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August 3, 2012

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

DOCKET FILE COPY ORIGINAL

Via Federal Express Overnight Delivery

Re: Surreply of TV Max, Inc. to Reply of Univision Communications, Inc., MB Docket No. 12-181, CSR-8669-C

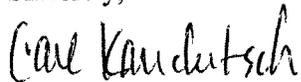
Enclosed for filing please find an original and two copies of the Surreply of TV Max, Inc. to Reply of Univision Communications, Inc. in MB Docket No. 12-181, CSR-8669-C.

Additional copies have been sent to the individuals listed on the Certificate of Service attached to the Answer 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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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

In the Matter of)	
)	
TV Max, Inc., dba Wavevision)	MB Docket No. 12-181
)	CSR-8669-C
Enforcement Complaint Concerning)	
KXLN-DT, Rosenberg, Texas and)	
KFTH-DT, Alvin, Texas)	

To: Office of the Secretary
Attn: Media Bureau

SURREPLY OF TV MAX TO REPLY OF UNIVISION COMMUNICATIONS, INC.

TV Max, Inc. (dba Wavevision, referred to as “TV Max”) by and through its counsel and pursuant to Section 76.7 of the Commission’s Rules, files this Surreply to Univision Communications, Inc.’s (“Univision”) Reply to TV Max’s Answer to Enforcement Complaint¹ concerning TV Max’s alleged violation of Section 325(b) of the Communications Act of 1934 (the “Act”) and the Commission’s rules.

TV Max agrees with Univision that there is no dispute that buildings not equipped with MATV systems do not qualify for exemption under Section 76.64(e) of the Commission’s rules.² TV Max concedes that at the time its retransmission consent agreement with Univision expired on December 31, 2011, approximately 50% of the multi-dwelling unit (“MDU”) buildings served by TV Max had not been equipped with MATV systems. However, TV Max does not agree that its failure to fully qualify for the MATV exemption as of January 1, 2012 at all MDU buildings served by TV Max constitutes the kind of “willful and repeated” non-compliance as to justify the imposition of a forfeiture penalty under Section 1.80(a)(2) of the Commission’s rules.

As explained in the Declaration of Thomas Balun filed with the Answer of TV Max³, (1) no resident of any MDU building served by TV Max has been billed for the reception of signals of television broadcast stations KXLN-DT and KFTH-DT (the “Signals”) since November 2011, and (2) TV Max has

¹ “Reply to TV Max’s Answer to Enforcement Complaint,” MB Docket No. 12-181, CSR-8669-C (submitted July 30, 2012) (the “Univision Reply”).

² 47 C.F.R. § 76.64(e) (the “MATV Exemption”).

³ Declaration of Thomas Balun, Attachment 1 to Answer of TV Max to Enforcement Complaint, MB Docket No. 12-181, CRS-8669-C (the “Balun Declaration”).

been working diligently and in good faith since November 2011 to install master antennas on all MDU buildings, in order to render operational the MATV systems (consisting of inside wiring serving each residential unit) already in place at those buildings. TV Max's failure to complete all installations by January 1, 2012 was *not* attributable to lack of good faith efforts to comply with applicable laws and regulations, but to the unanticipated resistance of some building owners to the rooftop antenna installations. TV Max has been continuously working to overcome that resistance, and as of July 26, 2012, master antennas have been fully installed and are currently operational at all MDU buildings served by TV Max.⁴

Therefore, to the extent that TV Max's operations at MATV-equipped MDU buildings meet the requirements of the MATV exemption, there is no basis for entry of an order requiring TV Max to cease and desist from retransmitting the Signals (because TV Max no longer retransmits the signals), and no basis for initiation of a forfeiture proceeding (because there is no evidence of willful violation of the Commission's rules).

The only issue before the Commission is whether or not TV Max's operations at the MATV-equipped MDU buildings – which as of July 26, 2012, include *all* MDU buildings served by TV Max – meet applicable criteria for exemption from retransmission consent requirements under Section 76.64(e).

The purpose of the MATV Exemption is to ensure, following the advent of pay-television *via* cable systems, that consumers may continue to receive free broadcast signals obtained over the air. More specifically, the Commission has stated that the MATV Exemption is intended to ensure that an MVPD would be “unable to terminate or otherwise limit the availability of local broadcast signals to individual residents” following termination of cable service.⁵

In this proceeding as well as Docket No. 12-113, TV Max has drawn the Commission's attention to the fact that unlike other franchised cable television operators, TV Max does not retransmit broadcast signals throughout an entire community. Rather, TV Max only serves residents of MDU buildings. From this perspective, TV Max is similar to a SMATV operator that simply uses MATV facilities to deliver local broadcast signals to residents of a multi-family building – the traditional use of an MATV system.

Prior to the expiration of TV Max's retransmission consent agreement with Univision, the off-air stations were included in TV Max's basic cable package. However, beginning in November 2011, TV

⁴ See E-mail from Carl Kandutsch, counsel for TV Max, to Diana Sokolow, FCC Media Bureau, Policy Division, MB Docket Nos. 12-113 and 12-181 (sent to all parties on July 26, 2012) (“July 26 TV Max E-mail”) and Supplemental Declaration of Thomas Balun, Attachment 1 to this Surreply.

⁵ *In re Implementation of the Cable Act*, 8 FCC Rcd 2965, 2998 (1993) (the “1993 Order”).

Max removed the off-air stations from its basic programming tier and since November, TV Max has not billed any resident of an MDU building served by the company for any off-air broadcast programming.⁶

This transition was accompanied by the installation and activation of MATV systems at each building, such that the free-off air signals could be provided to MDU residents apart from TV Max's cable system. TV Max has expended significant resources in installing, at its sole expense, master antennas at each MDU building for which TV Max has a right-of-entry agreement with the owner, and connecting the master antennas to the wiring serving each residential unit in every building. These MATV systems allow MDU residents to receive off-air broadcast signals in either of two ways, at the resident's option: If the resident possesses a digital television set or a digital converter, the resident may receive the broadcast signals directly from the on-site MATV system. Alternatively, if the resident does not possess a digital television set or a digital converter, the resident may choose to receive an analog duplication of the off-air digital signal that has been inserted into the on-site MATV system and delivered to the resident's analog television. In either case, any resident of any MDU building served by TV Max may receive the broadcast signal using either of the delivery methods described above, at the resident's option, and without any monthly charge.

Thus, the MATV systems installed by TV Max serve public purposes that are consistent with relevant policies of the Federal Communications Commission. The MATV systems allow consumers to receive local broadcast signals by consumers at no charge, regardless of whether the consumer subscribes to any TV Max pay-service, without the need to purchase an individual off-air antenna. Furthermore, because the MATV facilities are the property of the MDU building owners, and remain at buildings following the termination or non-renewal of TV Max's right-of-entry agreements with property owners, the master antenna systems ensure that TV Max is "unable to terminate or otherwise limit the availability of local broadcast signals to individual residents" following termination of cable service – which is the primary purpose of the MATV Exemption as described by the Commission itself in the *1993 Order*.

In addition, TV Max has taken an active role in assisting consumers with technical and financial difficulties associated with the mandated conversion of broadcast signals from analog to digital format. As described in the Balun Declaration, the digital conversion required consumers purchase either a new digital television, or a digital-to-analog converter for each analog television set in order to receive broadcast signals in digital format. TV Max makes available to all residents of its MDU buildings free digital to analog conversion of off-air signals, thus providing a benefit to citizens of Houston who cannot afford to purchase a digital television or a conversion device, or are unable to correctly install the device

⁶ Balun Declaration, ¶ 5(b).

without assistance.⁷ This free service provided by TV Max furthers the Commission's goal of ensuring the uninterrupted reception of broadcast signals by consumers following the digital conversion.

Univision asserts that the MATV Exemption only protects signals "actually received" by the MATV system; therefore, according to Univision, it is irrelevant that TV Max "makes available" broadcast signals to all MDU residents at no charge and at the individual resident's option, by means of an on-site MATV system belonging to the building owner, without transmission of the signals through TV Max's fiber ring, and without the need for a set-top box.⁸ TV Max believes that Univision's assertion is unsupported either by the express provisions of Section 76.64(e) or by the public policy purposes underlying the MATV Exemption.

First, because most consumers prefer, and possess the technical means, to view digital (including HD) programming on their television sets, the rooftop master antennas installed by TV Max on MDU buildings remain the primary means by which residents of those buildings receive broadcast signals. However, even those broadcast signals that are converted from digital to analog format for the benefit of consumers are inserted (along with other programming signals) by TV Max into the on-site MATV facilities located at each MDU building for delivery to the end-user's television set. Therefore, those signals are in fact "received by master antenna facilities" as required in Section 76.64(e).

The fact that TV Max offers consumers the option to receive broadcast signals directly through MATV systems "in conjunction with" (rather than to the exclusion of) TV Max's cable programming is also consistent with the language of Section 76.64(e). The crucial points are: (a) that the broadcast signals received by MATV facilities are made available to any resident at any MDU building served by TV Max, at the resident's option, without transmission through TV Max's fiber ring or the need for a set-top box, and at no charge, regardless of whether or not the resident is a TV Max subscriber; and (b) because the on-site MATV facilities are the property of the building owner and remain at the property following termination or expiration of TV Max's right-of-entry agreement, the MATV systems ensure that TV Max is unable to terminate or otherwise limit the availability of local broadcast signals to individual residents following termination of cable service.

CONCLUSION

For all of the reasons set forth above, in TV Max's Answer to Univision's Enforcement Complaint, and in filings submitted to the Commission in Docket No. 12-113, TV Max qualifies for

⁷ Balun Declaration, ¶ 7.

⁸ See Univision Reply, p. 7.

exemption from retransmission consent requirements under Section 76.64(e), and Univision's request for regulatory intervention should be denied.

Respectfully submitted,

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

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Dated: August 3, 2012

ATTACHMENT 1

SUPPLEMENTAL 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 TV Max to Reply of Univision Communications, Inc. in MB Docket No. 12-181.
2. TV Max's failure to install MATV systems at all multi-dwelling unit ("MDU") buildings by January 1, 2012 was *not* attributable to lack of good faith efforts to comply with applicable laws and regulations, but to the unanticipated resistance of some building owners to the rooftop antenna installations. TV Max has been continuously working to overcome that resistance, and as of July 26, 2012, master antennas have been fully installed and are currently operational at all MDU buildings served by TV Max.

I declare under penalty of perjury that I have read the Surreply of TV Max to the Reply of Univision Communications, 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 Answer 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 August 3, 2012



Thomas Balun
CEO, TV Max

CERTIFICATE OF SERVICE

I certify that on this 3rd day of August 2012, I caused the foregoing Surreply of TV Max to Reply of Univision Communications, Inc. 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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