



Federal Communications Commission
Washington, D.C. 20554

December 20, 2012

Carl E. Kandutsch
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2520 Avenue K
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RE:

- FOX Enforcement Complaint Concerning KTXH(TV) and KRIV(TV), Houston TX, MB Docket No. 12-113, CSR No. 8623-C (dated Apr. 12, 2012) (“FOX Complaint”)
- Univision Enforcement Complaint Concerning KXLN-DT, Rosenberg, TX and KFTH-DT, Alvin, TX, MB Docket No. 12-181, CSR No. 8669-C (dated Jun. 21, 2012) (“Univision Complaint”)
- Post-Newsweek Enforcement Complaint Concerning KPRC-TV, Houston, TX, MB Docket No. 12-222, CSR No. 8694-C (dated Jul. 31, 2012) (“Post-Newsweek Complaint”)
- ABC Enforcement Complaint Concerning KTRK-TV, Houston, TX, MB Docket No. 12-266, CSR No. 8707-C (dated Sept. 5, 2012) (“ABC Complaint”)

Dear Mr. Kandutsch:

1. As you know, we had a conference call on December 4, 2012, between your client, TV Max, Inc. (d/b/a Wavevision) (“TV Max”), FCC’s Media Bureau staff, and the complainants in the above listed proceedings. As explained during the conference call, Bureau staff’s initial findings indicate that TV Max has willfully and repeatedly violated, and continues to violate, Section 325 of the Communications Act of 1934, as amended (the “Act”), and Section 76.64 of the Commission’s rules, by retransmitting the signals of six television broadcast stations (the “Stations”)¹ without the express authority of the originating stations.² Based on our initial findings, we are recommending that the Commission issue a Notice of Apparent Liability for Forfeiture for these violations. We expect TV Max to immediately stop retransmitting the Stations’ signals without consent and come into compliance with the Commission’s rules. Failure to do so may subject TV Max to further enforcement action.

2. Our initial findings of violation are based on (1) TV Max’s admitted carriage of the Stations from the time their retransmission consent agreements expired until at least July 26, 2012 without the Stations’ consent and without a master antenna television (MATV) system in place in all the buildings it serves; and (2) TV Max’s ongoing carriage of the stations without consent since July 26, 2012 through a method that does not qualify for the MATV Exception.

¹ The six stations involved are KTXH(TV), KRIV(TV), KXLN-DT, KFTH-DT, KPRC-TV, and KTRK-TV.

² 47 U.S.C. § 325(b)(1)(A); 47 C.F.R. § 76.64(a).

3. We received four complaints from broadcasters alleging that TV Max retransmitted without consent the signals of six stations.³ Our initial findings are as follows.

4. TV Max is a cable television operator that serves more than 10,000 subscribers in the Houston, TX Designated Market Area (“DMA”), in 245 multiple-dwelling unit buildings (MDUs).⁴ Because all its subscribers reside in MDUs, TV Max decided to carry broadcast stations without paying retransmission consent fees by invoking the little-used master antenna television (MATV) exception to the retransmission consent requirement.⁵ Notably, TV Max admits that it retransmitted the stations’ signals without retransmission consent before MATV systems on all of its MDU buildings were installed.⁶ TV Max’s retransmission agreements with the FOX, Univision, and Post-Newsweek stations expired December 31, 2011, and its agreement with ABC expired March 2, 2012.

5. In November 2011, TV Max began to convert all MDU buildings to MATV systems and states that it had hoped to complete the installations before the retransmission consent agreements expired on December 31, 2011. TV Max admits, however, that no more than half of its 245 buildings had operational MATV systems as of January 1, 2012.⁷ TV Max further concedes that it had not installed MATV systems on at least 19 buildings as of July 19, 2012 but nonetheless continued to carry the Stations’ signals throughout this time period, despite the filing of the Fox complaints in April. On July 26, 2012, TV Max asserted that it had completed installation of MATV systems on all of its MDU buildings.⁸ Based on this record, TV Max violated the retransmission consent rules during this seven-month time period (January 1, 2012 – July 26, 2012, the time period that it did not have MATV systems in place for all its buildings and retransmitted the signals without the broadcasters’ consent). Thus, we are recommending that the Commission issue a Notice of Apparent Liability for Forfeiture for TV Max’s

³ See FOX Enforcement Complaint Concerning KTXH(TV) and KRIV(TV), Houston TX, MB Docket No. 12-113, CSR No. 8623-C (dated Apr. 12, 2012) (“FOX Complaint”); Univision Enforcement Complaint Concerning KXLN-DT, Rosenberg, TX and KFTH-DT, Alvin, TX, MB Docket No. 12-181, CSR No. 8669-C (dated Jun. 21, 2012) (“Univision Complaint”); Post-Newsweek Enforcement Complaint Concerning KPRC-TV, Houston, TX, MB Docket No. 12-222, CSR No. 8694-C (dated Jul. 31, 2012) (“Post-Newsweek Complaint”); ABC Enforcement Complaint Concerning KTRK-TV, Houston, TX, MB Docket No. 12-266, CSR No. 8707-C (dated Sept. 5, 2012) (“ABC Complaint”).

⁴ See, e.g., Answer of TV Max to Enforcement Complaint of Univision Communications, Inc. (“TV Max Answer to Univision”), MB Docket No. 12-181, dated Jul. 19, 2012 at 1-2. TV Max currently holds a cable television franchise with the City of Houston, TX.

⁵ See *id.* at 2. See also 47 C.F.R. § 76.64(e) (“The retransmission consent requirements of this section are not applicable to broadcast signals received by master antenna television facilities or by direct over-the-air reception in conjunction with the provision of service by a multichannel video program distributor provided that the multichannel video program distributor 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.”).

⁶ See, e.g., Surreply of TV Max, Inc. to Fox Television Holdings, Inc.’s Reply, MB Docket No. 12-113, (“TV Max Surreply to FOX”), dated May 25, 2012 at 3 (“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.”).

⁷ *Id.*

⁸ See TV Max email (in the docket) dated July 26, 2012. See also, e.g., TV Max Answer to Univision at 2-3.

willful and repeated violations of Section 325 of the Act and Section 76.64 of the Commission's rules.⁹

6. Moreover, we believe that TV Max's unlawful retransmission of the Stations' signals over its cable system to its cable subscribers is not cured by its installation of MATV systems on its MDU buildings. The record shows that TV Max is retransmitting the Stations' signals from its off-site (central) headend that serves multiple MDUs ("off-site headend") rather than using the MATV antenna at the individual buildings for all of its customers.¹⁰ TV Max claims it complies with the MATV Exception because the broadcast signals received by the MATV systems are made available to all MDU residents at no charge and at the resident's option.¹¹ The Exception, however, does not apply to signals retransmitted from an off-site headend facility, even if the customer also has access to a MATV or over-the-air version of the signal.¹² The MATV Exception applies only when an operator merely facilitates a subscriber's access to an over-the-air television signal received by a MATV antenna and where the signal made available without charge to subscribers is the same over-the-air signal received by the MATV antenna.¹³ To the extent TV Max is transmitting to some subscribers broadcast signals received at its off-site headend, it does not qualify for the MATV Exception and, therefore, continues to willfully and repeatedly violate the retransmission consent rules by continuing to transmit the broadcasters' signals in this manner.

7. Accordingly, we expect that TV Max will immediately come into compliance with the law, if it has not already done so.

Sincerely,



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⁹ 47 U.S.C. § 325(b)(1)(A); 47 C.F.R. § 76.64(a).

¹⁰ See TV Max email (in the docket) dated July 26, 2012 ("Answer to Interrogatory," stating "Broadcast signals are delivered to MDU residents using both the fiber ring and the MATV systems.").

¹¹ TV Max Surreply to FOX at 2-3.

¹² The MATV Exception in Section 76.64(e) pertains only to "broadcast signals received by master antenna television facilities." 47 C.F.R. § 76.64(e).

¹³ *Id.*

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