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May 24, 2012

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

Via Federal Express Overnight Delivery

Re: **Surreply of TV Max, Inc. to Fox Television Holdings, Inc.'s Reply, MB Docket No. 12-113, CSR-8623-C**

Enclosed for filing please find an original and two copies of the Surreply of TV Max, Inc. to Fox Television Holdings, Inc.'s Reply in MB Docket No. 12-113, CSR-8623-C.

Additional copies have been sent to the individuals listed on the Certificate of Service attached to the Surreply of TV Max.

Please note that Attachment 1, the Supplemental Declaration of Thomas Balun, is a photocopy of the original. The signed original Supplemental Declaration will be delivered to your office via Federal Express Overnight Delivery.

Thank you for your assistance.

Sincerely,



Carl E. Kandutsch
Attorney for TV Max

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MAY 25 2012

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

In the Matter of)	
)	
Retransmission Consent Complaint)	MB Docket No. 12-113
And Petition of Fox Television Holdings, Inc.)	CSR-8623-C
)	
To: Office of the Secretary)	
Attn: Media Bureau)	

SURREPLY OF TV MAX, INC. TO FOX TELEVISION HOLDINGS, INC.’S REPLY

TV Max, Inc. (dba Wavevision, referred to as “TV Max”) by and through its counsel, files this Surreply, pursuant to Section 76.7 of the Commission’s rules, to Fox Television Holdings, Inc.’s Reply to TV Max Response¹. The scope of this Surreply is limited to correcting certain misrepresentations of the factual record included in the Fox Reply.

TV Max does not deny that it is required to negotiate consent agreements in good faith with respect to retransmission of signals of television stations KTXH(TV) and KRIV(TV) (the “Signals”) to the extent that TV Max does not qualify for the exemption set forth in 47 C.F.R. § 76.64(e) (referred to as the “MATV Exemption”).

Nor does TV Max deny that as of January 1, 2012, when the prior retransmission consent agreement with Fox expired, not all of the MDU buildings served by the company had been converted to MATV systems so as to qualify for the MATV Exemption. As stated in paragraph 5 of the Declaration of Thomas Balun (“Balun Declaration”) filed with the Response of TV Max dated May 1, 2012², about 50% of the MDU buildings had been converted to MATV systems as of January 1, 2012. The Balun Declaration further asserts that since November 2011, TV Max has been working diligently to complete the installation of MATV systems at all MDU buildings as efficiently as practically possible, and that such installation of MATV systems at 100% of the MDU buildings will be complete by June 1, 2012.

TV Max does deny, however, that (a) with respect to MDU buildings not converted to MATV systems since January 1, 2012, TV Max has failed to negotiate in good faith with Fox as required Section

¹ Fox Television Holdings, Inc.’s Reply to TV Max Response, MB Docket No. 12-113, CSR-8623-C (submitted May 15, 2012) (the “Fox Reply”).

² Response of TV Max, Inc. to Complaint and Petition for Order Requiring TV Max, Inc. to Show Good Cause, MB Docket No. __, CSR No. __ (submitted May 1, 2012) (the “TV Max Response”).

76.65³ of the Commission's Rules; and (b) with respect to MDU buildings at which MATV systems have been installed (including all buildings by June 1, 2012), that TV Max does not qualify for the MATV Exemption.

With respect to MDU buildings not converted to MATV systems as of and following January 1, 2012, TV Max is negotiating in good faith with Fox. As stated in the Fox Reply⁴, TV Max participated in a conference call with Fox representatives on April 26, 2012 concerning a retransmission consent proposal provided by Fox. Since that time, TV Max, in consultation with its accountants, has been preparing a counter-proposal and that counter-proposal will be provided to Fox no later than Monday, May 28, 2012. The TV Max counter-proposal will include a good faith offer to settle all outstanding retransmission consent accounts relating to use of the Fox Signals since the prior retransmission consent agreement expired on January 1, 2012. The obligation to negotiate in good faith is not being ignored; rather, that obligation is being pursued with due diligence.

With respect to MDU buildings at which MATV systems have been installed, TV Max has met each of the criteria set forth in 47 C.F.R. § 76.64(e)⁵, and therefore qualifies for the MATV Exemption.

While apparently accepting TV Max's representation that the Signals may be received by non-subscribing residents of these MDU properties at no charge via the MATV system, Fox asserts that TV Max continues to retransmit the Signals to its pay-subscribers by means of its central head-end facility and fiber ring for a fee. Therefore, according to Fox, TV Max does not qualify for the MATV Exemption.

This assertion is incorrect, and inconsistent with factual averments contained in Mr. Balun's sworn Declaration and in the attached Supplemental Declaration of Thomas Balun.⁶

First, regarding distribution of the Signals through the central head-end rather than through the on-site MATV facilities, the Balun Declaration asserts unequivocally: "The off-air signals are not inserted into TV Max's cable system; rather, they are inserted into the MATV systems owned by the owner of the MDU building."⁷ Because the Signals are inserted into the MATV systems rather than into TV Max's cable systems, the Signals are "received by master antenna facilities"⁸ as required in the MATV Exemption.

Specifically, as a convenience offered to its subscribers, TV Max allows subscribers to receive off-air broadcast signals in either of two ways, at the subscriber's option. Units that are equipped with a

³ 47 C.F.R. § 76.65.

⁴ Fox Reply, p. 6.

⁵ These separate criteria are set forth on page 5 of the TV Max Response.

⁶ See Supplemental Declaration of Thomas Balun, attached hereto at Attachment 1.

⁷ Balun Declaration, ¶ 6.

⁸ 47 C.F.R. § 76.64(e).

digital television or a digital converter may receive off-air broadcast signals via the building's MATV facilities directly. However, because some subscribers do not own digital televisions, and are forced to purchase complicated and often unreliable digital converters, those subscribers may elect to receive an analog duplication of the off-air signal that is inserted into the building's MATV system for delivery to the subscriber's television set. In either case, the broadcast Signals are "received by master antenna television facilities," as required under the MATV Exemption, and no resident of any MDU building served by TV Max incurs a monthly charge for the reception of local off-air television signals.⁹

Second, regarding the availability of the Signals "without charge," the Balun Declaration unequivocally avers that since January 1, 2012, "reception of the Signals has been available to any resident of an MDU building served by TV Max *at no charge*, and at the resident's option, *regardless of whether the resident subscribes to any TV Max service.*"¹⁰ This implies, contrary to Fox's claim, that the Signals are available to TV Max's pay-subscribers – as well as to non-subscribers – at no charge. The fact that "TV Max did not reduce its retail rates upon expiration of its retransmission consent agreement with Fox" is irrelevant, because per the Balun Declaration, TV Max "makes reception of [the Signals] available without charge and at the subscriber's option,"¹¹ which is all that the MATV Exemption requires. The MATV Exemption does not dictate pricing policies to MVPDs.

Finally, as described in the TV Max Response, the third component of the MATV Exemption is also satisfied because, as stated in the Balun Declaration, the MATV systems installed at MDU buildings served by TV Max are owned by the building owner.¹²

In summary, TV Max admits to non-compliance with the retransmission consent regime insofar as it had failed to install MATV systems at 100% of the MDU buildings served by the company at the time the prior retransmission consent agreement with Fox expired on December 31, 2011. However, that non-compliance cannot realistically be characterized as "willful and repeated" so as to justify imposition of a forfeiture penalty under the Commission's rules,¹³ nor is TV Max refusing to negotiate in good faith with Fox. All MDU buildings served by TV Max will be fully converted to exempt MATV systems by June 1, 2012, and TV Max's counter-proposal will be provided to Fox no later than May 28, 2012 as part of a good-faith negotiation to resolve all outstanding accounts. For all of these reasons, the Commission's intervention is not required, and TV Max respectfully requests that the relief sought by Fox in this case be denied.

⁹ Balun Supplemental Declaration at ¶ 6.

¹⁰ *Id.*, at ¶ 5 (emphasis added).

¹¹ 47 C.F.R. § 76.64(e).

¹² Balun Declaration at ¶ 5.

¹³ 47 C.F.R. § 1.80(a)(2).

Respectfully submitted,

TV Max, Inc., d.b.a. Wavevision

By: Carl Kandutsch

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Dated: May 24, 2012

ATTACHMENT 1

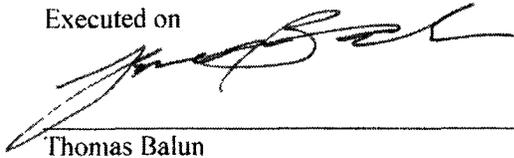
SUPPLEMENTARY DECLARATION OF THOMAS BALUN

I, Thomas Balun, hereby state as follows:

1. I am the CEO of TV Max, Inc. (dba Wavevision, referred to herein as "TV Max"). I submit this Declaration in connection with the Surreply of TV Max to Reply of Fox Television Holdings, Inc. ("Fox"). The averments included in this Supplementary Declaration are intended to supplement those included in my prior Declaration submitted with TV Max's Response on May 1, 2012.
2. Each apartment complex is wired utilizing a master antenna television ("MATV") distribution system that is capable of delivering signals to each unit in any residential apartment building ("MDUs") served by TV Max. These MATV systems stand alone without cable or any other video provider. They include an antenna that receives local digital broadcast signal and "home run" wiring that delivers digital television signal to each apartment. TV Max mixes its spectrum with the existing MATV wiring to deliver both video and internet to those residents who wish to subscribe to these services.
3. These MATV systems are owned by and therefore under the control of the owner of the MDU property. In the event the contract with the MDU owner is not renewed and TV Max stops serving the residents of the MDU property, those residents who had received the free off-air signals, including both non-subscribers and former cable subscribers, continue to receive the local off-air digital broadcast signal.
4. Prior to the expiration of the retransmission consent agreement with Fox on December 31, 2011, the off-air stations were included in the TV Max basic cable package. However, in November 2011 TV Max removed the local off-air broadcast stations from its basic programming tier, and since that time all residents of any apartment building served by TV Max may receive the local programming free of monthly charges.
5. When the television broadcasters converted their signals from analog to digital broadcast transmission, the citizens of this country were faced with the need to convert to digital reception. This conversion involved either the purchase of a new digital television or the purchase of a digital-to-analog converter for each analog television. Many of these converters proved to be unreliable and complicated to use. End users who already subscribed to cable services did not need to do anything, because the cable operator did it for them.
6. TV Max utilizes diplexers and filters to allow the delivery of local off-air broadcast signals to residents of MDU buildings served by our company. TV Max distributes off-air broadcast signals to its paying subscribers in either of two ways, at the subscriber's option: If the subscribing unit is equipped with a digital television or a digital converter, the subscriber may receive the off-air signal via the building's MATV facilities directly; alternatively, if the subscribing unit is not equipped with a digital television or a digital converter, the subscriber may receive an analog duplication of the off-air digital signal that has been inserted into the MATV system for delivery to the subscriber's television set. In either case, residents of MDU buildings served by TV Max may receive local off-air television without any monthly charge and at the resident's option.

I declare under penalty of perjury that I have read the Surreply of TV Max to the to Reply of Fox Television Holdings, Inc., that the facts described in the Surreply and in this Supplemental Declaration are true and correct to the best of my knowledge, information and belief, that the Surreply of TV Max is well grounded in fact, warranted under current law or good faith argument for the extension, modification or reversal of current law.

Executed on

A handwritten signature in black ink, appearing to read 'T. Balun', is written over a horizontal line.

Thomas Balun
CEO, TV Max

CERTIFICATE OF SERVICE

I certify that on this 24th day of May 2012, I caused the foregoing Surreply of TV Max to Fox Television Holdings, Inc.'s Reply to be served by registered U.S. mail, overnight delivery, return receipt requested, except where email is indicated, on the following:

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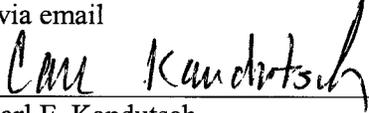
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