the terms and conditions of retransmission consent agreements to fulfill the duties established by section 325 . . . ."[19] Because TV Max refused to negotiate with FOX and continues to retransmit the signals of the Stations without FOX's express authority – in fact in contravention of FOX's clear and unequivocal request that it stop retransmitting the signals – TV Max is willfully refusing to comply with the Act and the Commission's rules. FOX therefore respectfully requests that the Commission find TV Max in violation of the Act and the rules and move expeditiously to direct TV Max to show cause why a cease and desist order should not be issued. FOX also urges the Commission to call for

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[17] 47 U.S.C. § 325(b). Section 325(b) sets forth certain limited exceptions, none of which are applicable here.

[18] 47 C.F.R. § 76.64(a), (j).

[19] 47 C.F.R. § 76.65.

expedited hearing proceedings on the show cause order and, in the meantime, to order TV Max to terminate its retransmission of the Stations' signals.[20]

The legislative history of Section 325(b) of the Act makes clear that Congress designed the retransmission consent regime to "allow broadcasters to control the use of their signals by anyone engaged in retransmission by whatever means."[21] Congress enacted the law to ensure the continued viability of over-the-air television and to protect the public interest benefits of broadcast television.[22] Congress concluded that "a very substantial portion of the fees which consumers pay to cable systems is attributable to the value they receive from watching broadcast signals" and public policy should not support a system "under which broadcasters in effect subsidize the establishment of their chief competitors."[23] Congress further explained that "[c]able operators pay for the cable programming services they offer to their customers; the Committee believes that programming services which originate on a broadcast channel should

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[20] The Commission has authority to issue an order directing TV Max to terminate its carriage of the Stations' signals even in the absence of a show cause order. If it does so, and if TV Max immediately were to come into compliance with this directive, the Commission would not need to proceed to issue a show cause order. *See In re Complaint of North Texas Broadcasting Corp.*, 10 FCC Rcd 8343, 8344 (1995) (holding that "carriage of the signal of [a broadcast station] without its retransmission consent having been obtain[ed] is in violation" of the Act and ordering cable system to "inform the Commission that it has ceased carriage of the signal . . . or received the necessary retransmission consent" within 30 days); *see also In re Board of Water, Light & Sinking Fund Commissioners of the City of Dalton, Georgia*, 19 FCC Rcd 19534, 19538 (2004) ("[W]e do not believe that an Order to Show Cause is appropriate at this juncture. We have no reason to believe that the [cable operator] will not" cease carriage of the station in question "upon release of this order").

[21] *See* S. Rep. No. 102-92 (1991), at 34.

[22] *See id.* at 35 ("The Committee has concluded that the exception to section 325 for cable retransmissions has created a distortion in the video marketplace which threatens the future of over-the-air broadcasting.").

[23] *Id.*

not be treated differently."[24] Each day that a cable company such as TV Max retransmits FOX's signals without permission, it damages FOX by effectively forcing the Stations to "subsidize . . . their chief competitors."[25] Accordingly, FOX requests that the Commission respond swiftly to TV Max's willful and continuing retransmission violations and thus maintain the competitive balance Congress sought to establish through the retransmission consent rules.

To the extent that TV Max erroneously asserted in a March 2012 letter to FOX's local Texas counsel that the "retransmission consent requirements are not applicable to [TV Max],"[26] the Commission easily can dispose of this spurious argument. TV Max now appears to claim that it is not required to obtain FOX's consent to retransmit the Stations because TV Max purportedly is "in compliance with 47 CFR 76.64(e)."[27] Curiously, TV Max failed to raise this argument prior to December 31, 2011, when FOX diligently and in good faith tried to negotiate an extension of the Agreement. Regardless of the odd timing, TV Max's argument makes no sense.

First, TV Max and FOX were parties to a *retransmission consent agreement* for a term running from January 1, 2009 through December 31, 2011. As part of the Agreement, FOX explicitly granted, and TV Max explicitly accepted, retransmission consent for carriage of the Stations. In exchange, among other things, TV Max provided to FOX commercial advertising "spots" to be telecast during available time on TV Max's cable systems. If TV Max were not

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[24] *Id.*

[25] *Id.*

[26] Letter from Richard Gomez, Vice President and General Manager, TV Max, Inc., to Catherine L. Robb, counsel to FOX (dated Mar. 16, 2012), a copy of which is attached hereto as Attachment 5.

[27] *See id.*

subject to the retransmission consent requirements, as it now erroneously claims, there would be no logical explanation for it to have signed the Agreement and provided consideration to FOX for the previous three years.[28] In any event, there can be no dispute that TV Max is a cable operator that makes available for purchase, by subscribers or customers, multiple channels of video programming – the very definition of an MVPD subject to Section 325.[29]

Second, TV Max does **not** operate a master antenna system exempt from obtaining retransmission consent under 47 C.F.R. § 76.64(e).[30] This rule states that the:

> retransmission consent requirements of this section are not applicable to broadcast signals received by master antenna television facilities . . . in conjunction with the provision of service by [an MVPD] *provided that* the [MVPD] makes reception of such signals available *without charge* and *at the subscribers option* and *provided further* that the antenna facility used for the reception of such signals is either *owned by the subscriber or the building owner*; or under the *control and available for purchase by the subscriber or the building owner* upon termination of service.[31]

This rule is not applicable to TV Max. FOX understands that TV Max receives the signals of FOX's Stations at a central head-end in the DMA, from where TV Max's fiber ring retransmits

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[28] FOX does not believe, and TV Max has not asserted, that there has been any change in circumstances since January 1, 2012 that conceivably could result in TV Max suddenly becoming exempt from the retransmission consent requirements.

[29] *See* 47 U.S.C. § 522(13); *see also* List of Registered Texas Cable Communities, *available at* http://www.fcc.gov/mb/engineering/list/TX.xls (last visited Apr. 11, 2012) (showing TV Max systems registered as TX1777, TX7786, TX1795, TX1986, TX2219-22, TX2228 and TX2255-56 in Harris County, Texas).

[30] *See* 47 C.F.R. § 76.64(e); *see also In re Implementation of the Cable Act*, 8 FCC Rcd 2965, 2997 (1993) ("*1993 Order*") (*on reconsideration at In re Implementation of the Cable Television Consumer Protection and Competition Act*, 9 FCC Rcd 6723 (1994)).

[31] 47 C.F.R. § 76.64(e) (emphasis supplied).

those signals to various apartment buildings dispersed throughout the DMA.[32] Thus, TV Max is not operating a master antenna facility at all.

Furthermore, inasmuch as TV Max receives the Stations' signals at a central head-end controlled exclusively by TV Max, it cannot possibly be the case that any subscriber (or apartment building owner) "owns" or "controls" the "antenna facility used for the reception of such signals," nor can an antenna at a TV Max head-end be "available for purchase by" any subscriber or building owner upon termination of service.[33] FOX also understands that TV Max does not offer its subscribers in the DMA an option not to receive the Stations' signals, nor has it reduced the subscription fees paid by its retail customers since January 1, 2012, each as required by Section 76.64(e).[34] Given that TV Max indisputably was carrying the Stations pursuant to the Agreement between 2009 and 2011, and because it did not reduce its retail rates upon expiration of the Agreement, TV Max cannot now rationally claim that it is now delivering the Stations' signals to subscribers "without charge" as required by Section 76.64(e).[35]

In any event, the narrow exemption contemplated by Section 76.64(e) of the rules was intended simply to ensure that households could continue to receive broadcast signals legitimately obtained over-the-air, whether via an individual antenna or in cases where the off-air

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[32] *See* Di Scipio Declaration; *see also* About Wavevision, http://www.wavevision.com/houston/about-wavevision (last visited Apr. 11, 2012) ("The all new Houston-based Wavevision offers you highly affordable cable and internet through our fiber optic lines").

[33] 47 C.F.R. § 76.64(e). The Commission imposed this requirement to ensure that a "multichannel distributor" would be "unable to terminate or otherwise limit the availability of local broadcast signals to individual residents" following termination of cable service. *1993 Order*, 8 FCC Rcd at 2998.

[34] 47 C.F.R. § 76.64(e); *see also* Di Scipio Declaration.

[35] *Id.*

signal is relayed to their televisions by a master antenna.[36] Aside from the fact that TV Max *does not* utilize a master antenna, it clearly *does* engage in far more than simply relaying over-the-air signals to its subscribers. FOX understands that TV Max makes the Stations' signals available to its subscribers via set-top-boxes that (1) use advanced electronics to integrate the signals into the cable channel line-up; (2) enable viewers to utilize advanced services (such as interactive programming guides and digital video recorders); and (3) in some or all cases rely upon a digital tuner contained not in a television (as would be expected for true over-the-air reception) but in the set-top-box itself.[37] For that matter, FOX understands that the Stations' HD signals appear in the TV Max channel line-up not on their over-the-air channels (20 for KTXH and 26 for KRIV), but on channels 602 and 606.[38] To accomplish all of these ends, TV Max must manipulate, encode and retransmit FOX's signals between its head-end and viewers' homes. Even if it were operating a master antenna facility, TV Max is not by any stretch of the imagination simply relaying signals passively from an over-the-air antenna to a television set.[39]

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[36] *See 1993 Order*, 8 FCC Rcd at 2997 (citing comments filed by the National Association of Broadcasters, which said "the simple operation of a collective antenna in an apartment building to receive local television signals does not involve the redistribution of broadcast signals, and the consent of those local stations would not be required"). The FCC also analogized this exception to provisions in the Copyright Act that exempt "from copyright liability . . . a service that 'consists entirely of the relaying, by the management of a hotel, apartment house, or similar establishment, of signals transmitted by a broadcast station licensed by the [FCC], within the local service area of such station, to the private lodgings of guests or residents of such establishment, and no direct charge is made to see or hear the secondary transmission.'" *Id.* at n.375 (citing 17 U.S.C. § 111(a)).

[37] This has to be the case for any subscriber that still receives broadcast signals from TV Max for viewing on an analog television or a digital monitor lacking an integrated tuner, which cannot receive over-the-air broadcast signals on their own.

[38] *See* Di Scipio Declaration; *see also* http://www.wavevision.com/houston/channel-line-up#gold (last visited Apr. 11, 2012).

[39] *See 1993 Order*, 8 FCC Rcd at 2997.

In short, there is no basis for TV Max's bald assertion that it does not have to comply with the retransmission consent requirements of the Act and the FCC's rules.[40] FOX therefore urges the Commission to expedite initiation of a forfeiture proceeding and issuance of a notice of apparent liability to penalize TV Max for its willful violations to the maximum extent allowed by law. As the Commission again confirmed just last month, a cable system that "retransmit[s] the signal of a broadcasting station without 'the express authority'" of the station "willfully and repeatedly violate[s] Section 325 of the Communications Act . . . and Section 76.64 of the Commission's rules."[41]

In the *Bailey NALs*, the FCC acknowledged its longstanding position that "if an MVPD retransmits a television signal without consent, Commission intervention would be consistent with precedent and 'properly documented retransmission of a television signal without consent would be grounds for imposition of a forfeiture.'"[42] With regard to TV Max's assertion that Section 76.64(e) of the FCC's rules insulates it from liability here, the *Bailey NALs* also made clear that it is "irrelevant . . . that [the cable operator] receives the signal 'free over the air to antenna receivers.' We emphasize that the cable operator has discretion to decide whether to

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[40] FOX responded to Mr. Gomez's March 16, 2012 letter, disputing TV Max's assertions regarding Section 76.64(e) and offering TV Max an opportunity to supply information that would "demonstrate that TV Max does satisfy all of the requirements for exemption . . . ." Letter from Catherine L. Robb, counsel to FOX, to Richard Gomez, Vice President Operations, TV Max, Inc. (dated Mar. 22, 2012). To date, TV Max still has not provided any substantive response. A copy of FOX's letter is attached as Attachment 6 hereto.

[41] *In re Notice of Apparent Liability for Forfeiture of Bailey Cable TV, Inc.*, 2012 WL 928199, DA 12-420 (2012); *In re Notice of Apparent Liability for Forfeiture of Bailey Cable TV, Inc.*, 2012 WL 928200, DA 12-421 (2012) (the "*Bailey NALs*") (each quoting 47 U.S.C. § 325).

[42] *Bailey NALs*, at ¶ 6 (quoting *1993 Order*, 8 FCC Rcd at 3005).

enter into a retransmission consent agreement, but in the absence of such an agreement, the Act and the Commission's rules prohibit retransmission of the station's signal."[43]

Pursuant to Section 1.80 of the Commission's rules, a "forfeiture penalty may be assessed against any person found to have . . . willfully or repeatedly failed to comply with any provisions of the [Act]; or of any rule, regulation or order issued by the Commission . . . ."[44] Like the cable operator in the *Bailey NALs*, TV Max has willfully violated both the Act and the Commission's rules and its violation is repeated and ongoing. The *Bailey NAL*s indicate that it would be appropriate to assess a base forfeiture of $7,500 for each violation, with each day of unlawful carriage a separate violation. Thus, the Commission calculated that the cable operator in the *Bailey NALs* was subject to a potential forfeiture of $510,000 (the base forfeiture multiplied by 34 days of unlawful carriage for each station carried).[45] The FCC should utilize the same formula in determining a forfeiture against TV Max for its 103 days (and running) unauthorized carriage of the two Stations here. This would send a stern and necessary signal that the FCC will not tolerate wanton disregard of the retransmission consent regime. Otherwise, the Commission risks MVPDs continuing to flaunt the Act and its rules by carrying broadcast stations without consent, as TV Max has willfully done notwithstanding the recent *Bailey NALs*.

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[43] *Id.* at ¶ 7 (internal citation omitted).

[44] 47 C.F.R. § 1.80(a)(2), which implements Section 503 of the Act, 47 U.S.C. § 503.

[45] *See Bailey NALs*, at ¶ 8. Only because Bailey submitted financial information indicating that $510,000 in forfeitures would cause it "extreme financial hardship, and would represent a significant percentage of [its] gross revenues," did the Commission impose a lower actual amount of apparent liability. *Id.*

For the foregoing reasons, FOX respectfully requests that the Commission find TV Max in violation of the Act and the rules and require it to show cause why the Commission should not order TV Max to cease and desist from retransmitting the Stations' signals. In the meantime, the FCC should order TV Max to terminate carriage of the Stations on all of its systems. Finally, FOX respectfully requests that the Commission initiate a forfeiture proceeding and issue a notice of apparent liability to penalize TV Max to the fullest extent allowed by law for its willful and deliberate actions.

Respectfully submitted,

FOX TELEVISION HOLDINGS, INC.

By: _____

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Washington, D.C. 20005
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Its Attorneys

Dated: April 12, 2012

ATTACHMENT 1

DECLARATION

I, Joseph M. Di Scipio, hereby state as follows:

1. I am Vice President, Legal & FCC Compliance, Fox Television Stations, Inc., which is a subsidiary of Fox Television Holdings, Inc. ("FOX") and licensee of KTXH(TV) and KRIV(TV), Houston, Texas (the "Stations"). I submit this Declaration in connection with FOX's Retransmission Consent Complaint and Petition for Order Requiring TV Max, Inc. to Show Cause Why It Should Not Cease and Desist From Violating Section 325(b) of the Communications Act, dated April 12, 2012 (the "Complaint").

2. FOX and TV Max Corporate, Inc. ("TV Max") were parties to that certain "Fox Television Holdings Retransmission Consent Agreement" (the "Agreement"), effective for the term running January 1, 2009 through December 31, 2011. The Agreement expired in accordance with its terms on December 31, 2011. The Agreement provided FOX's consent to TV Max's retransmission of the Stations on TV Max cable systems in the Houston, Texas Designated Market Area (the "DMA") until December 31, 2011. The Agreement also provided that, in exchange for FOX's consent, TV Max, among other things, provided FOX commercial advertising "spots" to be telecast during available time on TV Max's cable systems.

3. FOX validly elected retransmission consent for the 2012-2014 election cycle. A copy of FOX's election notice to TV Max is attached hereto as Exhibit A.

4. On December 20, 2011, I sent TV Max a letter reminding it that the Agreement was set to expire on December 31, 2011, and alerting it that carriage of the Stations after the expiration of the Agreement would constitute a violation of the Communications Act and the FCC's rules (as well as copyright infringement). TV Max continued to carry the Stations on its cable systems upon expiration of the Agreement.

5. On March 13, 2012, FOX's Texas counsel sent another letter to TV Max, reiterating that the cable operator's continuing carriage of the Stations without consent violates Federal law. FOX demanded that TV Max cease and desist from its unauthorized retransmissions. TV Max has continuously carried the Stations on its cable systems without FOX's authorization since January 1, 2012.

6. I understand that TV Max receives the signals of FOX's Stations at a central head-end in the DMA, from where TV Max's fiber ring retransmits those signals to various apartment buildings dispersed throughout the DMA. I further understand that TV Max does not offer its subscribers in the DMA an option not to receive the Stations' signals, nor has it reduced the subscription fees paid by its retail customers since January 1, 2012.

7. I also understand that TV Max makes the Stations' signals available to its subscribers via set-top-boxes that use advanced electronics to integrate the signals into the cable channel line-up; that enable viewers to utilize advanced services (such as interactive programming guides and digital video recorders); and that in some or all cases rely upon a digital tuner contained in the set-top-box itself. I also understand that the Stations' HD signals appear in the TV Max channel line-up not on their over-the-air channels, but on channels 602 and 606.

8. As of April 12, 2012, TV Max willfully and deliberately continued to retransmit the signals of the Stations on its cable systems in the DMA.

I declare under penalty of perjury that I have read the foregoing Complaint, that the facts therein and in this Declaration are true and correct to the best of my knowledge, information and belief, formed after reasonable inquiry, that the Complaint is well grounded in fact, that it is warranted by existing law or good faith argument for the extension, modification or reversal of existing law, and that it is not interposed for any improper purpose.

Executed on April 12, 2012

Joseph M. Di Scipio
Vice President, Legal & FCC Compliance
Fox Television Stations, Inc.
444 N. Capitol Street, N.W.
Washington, D.C. 20001

Exhibit A

D'ARTAGNAN BEBEL
Vice President,
General Manager

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

August 23, 2011

TVMax
10300 Westoffice Drive
Houston, TX 77042

Re: Election of Retransmission Consent

Dear Sir or Madam,

This letter is a notification that television stations KRIV and KTXH, Houston, Texas ("Stations"), owned and operated by Fox Television Holdings, Inc. ("Fox"), elect retransmission consent with respect to retransmission of their broadcast signals by TVMax Houston, LP or its affiliates ("Operator"). This retransmission consent election is for all communities within the Stations' "television market" (as defined in 47 C.F.R. § 76.55(e)) served by cable systems owned or managed by or affiliated with Operator including those comprised of the following headends: Houston,Idlewood Park, Oaks og Greenspoint, Seabrook, Walnut Grove, Webster, and any other headend for which Stations could elect must carry under the Rules referenced below.

Accordingly, Stations hereby notifies Operator that, pursuant to Section 325(b)(3)(B) of the Communications Act of 1934, as amended (the "Act"), and Section 76.64(f)(2) of the Rules and Regulations of the Federal Communications Commission (the "Rules"), Stations elect to assert their rights under Section 325(b)(1)(A) of the Act and Section 76.64(a) of the Rules to require that Operator obtain Stations' express consent before retransmitting its signals. This election of retransmission consent is for the period January 1, 2012 through December 31, 2014.
Please direct all correspondence and any questions regarding this matter to:

Joseph M. Di Scipio
Vice President, Legal and FCC Compliance
Fox Television Stations, Inc.
444 North Capitol Street, NW, Suite 740
Washington, DC 20001
jdiscipio@newscorp.com
202-715-2350

Sincerely,

D'Artagnan Bebel
VP/General Manager

cc. Public File

4261 SOUTHWEST FREEWAY HOUSTON, TEXAS 77027-7201

SENDER: *COMPLETE THIS SECTION*

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

TVMax
10300 Westoffice Drive
Houston, TX 77042

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X C. Smith-Cole ☐ Agent ☐ Addressee

B. Received by *(Printed Name)* C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number
(Transfer from service label) 7011 0470 0000 9470 8493

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

ATTACHMENT 2

DECLARATION

I, Steven W. Hunt, hereby state as follows:

1. I am Regional Vice President, Affiliate Sales and Marketing, for Fox Cable Networks. My responsibilities include negotiating for retransmission consent with respect to broadcast television stations KTXH(TV) and KRIV(TV), Houston, Texas (the "Stations"). I submit this Declaration in connection with Fox Television Holdings, Inc.'s ("FOX") Retransmission Consent Complaint and Petition for Order Requiring TV Max, Inc. to Show Cause Why It Should Not Cease and Desist From Violating Section 325(b) of the Communications Act, dated April 12, 2012 (the "Complaint").

2. FOX diligently and in good faith attempted to negotiate with TV Max between August and December of 2011. Specifically, in September 2011, FOX proposed terms for TV Max's continued carriage of the Stations beyond the end of 2011. FOX repeatedly attempted to contact TV Max by telephone, mail and email, but TV Max refused to provide any substantive response.

3. I maintained detailed records concerning my attempts to contact TV Max, by telephone, email and mail, during the time period August 2011-December 2011. The summary of this correspondence set forth in the foregoing Complaint is true and accurate.

I declare under penalty of perjury that I have read the foregoing Complaint, that the facts therein and in this Declaration are true and correct to the best of my knowledge, information and belief, formed after reasonable inquiry, that the Complaint is well grounded in fact, that it is warranted by existing law or good faith argument for the extension, modification or reversal of existing law, and that it is not interposed for any improper purpose.

Executed on April 12, 2012

Steven W. Hunt
Regional Vice President, Affiliate Sales and Marketing
Fox Cable Networks
100 East Royal Lane
Irving, TX 75039

ATTACHMENT 3

FOX TELEVISION STATIONS, INC.
A UNIT OF FOX ENTERTAINMENT GROUP

444 North Capitol Street NW, Suite 740
Washington, DC 20001
Phone 202 715 2350 • Fax 202 824 6510
Cell 202 679 8567 • e-mail: jdiscipio@newscorp.com

Joseph M. Di Scipio
Vice President
Legal and FCC Compliance

December 20, 2011

Richard Gomez
Vice President Operations
TVMAX Inc.
10300 Westoffice Drive, Suite 200
Houston, TX 77042

Re: Notice to Cease and Desist Copyright Infringement and Violation of the Communications Act

Dear Mr. Gomez:

With December 31 quickly approaching, we are writing because your contract to carry the Fox television stations referenced below expires on December 31, 2011, and we do not have an agreement in place for continued carriage.

As you know, Fox Television Stations, Inc. ("Licensee"), licensee of KRIV and KTXH ("Stations"), elected retransmission consent status for all of the Stations transmitted by TV MAX Inc. ("Operator") cable systems, including, without limitation, those serving the Houston designated market area. Licensee made this election for the period beginning January 1, 2012, and ending December 31, 2014. As of January 1, 2012, Operator will not have the right to retransmit the signals of the Stations and must cease such retransmission as of December 31, 2011, at 11:59 p.m.

Although multiple efforts have been made through phone calls and emails, we have been unable to reach agreement on the terms of carriage of the Stations' signals going forward.

Retransmission of the Stations without the consent of Licensee is a violation of the Copyright Act, the Communications Act of 1934, as amended, and the rules of the Federal Communications Commission ("FCC"). If Operator continues to retransmit the signals of the Stations after December 31, 2011, Licensee may pursue appropriate damages under the Section 504 of the Copyright Act, which allows a victim of willful copyright infringement to recover, at its election: (a) all actual damages or (b) statutory damages in the amount of $ 150,000 per work, as well as attorneys' fees. In addition, should Operator continue retransmitting the Stations after December 31, 2011, Licensee may refer this matter to the FCC for violation of the Communications Act.

Should you wish to have the right to continue to carry the Stations as of January 1, 2012, please contact Steven Hunt at (972) 868-1801. No temporary rights to retransmit the Stations shall be granted without agreement on rates for retransmission consent.

Sincerely,

Joseph M. Di Scipio

ATTACHMENT 4