



650 Dresher Road p. 215-784-5840  
Horsham, PA 19044 f. 215-784-5833  
musicchoice.com

May 9, 2012

FILED/ACCEPTED

Via Hand Delivery

MAY - 9 2012

Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Federal Communications Commission  
Office of the Secretary

Re: *MB Docket No. 12-113*  
*Retransmission Consent Complaint and Petition of Fox Television Holdings, Inc.*

Dear Ms. Dortch:

Music Choice ("Music Choice") submits these brief comments to offer its perspective on the allegations contained in Fox's retransmission consent complaint against TV Max, Inc. ("TV Max") and the response of TV Max.<sup>1</sup> While TV Max suggests that its continued carriage of the Fox broadcast stations without payment is due to a good faith belief that it falls into an exception to the retransmission consent requirements, it is telling that TV Max has carried Music Choice's service for nearly two years without payment, in breach of its contract with Music Choice and despite repeated notices directing it to cease and desist such unauthorized transmissions.

Music Choice nationally distributes, in exchange for a license fee, television programming including digital music channels, video-on-demand programming, and a user-influenced music video network to over two hundred (200) multichannel video programming distributors ("MVPDs"). These MVPDs in turn distribute the Music Choice programming services on a subscription basis to end user subscribers.

Effective January 1, 2010, Music Choice and TV Max entered into a Music Choice Affiliation Agreement (the "Affiliation Agreement").<sup>2</sup> Pursuant to the Affiliation Agreement, TV Max paid a monthly per-subscriber license fee for the right to distribute the "Music Choice Audio Services."

<sup>1</sup> *Retransmission Consent Complaint and Petition of Fox Television Holdings, Inc.*, MB Docket No. 12-113 (filed April 12, 2012) ("Fox Complaint"); *id.*, Response of TV Max to Complaint (filed May 1, 2012).

<sup>2</sup> The entity with which Music Choice contracted is "TVMAX Corporate, Inc.", but Music Choice believes this entity to be the same entity carrying at least one of the Fox Stations noted in the Complaint (KPIV) and the Music Choice audio channels.

No. of Copies rec'd 0+4  
List ABCDE

Starting in June 2010, TV Max failed to pay license fees due to Music Choice. Despite repeated attempts to contact TV Max and resolve the outstanding payment issues, TV Max failed to respond. Music Choice sent a formal Demand for Payment Notice in January 2011, and having still received no response, sent a formal termination notice in February 2011, which further directed "TVMAX to immediately cease and desist its distribution of the Music Choice Audio Services to its subscribers."

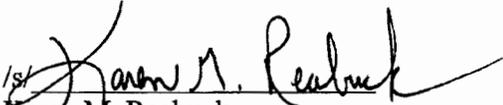
In March 2011, Music Choice was contacted by Broadband Ventures I, which represented that it had taken over accounting for TV Max and proposed a payment installment plan. Broadband Ventures acknowledged that TV Max continued to carry the Music Choice Audio Services. Music Choice agreed to reauthorize TV Max to carry the service if payments were made according to the payment plan. However, only one of the six agreed-upon payments was made, leading Music Choice to again terminate the agreement in April 2011, demand past due payments, and order TV Max to cease and desist carriage of the Music Choice Audio Services. TV Max did not respond.

In April 2012, Music Choice discovered that TV Max still listed the Music Choice Audio Services channels in the TV Max/Wavevision lineup. Through subsequent phone calls to TV Max's customer service organization, Music Choice confirmed that TV Max continues to distribute the Music Choice Audio Services without payment and in breach of contract. Music Choice is currently reviewing its legal options against TV Max.

Music Choice takes no position on the legal question of whether the retransmission consent rules or exceptions should apply to TV Max. But we do believe that it is not coincidence that TV Max has failed to pay other programming providers for their content. TV Max has been advised repeatedly that it is not authorized and licensed to carry the Music Choice Audio Services channels, yet continues to do so notwithstanding its terminated Affiliation Agreement and non-payment of Music Choice license fees for nearly two (2) full years. This behavior demonstrates a pattern of bad faith conduct that goes directly to the issue of whether TV Max is bargaining in good faith with Fox as it represents in its response.

Because TV Max has a history of, at best, questionable actions in carriage matters, Music Choice supports Fox's request that the Commission send a "stern and necessary signal that the FCC will not tolerate wanton disregard. . ." of license and carriage requirements.

Respectfully submitted,

  
/s/ Karen M. Reabuck  
Karen M. Reabuck  
Vice President, Legal Affairs  
MUSIC CHOICE  
650 Dresher Road  
Horsham, PA 19044